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CONSTITUENT ASSEMBLY DEBATES

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CONTENTS

Volume IX 30th July to 18th September 1940

Pages

Saturday, 30th July 1940

[illegible] 1

[illegible] 2 - 42

Monday, 1st August 1940

[illegible] 43 - 83

Tuesday, 2nd August 1940

[illegible] 84

[illegible] 85 - 127

Wednesday, 3rd August 1940

[illegible] 128 - 163

Thursday, 8th August 1940

[illegible] 164 - 206

Friday, 9th August 1940

[illegible] 207 - 240

Monday, 12th August 1940

[illegible] 241 - 273

Tuesday, 13th August 1940

[illegible] 274 - 311

Wednesday, 14th August 1940

[illegible] 312 - 348

Thursday, 15th August 1940

[illegible] 349 - 374

Friday, 16th August 1940

[illegible] 375 - 411

Monday, 19th August 1940

[illegible] 412 - 443

Tuesday, 20th August 1940

[illegible] 444 - 479

Wednesday, 21st August 1940

[illegible] 480 - 511

Thursday, 22nd August 1940

[illegible] 512 - 548

Friday, 23rd August 1940

[illegible] 549 - 580

Monday, 26th August 1940

[illegible] 581 - 618

Tuesday, 27th August 1940

[illegible] 619 - 650

Wednesday, 28th August 1940

[illegible] 651 - 688

Thursday, 29th August 1940

[illegible] 689 - 720

Friday, 30th August 1940

[illegible] 721 - 752

Monday, 2nd September 1940

[illegible] 753 - 788

Tuesday, 3rd September 1940

[illegible] 789 - 820

Wednesday, 4th September 1940

[illegible] 821 - 852

Thursday, 5th September 1940

[illegible] 853 - 884

Friday, 6th September 1940

[illegible] 885 - 916

Monday, 9th September 1940

[illegible] 917 - 948

Tuesday, 10th September 1940

[illegible] 949 - 980

Wednesday, 11th September 1940

[illegible] 981 - 1012

Thursday, 12th September 1940

[illegible] 1013 - 1044

Friday, 13th September 1940

[illegible] 1045 - 1076

Monday, 16th September 1940

[illegible] 1077 - 1108

Tuesday, 17th September 1940

[illegible] 1109 - 1140

Wednesday, 18th September 1940

[illegible] 1141 - 1172

Pages

Tuesday, 30th August 1949

Draft Constitution—(*contd.*) 737—783

[Seventh Schedule—(*contd.*) List I—Entries 7 to 12, 9-A, 13 to 15, 15-A, 16 to 26, 26-A, 27 to 40, 40-A and II and 41 to 52 (considered)]

Wednesday, 31st August 1949

Draft Constitution—(*contd.*) 783—824

[Seventh Schedule—(*contd.*) List I—Entries 53 to 57, 57-A, 58, 58-A, 59 to 61, 61-A, 62 to 64, New Entry 64-A, 65 to 70, 70-A, 71 to 91 and 73-A considered]

Thursday, 1st September 1949

Statement re—Vindhya Pradesh Representation in the Assembly 829—830

Draft Constitution—(*contd.*) 830—871

[Seventh Schedule—(*contd.*) List I—Entries 74 to 91 List II—Entries 1—11 considered]

Friday, 2nd September 1949

Condolence on the death of Shri Gopinath Srivastava 871

Draft Constitution—(*contd.*) 871—928

[Seventh Schedule—(*contd.*) List II—Entries 11 to 67, List III—Entries 1, 2 and 2-A considered]

Saturday, 3rd September 1949

Draft Constitution—(*contd.*) 929—964 A

[Seventh Schedule—(*contd.*) List III—Entries 2-A, 7 to 23, 25-A, 26, 26-A, 27, 28, 28-A, 29 to 31, 31-A, 32, 33, 4, and 8, 34, 34-A, 35, 36 and New Entry considered]

Monday, 5th September 1949

[illegible]

Tuesday, 6th September 1949

[illegible]

Wednesday, 7th September 1949

[illegible]

Thursday, 8th September 1949

[illegible]

Friday, 9th September 1949

[illegible]

Saturday, 10th September 1949

Draft Constitution—(*contd.*) [illegible]

[Article 24 considered]

Monday, 12th September 1949

Draft Constitution—(*contd.*) [illegible]

[Article 24 and new Art. 24-A, Language considered]

Tuesday, 13th September 1949

Draft Constitution—(*contd.*) [illegible]

[New Part XIV-A (Language) considered]

Wednesday, 14th September 1949

Abolition of Privy Council Jurisdiction Bill [illegible]

Draft Constitution—(*contd.*) [illegible]

[New Part XIV-A (Language) considered]

Pages

Thursday, 12th September 1940

[illegible] 1411 1434

[illegible]

Friday, 13th September 1940

[illegible] 1441 1488

[illegible]

Saturday, 14th September 1940

[illegible] 1489 1518

[illegible]

Pages

[illegible] 1 [illegible]

[illegible]

[illegible]

[illegible]

Monday, 16th September 1940

[illegible] [illegible]

[illegible] 1493 1601

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 30th July 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register :—

Maulana Mohd. Hifzur Rahman (United Provinces : Muslim).

Seth Govind Das (C.P. & Berar : General) : *[Mr. President, before we proceed with our business, I would like to draw your attention to one matter. Since the day of our arrival here we have been hearing various rumours about our National Language. It is said that the question of National Language would now be left for Parliament to decide. Sir, you have said here repeatedly that not only would the question of our National Language be decided by us here, but that our Constitution too would be adopted in our National Language. Now we are holding the final session, and I have learnt that the Translation Committee appointed by you for preparing the Hindi translation of the Draft Constitution has already translated the articles so far adopted by this Assembly. I would like you, Sir, to contradict these rumours and make a definite announcement that the question of the National Language would not be left to the Parliament but that it would be decided by the Constituent Assembly. Unless it is so done, in my opinion, our Constitution would remain incomplete. I would also like you, Sir, to fix the dates when questions of National Language, National Anthem and the name of the country would be taken up here so that the people may come to know of the dates when these questions would be decided.]

Dr. B. Pattabhi Sitaramayya (Madras : General) : I thought it had been understood that whenever any Member wanted to raise a point which was not on the agenda, he should speak to the President in the Chamber. May I know whether such a procedure has been gone through in this case.

Mr. President : No.

Dr. B. Pattabhi Sitaramayya : To spring such a subject upon the audience all of a sudden and to make a long speech is against all order and procedure.

The Honourable Shri Jawaharlal Nehru (United Provinces : General) : Hear, hear.

Mr. President : The question as to whether the question of language should be left for the Parliament depends entirely upon the decision of this House. It is for this House to consider that question and come to any decision that it likes. I do not think any further question arises and when that article is reached and a decision is taken, we shall act accordingly.

Seth Govind Das *[Mr. President, my second point that a date should be fixed remains yet unanswered.]

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*[ ] Translation of Hindustani Speech :

Krishnamachari (Madras : General) : Mr. President, may I draw your attention to an irregular act on the part of the Assembly Staff. I would like to know, Sir, whether you have given any member of the staff disciplinary jurisdiction over the Members of the Constituent Assembly so that they can punish them for what they think is non-compliance with their request. A member of the staff has written to me to say that I would not get petrol coupons for a particular week because of something that I have not done in the past. I do not know whether he is entitled to do so and if you have authorized him to do so, and I think the whole action is perfectly irregular.

Mr. President : It is evident I could not have given any authority like that to any member of the staff; however, I shall look into the matter

We shall now take up article 79-A.

DRAFT CONSTITUTION—(*Contd*)

New Article 79-A

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move

That in amendment No. 1 of List I (First Week) of Amendments to Amendments, t the provisions of any law made under the said clause."

Secretariat of Parliament "79-A. (1) Each House of Parliament shall have a separate Secretarial Staff :

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

The House will see that this is a new article which is sought to be introduced in the Constitution. The reason why the Drafting Committee felt the necessity of introducing an article like this lies in the recent Conference that was held by the Speakers of the various Provinces in which it was said that such a provision ought to be made in the Constitution.

It was, as every one most probably in this House knows, a matter of contention between the Executive Government and the President ever since the late Mr. Vithalbhai Patel was called upon to occupy the President's Chair in the Assembly. A dispute was going on between the Executive Government and the President of the Assembly. The President had contended that the Secretariat of the Assembly should be independent of the Executive Government. The Executive Government of the day, on the other hand, contended that the Executive had the right to nominate, irrespective of the wishes and the control of the President the personnel and the staff required to serve the purposes of the Legislative Assembly. Ultimately, the Executive Government in 1928 or 1929 gave in and accepted the contention of the then President and created an independent secretariat for the Assembly. So far, therefore, as the Central Assembly is concerned, there is really no change effected by this new article 79-A, because what is provided in clause (1) of article 79-A is already a fact in existence.

But, it was pointed out that this procedure which has been adopted in the Central Legislature as far back as 1928 or 1929 has not been followed by the Provincial legislatures. In some provinces, the practice still continues officer who is subject to the disciplinary jurisdiction of the Legislative

Department being appointed to act under the control of the Legislature Assembly, with the result that that officer is under the control of the Executive exercised by the department of which he is an officer and by the Minister under whom for the time being he is serving. It is contended that this is derogatory to the dignity of the Speaker and the independence of the Legislative Assembly

The Conference of the Speakers passed various resolutions insisting that besides making this provision in the Constitution, several other provisions should also be made in the Constitution so as to regulate the strength, appointment, conditions of service, and so on and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. They thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate secretarial staff and the rest of the matter is left to be regulated by Parliament. Clause (3) provides that, until any provision is made by Parliament, the President may, in consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service. When Parliament makes a law, that law will override the rules made *pro-tempore* by the President in consultation with the Speaker of the House of the People. I think that the provision that we have made is sufficient to meet the main difficulty which was pointed out by the Speakers' Conference. I hope the House will find no difficulty in accepting this new article.

[Amendments 43 and 44 of List II (First Week) were not moved.]

Shri H. V. Kamath (C.P. & Berar : General): Sir, May I move all the amendments standing in my name or am I to take my chance after Prof. Shibban Lal Saksena?

Mr. President: All at once.

Shri H. V. Kamath: Mr. President, I move

"That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed new article 79-A, for the words 'shall be construed as preventing the words 'shall prevent' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (2) of the proposed new article 79-A, for the words 'recruitment, and the conditions of service of persons appointed, to' the words 'recruitment to, the salaries and allowances and the conditions of service of' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, for the word 'or' occurring in line 4, the word 'and' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, the words 'as the case may be' be deleted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, for the words 'the House of the People or the Council of States' the words 'each House of Parliament' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, all the words after the words 'Council of States' where they occur for the second time, be deleted."

Mr. President: Are not all these amendments more or less of a verbal nature?

Shri H. V. Kamath: No, Sir, I shall however speak on the more substantial ones. If you deem fit you may kindly say which are verbal and I shall abide by your ruling, Sir.

Mr. President: No. 72 is verbal.

Shri H. V. Kamath: Nos. 72 and 73 go together. Coming to amendment No. 69, the object of this amendment is to eliminate unnecessary verbiage. We in this proviso to clause (1) I do not find any parallel in any other provision which provisos have been moved and adopted. I have closely examined various provisos of articles that this House has adopted in the past, and for the words occurring in this proviso to clause (1) I do not find any parallel in any other proviso which we have adopted earlier. I shall refer to two or three articles that we have already passed. I shall invite your attention to article 22. The proviso to clause (1) says:

"Provided that nothing in this clause shall apply to an educational institution ..."

It does not say:

"Provided that nothing in this clause shall be construed as applying et. "

This is unnecessarily cumbering the Constitution with needless, redundant, superfluous verbiage.

I therefore feel that the meaning of this proviso could be adequately conveyed by merely stating that nothing in this clause shall prevent the creation of posts common to both Houses of Parliament. If the House is desirous of referring to other articles of similar nature, I shall invite its attention to article 42 clause (3) sub-clause (b). There again it says:

"Nothing in this article shall prevent Parliament from conferring by law functions on authorities other than the President."

The proposed article, article 79-A, has a very clumsy construction, in my judgment, and no useful purpose would be served by the addition of the words "shall be construed as preventing".

I therefore submit that our object will be adequately served by merely stating that:

"Nothing in this clause shall prevent the creation of posts common to both Houses of Parliament."

Then I come to amendment No. 71 which relates to recruitment and conditions of service of persons appointed to these posts—the secretarial staff or others of either Parliament.

Mr. President: Would you not leave the wording to the Drafting Committee? I am sure the Drafting Committee will consider these.

Shri H. V. Kamath: It is in my judgment more or less substantial and I would crave your indulgence to let me speak.

Mr. President: If it is put to the House it may be lost.

Shri H. V. Kamath: That will be after my speech. I leave it entirely to the judgment of the House which I do not wish to fetter. I only wish to place my views before the House and it is open to the House to either accept or reject them. I submit that should not affect the moving of my amendments at this stage.

Amendment No. 71. This clause (2) of this new article refers to recruitment and conditions of service. Now for any staff, secretarial or otherwise or any

body of public servants, various questions arise. Recruitment is the first, without which there is no body of public servants. Then conditions of service arise. But to my mind the conditions of service do not include the salaries, emoluments and other allowances that will be paid to those servants. I remember covenants that used to be signed by members of the all India services. Various conditions of service were laid down in those covenants that used to be executed between officers of all India services and the Secretary of State. Notably, I remember personally the Indian Civil Service. There various conditions of service were laid down, but there was no reference at all to salaries and emoluments of the servants of that category. I am sure in every other Department, in every other field of service, Government or otherwise, a similar rule will hold, and that is, salaries and emoluments are matters apart from conditions of service. I have no doubt on that point and I do not know whether the House will hold the same views, but from my experience in this line salaries and emoluments are sometimes quite apart from the conditions of service, but I am sure so far as this new article is concerned this House will desire that Parliament should regulate not merely questions of recruitment and conditions of service but also the other connotation of emolument, that would be paid to the Secretarial staff of our future Parliament.

Therefore, in my judgment, it is very necessary that this article should make it clear that Parliament shall regulate not merely the recruitment, the cadre or growth of the staff and conditions of service, but also the other cognate matter of salaries and allowances that may be paid to the members of the staff. Already we have passed several articles, notably the articles pertaining to the Speaker, Deputy Speaker and similar other articles where we have definitely and explicitly referred to the salaries and allowances that will be paid to these various dignitaries of Parliament. Therefore, it is necessary, in my judgment, that these words should also be included in this article so as to make it quite clear that salaries and allowances also should be regulated by Parliament.

Coming to my next amendments Nos. 72 and 73, I have to say only one word about them. We have already had it stated in the article moved by Dr. Ambedkar where the proviso states 'nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.' Therefore, it is conceivable and also likely that there will be certain posts common to the House of the People and the Council of States. If that be so, then the possibility, nay, the desirability of creating certain posts common to both Houses of Parliament will certainly arise. The contingency will be inevitable that the President will have to consult not merely one or the other, the Speaker or the Chairman, but he must consult both of them. He will have to consult the Chairman of the Council of States as well as the Speaker of the House of the People, before creating posts common to both, and obtain the views of the Chairman and the Speaker as to whether it is necessary to make the posts common to both Houses or leave them otherwise. If we adopt the proviso, then the contingency which I have referred to will arise of the President having to consult both the Speaker and the Chairman.

Once the House accepts this amendment of mine, then the subsequent few words—"as the case may be" drop out automatically, because when you say "Chairman and the Speaker" then there is no valid reason for retaining the words "as the case may be." Therefore, amendments Nos. 72 and 73 go together.

Amendment No. 74 is identical with No. 71 and I have already stated the reasons for moving amendment No. 71 and so I do not propose to speak on amendment No. 74.

[Shri H V. Kamath]

Coming to amendment No. 75, it refers to clause (3), *i.e.*, with a view to bringing this into conformity with or in line with clause (1) of the proposed new article. Clause (1) refers to each House of Parliament. I desire that the article should end on a note similar to its beginning, that it should conclude in the same manner as it has begun. It begins with a reference to "Each House of Parliament" and there is no reason why, without detracting from the meaning of the article or this particular clause, we should not merely say "each House of Parliament" at the end also, instead of repeating the words "House of the People or the Council of States." I have already said in amendments 72 and 73 that the President will consult both Houses of Parliament and not merely the Chairman or the Speaker. Therefore it follows *ipso facto* and quite logically enough, that it will suffice if we merely state "each House of Parliament" and not repeat the words 'House of the People or the Council of States."

Then there remains the last amendment, *i.e.*, No. 76. Here it is slightly more than verbal, and the point of substance in it is this. It touches on the authority and power of Parliament, *vis-a-vis* the rule-making power of the President. The article lays down that "any rules so made shall have effect subject to the provisions of any law made under the said clause." Now if this clause is studied carefully, it will be realised that this power is given to the President only until Parliament meets to deliberate thereon, and only so long as provisions in this regard are not made by Parliament. That is to say, they do not overlap. There is to be no overlapping of the authorities of the Parliament and the President, at any point. Until the new Parliament meets and deliberates on these matters, it is obvious that no rules, no provisions in this regard can be made by Parliament. So, for that interim period, for the interregnum, power is given to the President to make rules in this respect. Once Parliament sits and deliberates and makes provisions in this regard on these various matters, the President's authority vanishes. The rules made by him have no power or force afterwards, once Parliament has made provisions in this regard. Therefore, in my judgment, to say that any rules made shall have effect, subject to provisions made under the said clause is wholly futile and fatuous, and I do not know how such a clause, such a provision could have at all found a place in this article. I wonder why this slip has been committed by Members and otherwise men of the Drafting Committee and other experts who have been grouped round them. To my mind this article makes it clear that Parliament shall make provisions, and until it does so, the President shall make rules. Then, what is the point in saying that these rules will be subject to any law made under the clause. Once Parliament has made provision in this regard, then the other rules have no authority; they die thereafter, and these rules will not govern in any manner the secretarial staff's recruitment, conditions of service and other matters connected with the staff of Parliament. But between now and the session of Parliament, for that period, the President will be empowered to make certain rules, but once Parliament meets and makes provisions, then the President, according to me, has no *locus standi* at all in this matter. Therefore it is absolutely pointless and purposeless and even derogatory to Parliament's dignity and authority to say that even after Parliament has met, the provisions in this regard made by the President will have effect subject to, etc., etc.

Clause (2), if it is read with and studied closely with clause (3), will make it quite clear to honourable Member that the last portion of clause (3).... "and any rules so made shall have effect subject to the provisions of any law made under the said clause" must be deleted.

Shri Mahavir Tyagi (United Provinces : General): We are now more than convinced by the honourable Member's arguments that these words are not necessary.

Shri H. V. Kamath: If my friend Mr. Tyagi is convinced, I am very happy. I am not so sure that my other colleagues are equally convinced, but I am certainly very glad to know from Mr. Tyagi that he has been convinced by my arguments, and I am glad that at least one Member of the House is with me, if not any others.

I therefore move these various amendments and commend them for conside ration of the House.

Prof. Sibban Lal Saksena (United Provinces : General) : Sir, I move.

"That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the clauses (2) and (3) of the proposed new article 79-A, before the word 'recruitment' the word 'strength' be inserted."

I have added the word "strength" because the present article does not specify this. If you add this word, it will remove a lacuna. As far as the article itself is concerned, I believe that at one time our revered leader, the late Mr. Vithalbhai Patel, had to fight the battle of independence for the secretariat of the then Central Legislative Assembly with the then bureaucracy and it is a happy day today that we are incorporating this principle to ensure the independence of the secretariat staffs of our Parliament in the Constitution.

I support this amendment of Dr. Ambedkar and I hope by including the word "strength" you will remove the lacuna, which I think is present there.

Mr. President: All the amendments have now been moved. Does any Member wish to speak ?

Shri R. K. Sidhva (C.P. & Berar : General) : Sir, I welcome this article The Speaker's secretariat ought to be quite separate from the executive It is a recognised fact everywhere. But I have noticed, Sir, that when men, with the best of intentions, come into power, they do not want to part with the power which is not due to them. Therefore, many persons had to fight for this right in the past. I can give you illustrations, Sir, that in the Municipal Corporations also the secretariat branch is mixed even now with the executive. When I was the Mayor of Karachi I had to fight very hard with the secretariat department and the secretariat executive department did not like to budge an inch and part with any power Ultimately, they had to yield and today, in pursuance of the resolutions passed by the All-India, Burma and Ceylon Mayors Conference, at Bombay, Calcutta and Madras there are separate secretariats for the Mayors. Therefore, it is in the fitness of things that the Speakers of all the provinces who met the other day under the chairmanship of the Speaker of the Parliament, decided that they must have a separate secretariat. I can cite you an illustration, Sir, that when the Speaker's secretariat wanted pencils for the Members the executive refused to give them. I know of a province where at the instance of the House, Members complained that stenographers did not take down the proceedings properly, and therefore it was necessary that an additional stenographer should be added, but the executive refused to grant the additional stenographer even with the consent of the House. These conditions prevail even today and I am so glad that this article has been brought and has been put into the Constitution. If our executives, I mean the Ministers, had been reasonable, this article would not have been put into the Constitution and Parliament would surely have taken note of it. But when it is seen that even popular Ministers are not prepared to part with that power, there is no other alternative but to put such an article into the Constitution.

Coming to the service staff, the language is quite different from the original article in the List at page 11, as proposed at that time by the Honourable Dr Ambedkar. He has made a certain improvement which I like. But I wish to make it clear that the staff of the secretariat should be quite different from

[Shri R. K. Sidhva]

the staff of the executive. The staff of the Speaker, I mean the Legislature, should be chosen from persons who are amiable, social, kind, useful and helpful to the Members, and not that kind of staff which exists in the Secretariat. I know that in our Parliament today we have got a staff who are helpful, kind, and always ready to help the Members in matters like the preparation of Bills, resolutions and questions. This is the kind of attitude that prevails also in the House of Commons. But if you go to the Central Secretariat, you will find quite a different type of staff. The practice in the House of Commons is that no staff shall be allowed to be recruited unless the Clerk of the House—whose post is equivalent to the Secretary of our Parliament—certifies that he is fit to be sent to the Public Service Commission. Then he will be allowed to sit for an examination by the Public Services Commission. That Clerk of the House keeps that man who aspires for a post in the secretariat, gives him a trial for a couple of months and sees whether he fulfils all the qualifications which I have mentioned. I can tell you from first-hand knowledge that the Clerk of the House of Commons is very careful to see that though an Additional Secretary, or an Assistant Secretary or an assistant clerk may be very good in the English language or in other matters, if he is not helpful, and kind and of an amiable nature, he is ruled out. Therefore he has no direct approach to the Public Services Commission either through the Ministries or the various departments until the Clerk of the House certifies that this man should proceed for the examination of the Public Services Commission. I would have preferred the original article which was moved by Dr. Ambedkar in that connection. In modification I had moved an amendment. I shall be pleased to have this clause put into the Constitution before the next Parliament comes in as I do not want the staff to be tampered with by anyone.

In the House of Commons the entire staff of its secretariat is appointed by the Clerk of the House and not even by the Speaker. Only as a matter of courtesy the Clerk of the House of Commons informs the Speaker that he is appointing so and so and the Speaker says it is all right. That is the practice. In May's Parliamentary Practice you will see that it distinctly lays down that the Clerk makes the appointment of the entire staff of the House of Commons. I therefore hope that a similar provision will be made by Parliament to that effect. I want to make it clear that, while we do not want the executive to interfere with the appointment of the staff of the Legislatures, it should not be understood that that power should go to the Parliament. It would be negativing the very object of this amendment if Parliament takes upon itself to make appointments. Once a fit Secretary is appointed in the interest of discipline we must see that he makes all other appointments subject of course to the approval of the Speaker. The Speaker should have a voice because we are in the initial stage and I therefore desire, unlike in the House of Commons, that the Speaker should have a voice in the initial stage in the appointment of the staff. I do maintain, as I have already stated, that unless we have the proper type of staff of the kind I have mentioned we shall not be doing justice to Parliament and it will not serve the purpose of the article that we are providing in the Constitution. With these words I heartily support the amendment moved.

Shri Brajeshwar Prasad (Bihar : General) : Sir, I rise to support the new article 79-A moved by the Chairman of the Drafting Committee. I recognise the necessity of a separate staff for the Parliament, but there is one thing which is proposed to be done which I do not like. Questions relating to appointment, and other conditions of service have been left to be determined . The amendment which I wanted to move, but did not, suggested should be clearly laid down in the Constitution that all questions appointment, in fact all appointments, must be made by the Federal Commission and not by the Speaker or the Chairman of the

upper House. Having due regard to the facts of our political life, when there is hardly a ministry in the provinces which is not being condemned for patronage, for undue favour, for provincialism, it is not safe to vest this power or leave it in a nebulous state or to ask the Parliament to regulate these things. The Parliament's power must be circumscribed in this sphere; and if we want that the position of the Speaker should be above suspicion it is necessary that no patronage should be vested in his hands. We want a separate staff not just for the sake of dignity; simply because other Ministers have got their separate secretariat, therefore the Speaker must also have a secretariat so that his position and dignity may be in line with that of the other Ministers. We want this because it is a necessity; but there is no reason why the power of appointment, promotion and disciplinary matters relating to the services should be left in the hands of the Parliament, which will vest these powers in the hands of the Speaker. Sir, I have nothing more to say.

The Honourable Dr. B. R. Ambedkar: Sir, nothing that has been said, in my judgment, calls for a reply.

Mr. President: The question is :

"That in amendment No 42 of List II (First Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed new article 79-A, for the words 'shall be construed as preventing' the words 'shall prevent' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No 42 of List II, in clauses (2) and (3) of the proposed new article 79-A, before the word 'recruitment' the word 'strength' be inserted"

The amendment was negatived.

Mr. President: The question is :

"That in clause (2) of the proposed new article 79-A, for the words 'recruitment, and the conditions of service of persons appointed, to' the words 'recruitment to, the salaries and allowances and the conditions of service of' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in clause (3) of the proposed new article 79-A, for the word 'or' occurring in line 4, the word 'and' be substituted"

The amendment was negatived.

Mr. President: The question is :

"That in clause (3) of the proposed new article 79-A, the words 'as the case may be' be deleted"

The amendment was negatived.

Mr. President: The question is :

"That in clause (3) of the proposed new article 79-A, for the words 'recruitment and the conditions of service of persons appointed to, the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in clause (3) of the proposed new article 79-A, for the words 'The House of the People or the Council of States' the words 'each House of Parliament' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79 A, all the words after the word 'Council of States' where they occur for the second time, be deleted."

The amendment was negatived.

Mr. President : The question is :

That in amendment No. 1 of List I (First Week) of Amendments for the proposed new article 79 A, the following be substituted

Secretariat of Parliament. "79 A. (1) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament

(3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

The motion was adopted

New article 79-A was added to the Constitution

Article 104

The Honourable Dr. B. R. Ambedkar : Sir, I move :

That for article 104, the following article be substituted :—

Salaries etc. of Judges "104. (1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pensions as may from time to time be determined by or under law made by Parliament, and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

Sir, all that I need say is that the present article is the same as the original article except that the word "privileges" has been introduced which did not occur in the original text. What those privileges are I would not stop to discuss now. We will discuss them when we come to the second schedule where some of them might be specifically mentioned.

Shri Brajeshwar Prasad : Sir, I do not want to move any of the three amendments standing in my name.

President : As regards Mr. Sidhva's amendment No. 79 this was with No. 2 but since Dr. Ambedkar has moved amendment No. 77 from words which Mr. Sidhva wanted to omit have been omitted, his amendment does not arise now.

(Amendment No. 80 of List III (First Week) was not moved.)

Pandit Hirday Nath Kunzru (United Provinces : General) : Sir, I beg to move

"That in amendment No. 2 of List I (First Week) of Amendments, after clause (2) of the proposed article 104, the following new proviso be added :

Provided that no law made under this article by Parliament shall provide that the pension allowable to a judge of the Supreme Court under that law shall be less than that which would have been admissible to him if he had been governed by the provisions which immediately before the commencement of the Constitution were applicable to the judges of the Federal Court"

Sir, the amendment moved by Dr. Ambedkar provides that the rights of a judge in respect of pension shall not be varied to his disadvantage after his appointment. I should therefore like to explain why I have thought it necessary to move my amendment. It is true that so far as existing incumbents are concerned, no change will be made in their pensions if article 104 is passed in the form proposed by Dr. Ambedkar. But we have to provide for the future too. Dr. Ambedkar proposes that the question of leave of absence and allowances and pension should be dealt with by Parliament by law after the passing of the Constitution by the Assembly. There are so many matters to be dealt with in this connection that it is not possible to provide for all of them in the Constitution, they can be provided for either in the appropriate Schedule or in parliamentary future. Now Dr. Ambedkar himself has proposed that the salaries of the judges should not be left to be determined by Parliament and that they should be fixed by the Constitution. The salary provided for them in one of the Schedules will be lower than it is at present, and this has been done because judges of the Supreme Court have been given under article 103 the option of resigning should the salary and conditions of service given in the Schedule not be acceptable to them. I shall discuss this matter when the Schedule is placed before the House. I may, however, say that I personally think that the salaries provided for the judges of the Supreme Court are lower than they should be. Our effort should be to attract the best legal talent in our highest courts of justice and the conditions of service therefore should be such as to induce men with the best qualifications and with the highest reputation at the bar to accept judgeships of the Supreme Court. That, however, is not a matter that I can go into in any detail at present; but my amendment proposes that whatever changes may be made in future they should not affect the pensions that the judges are now entitled to get. The last proviso in Dr. Ambedkar's amendment protects only the judges now holding office. But, so far as the future is concerned, Parliament will have the power to reduce the pension. Considering the present economic situation and also the fact that judges of the Supreme Court will not be allowed to plead or act in any court in the country, I think that the least that we can do is to provide that they should not be given a smaller pension than what they are entitled to now. It may be desirable in theory to leave everything in this respect to Parliament, but I think the question of pension is as important as that of salary. If you are not going to allow a judge of the Supreme Court after retirement to practise in any court in India I think it is only fair that the present pension should not be reduced. It is not very high even at present, it is not very attractive to persons at the bar who enjoy a good practice. But if it is lowered further there is a danger of making the judgeships unattractive to the best legal talent in the country.

This, Sir, is the justification for the amendment that I have moved. If it is accepted the effect will be to protect the pensions not merely of the existing but also of the future judges of the Supreme Court in the same manner as their salaries will be protected.

(At this stage Mr. President vacated the chair, which was then occupied by Mr. Vice-President, Shri V. T. Krishnamachari.)

Shri R. K. Sidhva : Mr. Vice-President, my attention was drawn by the Honourable the President that my amendment has been accepted by my honour

[Shri R. K. Sidhva]

able Friend, Dr. Ambedkar as per his amendment No. against his original amendment in List I No. from clause (2) that the question of and rights are referred to the Parliament. Now I want the very clear whether Parliament will have the right to the Chief Justice if this House is not in favour ance of my amendment by the honourable the in contravention of this House's decision when we allowances to Parliament, would they be in order whereby the Chief Justice of the Supreme Court Again if you refer to Part IV of Schedule as to the Judges of the Supreme Court and of the High Court:

"The Chief Justice or any other judge of the Supreme Court or a other judges of a High Court within the territories of India or any person being specified in Part III of the First Schedule shall be to reimburse him for expenses incurred in travelling on duty or

Unless you amend the language of this Schedule in view of the amended resolution, I think, Sir, this article will be rather in a confused state. I want to know what are the implications after the amendment of the article by Dr. Ambedkar. I find that he has not made any reference and I do not know whether he is going to make any reference to the Schedule hereafter, because that complicates the issue, and the purpose will be defeated if the matter is left to Parliament, who can against the wishes of the House pass orders that the Chief Justice can be given a furnished house.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am sorry I cannot accept the amendment moved by my honourable friend Pandit Kunzru, and I think there are two valid objections which could be presented to the House for rejecting his amendment. In the first place, we accept the principle for which he is fighting, namely, that the rights of a judge to his salary and pension once he is appointed have accrued to him and shall not be liable to be changed by Parliament by any law that Parliament may like to make with regard to that particular matter. I think, so far as my new article is concerned, I have placed that matter outside the jurisdiction of Parliament. Parliament, no doubt, has been given the power from time to time to make laws for changing allowances, pensions etc., but it has been provided in the article that that shall apply only to new judges and shall not affect the old judges if that is adverse to the rights that have already accrued. Therefore, so far as the principle is concerned for which he is fighting, that principle has already been embodied in this article.

From another point of view his amendment seems to be quite objectionable and the reason for this is as follows. As everybody knows pensions have a definite relation to salary and the number of years that a judge has served. To say, as my honourable Friend, Pandit Kunzru suggests, that the Supreme Court judges should get a pension not less than the pension to which each one of them would be entitled in pursuance of the rules that were applicable to judges of the Federal Court, seems to presume that the Federal Court Judge if he is appointed a judge of the Supreme Court shall continue to get the same salary that he is getting. Otherwise that would be a breach of the principle that pensions are regulated by the salary and the number of years that a man has put in. We have not yet come to any conclusion as to whether the Federal Court Judges should continue to get the same salary that they are getting when they are appointed to the Supreme Court. That matter, as I said, has not been decided and I doubt very much (I may say in anticipation) whether it will be possible for the Drafting Committee to advocate any such distinction as to between existing judges and new judges. The amendment, therefore,

is premature. If the House accepts the proposition for which my honourable friend Pandit Kunzru is contending that the Federal Court Judges should continue to get the same salary, then probably there might be some reason in supporting this sort of amendment that he has moved. At the present moment, I submit it is quite unnecessary and it is impossible to accept it because it seeks to establish a pension on the basis that the existing salary will be continued which is a proposition not yet accepted by the House.

Shri R. K. Sidhva: The Honourable Dr. Ambedkar has not answered my point as to how the Parliament is competent to give a furnished house to the Chief Justice.

The Honourable Dr. B. R. Ambedkar: We are not rejecting it. Nothing is said about the furnished house. We shall discuss that.

Mr. Vice President (Shri V. I. Krishnamachari): The question is:

That in amendment No. 1 of List I (First Week) of Amendments to Amendments, after clause (3) of the proposed article 104 the following new proviso be added:

Provided that no law made under this article by Parliament shall provide that the pension allowable to a Judge of the Supreme Court under that law shall be less than that which would have been allowable to him if he had been governed by the provisions which immediately before the commencement of this Constitution were applicable to the Judges of the Federal Court.

The amendment was negatived.

Mr. Vice-President: The question is:

That for article 104 the following article be substituted:

Salaries of Judges

"(1) There shall be paid to the Judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and until so determined to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

The motion was adopted.

Article 104, as amended, was added to the Constitution.

New Article 148-A

The Honourable Dr. B. R. Ambedkar: Sir, I move:

That after article 148, the following new article be inserted:

Abolition or creation of Legislative Councils in States

"148A. (1) Notwithstanding anything contained in article 148 of this Constitution, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) of this article shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of article 304 thereof."

[The Honourable Dr. B. R. Am

As honourable Members will see, the article provides for two contingencies (i) for the abolition of the Second Chamber and (ii) for the creation of a Legislative Council in a province which has no such Council at the commencement of the Constitution but may subsequently decide to have one.

The provisions of this article follow the procedure prescribed in the Government of India Act, section 60 for the creation of Legislative Council and section 308 which provides for the procedure to be adopted here for the creation and abolition is that the matter has to go to the Lower Chamber which by a resolution passed by a majority of the two courses that it may decide upon. In order to safeguard the position in the abolition of the Second Chamber, it is thought that a provision is made that such a law shall not be deemed to be an amendment of the Constitution, in order to obviate the difficulty that has been provided in the Draft Constitution for the amendment of the Constitution.

I commend this article to the House.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments in clause (1) of the proposed new article 148-A:

(i) the words 'Notwithstanding anything contained in article 368' be deleted;

(ii) to clause (1) the following proviso be added:

'Provided that no such resolution shall be considered by the Legislative Assembly in any State nor any corresponding Bill shall be discussed in Parliament unless at least fourteen days' notice of the same has been given.'"

Sir, I was one of those who was opposed to the formation of Upper Chambers altogether. But, the principle has been accepted by this House when it passed article 148 and we have provided for Second Chambers in some provinces, Madras, West Bengal, etc. Therefore, I welcome the provision which enables the Assemblies to abolish those Chambers. In my amendment I have only provided that once a resolution under this article is brought before the Assemblies, due notice of it must be given. I have therefore said that no such resolution shall be considered by the Legislative Assembly in any State nor any corresponding Bill shall be discussed in Parliament unless at least fourteen days' notice of the same has been given. It is quite possible that a resolution may be passed without adequate notice. It may be within the knowledge of Members that some times in Parliament, the order papers are received only a day in advance and it is quite possible that unless a fortnight's notice of such a vital amendment is given, some Members may be absent during its consideration for want of notice. I therefore think that it would be better if this principle is accepted, no harm would be done thereby. In fact, I would have wished that we had not made any provision at all for Second Chambers and left it entirely to the Assemblies to decide whether they wanted to have one. What we have done is, we have provided for Second Chambers and also for their abolition.

I commend my amendment for acceptance by the House.

Shri H. V. Kamath: Mr. Vice-President, I beg to move:

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments in (1) of the proposed new article 148-A, the words 'or for the creation of such a State having no such Council' be deleted."

Sir, the new article which by way of an amendment has been just now brought before the House by Dr. Ambedkar, deals with the vexed question of second chambers. It provides that the future Parliament may by law provide for the abolition of the Council in a State which has such a Council or provide for the creation of the Second Chamber where there is none

The House will recollect that we have adopted article 148, I believe some time during last year in the November or January session of the Assembly, and after the adoption of this article by the House, the representatives of various provinces were called upon to meet separately and decide for themselves whether their province will have a second chamber or not. I now stand before the House as a representative of a province which, happily, voted against a Second Chamber

(At this stage, Mr. President resumed the chair.)

I believe that of all the provinces in our country, only three, namely, Central Provinces and Berar, Assam and Orissa have voted against the creation of a second chamber in their provinces. The other provinces, I think have voted for a second chamber. Now, this article which has been brought before us by Dr. Ambedkar seeks to provide for the creation of a second chamber where there is none, of course, if the Assembly of that State decided upon such a course. I personally feel that to that extent this is a reactionary, a retrograde proposal. To provide for the creation of a second chamber where there is none already seems to me to be by no means a progressive measure. We are proud of a setting that ours is a democratic progressive State. We are now living in the twentieth century when powers of second chambers have been drastically curtailed where they have not been completely abolished. Even in Great Britain from whose Constitution we have borrowed so much, the wings of the House of Lords have been clipped to a considerable degree and the House of Lords today is not what it was twenty or thirty years ago. Here, Dr. Ambedkar wants the House to put this article which provides that the future Parliament may provide for the creation of a second chamber where there is none. I agree with him in so far as Parliament is empowered to abolish the second chamber where there is already one, but I cannot subscribe to this proposal of his that where there is no second chamber, your mighty will create one

What after all are the arguments for the creation of second chambers? There are three or four main reasons adduced by the protagonists of second chambers. Firstly, there is the force of tradition in some countries. Happily for our country we have no such tradition. The British, for their own convenience perhaps, introduced this system of second chambers and I hope with the quittal of the British this system also will leave our shores. There is no tradition so far as our country is concerned. There is another reason given *viz.*, for the adequate representation of interests not sufficiently represented in the Lower House. In this Constitution we have already dispensed with any special representation in the Lower House which obtained in the Government of India Act and earlier enactments. We have provided for a uniform mode of representation and from this new standpoint there is no reason whatever for the creation of second chambers. Another reason given is that it is a check on hasty legislation. Do we really want checks now-a-days at all? After all we are well aware that legislation in the modern world is a very cumbrous and elaborate affair in a democratic world I mean and a very dilatory process at times. Every Bill has got to pass through various stages, the introductory stage, select committee stage, second reading, third reading, etc. and so many months lapse. We have already experience in this House sitting as Parliament that some Bills have taken as much as more than a year for their enactment and during this period which is prolonged to one year or so the public at large—not only the House—have got adequate time at their disposal

[Shri H. V. Kamath]

to reflect on the Bill. So there is no necessity for any change in that behaviour because in a democracy legislation is always well thought out and debated upon, and has to pass through many stages before a Bill becomes law. Then there is also a fourth argument viz., that it is a check against hasty legislation by vested interests. We certainly are not going to allow vested interests to influence our economy and to that extent I feel the creation of second chambers is a retrograde proposal. In short, I feel that the second chamber is a rather superfluous or pernicious as the French politician philosopher Abbe Sieyes once observed; he said that "if the second chamber agrees with the first chamber it is superfluous and if it disagrees with the Lower House then it is pernicious". In either case to my mind there is no case whatever for the creation of second chambers and therefore, I plead with this House that this part of the original article 148-A which provides for the creation of second chamber in a State where there is none may be deleted and the article without that part may be adopted. I move therefore Amendment No. 86 of List III (First Week) and I hope that the House will see its way to accepting the same.

Shri R. K. Sidhva: Mr. President, the amendment in my name reads as follows:

"That in amendment No. 4 of List I (First Week) of Amendments to the Articles to be moved in clause (1) of the proposed new article 148 A the words 'of the total membership of the Assembly and by a majority of not less than two thirds' be deleted."

The object of this amendment is to delete the words in the original article proposed by Dr. Ambedkar to the effect "of the total membership of the Assembly and by a majority of not less than two thirds". My amendment is to say that if a bare majority states that there shall not be a second chamber it shall be accepted. When we passed this article 148 the decision was taken in a rather peculiar manner. It was left to the group or each province to decide. The House as a whole did not decide for each province but however that may be the decision has been taken and I am glad therefor that the new article has been added with the object that if the Parliament decides that a second chamber is not wanted, they need not operate upon article 148 which we have passed.

In the country it is the opinion that in the provinces there should not be second chamber and I am very glad that the Drafting Committee has taken note of it, but I am also sorry that they have not got courage to scrap article 148. If they had done so, it would have met the wishes of every one. The second chamber is again a great addition to our finances and it is not in the interests of the country at the present stage to add to our finances which are in a peculiar—I do not use any other word—condition today. Therefore while welcoming this amendment I do not want to fetter the Parliament by two thirds of the members of the Assembly present and voting or by majority of the total membership. If the members present in the House even by a majority are against the second chamber it will be nullified by the total number of members of the House. I therefore contend that if it is the desire and it is very clear from this additional article that has been brought by the Drafting Committee that then own views are changed because they are also flabbergasted as to what should be the composition of the second chamber and they could not come to any decision and so they felt 'Throw it to Parliament and let it decide what it likes.' All right, that is the lesser of the two evils. I am prepared to accept it because the House has accepted 148 and we do not want to change the article already passed by the House. It will be a bad precedent. But I do not want them to fetter the Parliament. If the House takes interest, six hundred members will be present; let them decide. Why insist upon two-thirds majority of the total members? It is very clear that you are not now as strong

as you were before for the second chamber. I can understand second chamber for the Centre. It is very useful and needed. I am in favour of it because all-India Bills will be passed and a second chamber is needed; but in the provinces it is an old anachronism and I feel that it should not exist and therefore my amendment seeks that by a bare majority if the House desires that the second chamber should not be there, it should not be there, and it should not be two thirds majority of the total number of members. With these words I move the amendment.

Sardar Hukam Singh (East Punjab: Sikh): Mr. President, Sir, I beg to move:

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, for clause (3) of the proposed new article 148-A, be deleted."

Sir, I could not understand why this clause was being added. The explanation that has been given now, that it is to facilitate the procedure that might be required for abolishing or creating Second Chambers, has not convinced me of the utility of this clause. Already provision was made in clause (2) of article 304 that

"Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the method of choosing a Governor or the number of Houses of the Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose."

and so on.

In the first instance, I do not see that there is much difference between this provision in clause (2) of article 304 and the one now proposed, except that in article 304, a Bill was to be initiated by the Legislature of the State, and then a majority of total membership was required, and then ratification by Parliament by a majority of total membership was needed. What is desired now is that a resolution instead of a Bill has to be passed by the State Legislature and it should have the majority of total membership, and then again, "law of Parliament" by a bare majority instead of "ratification by a majority of total membership". That is the difference which is now sought to be introduced.

Now, with this clause, we are, I must say, opening out large discretion for the Parliament or for the party in power to use this procedure capriciously, and at any time that it likes. Why should this be left to the whims and caprices of the party that whenever it sees that the Legislative Assembly is suitable to it, it might eliminate or abolish the Second Chamber, and whenever it sees that it is not desired, or when it sees that the Legislative Assembly is not prepared to co-operate with it, then it might create a second chamber so easily as is sought to be done now by a bare majority? Even if the procedure now laid down in the fresh article 148 A be taken up, that the Bill should be passed by a bare majority, even then, this could be a substitute for clause (2) of article 304, and there is no need for putting this clause (3) that it shall not be considered as an amendment of the Constitution. In my opinion, we should not allow these changes to be made so easily. Once a second chamber is created, it should not be easily abolished. Therefore, my amendment before the House is that clause (3) of this article be omitted, that it should not be left to the discretion or caprice of Parliament to create or abolish it at any time that it likes, this part of the Constitution.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Sir, I support the point of view that has been urged by several Members before me, that the provision for second chambers in the States is completely out of date and an anachronism. However, we have to take notice of the fact that certain States have already been given second chambers. Now the question is whether we should legislate and have an article in the Constitution for either

[Dr. P. S. Deshmukh]

the abolition or the creation or introduction of second chambers in the remaining States also. As has been pointed out by Sardar Hukam Singh just now, there was already contemplated a provision in the Draft article 304 clause (2), by which it was possible to consider this question at a later stage, both by the Legislative Assemblies of the States and then after it was considered by them, a recommendation was to come before Parliament. So, in addition to the various reasons that have already been advanced by my friend Mr. Kamath, Mr. Sidhva and Sardar Hukam Singh, I would only like to say that there are a few additional reasons why this article should not be incorporated in the present Constitution, and one of the principle reasons which I want to advance is that after all, the provision of second chambers was intended for the safeguarding of vested interests. But while this Constitution is being framed, we are not sitting still. We are as a Government pursuing policies and giving effect to our intentions in various ways. The rulers of Indian States have been removed, zamindaries and jagirdaries are on their way to dissolution and other vested interests are also rapidly being put into the melting pot. The second chambers were intended for some such so called stable element, in other words vested interests which it was considered would work as a salutary check against changes in the Government or the policies of the State which might be considered harmful and less beneficial to the State as a whole. But my submission is that there is no such person now who will adequately represent the orthodox or so-called stable elements in the society, these vested interests, which would contribute to the stability of the State. That being so, it is not unjustifiable that when we discussed who should compose the second chamber, who should sit as representatives in these second chambers, we were really at our wit's end, and all that we could think of were representatives elected by the various local bodies and Assemblies to be given seats in the second chambers. The municipalities, Local Boards, Gram Panchayats, etc., it was proposed should elect on their own behalf, certain representatives and they it was thought, will be proper members to sit in the second chambers. As a matter of fact, we have not, we will progressively have, none of those special interests to sit in the second chambers, as could be deemed proper and desirable. That being so, I think the proposed provisions in this respect in the present Constitution and the policy that we are pursuing should be considered a little more carefully, and I feel that that consideration will lead the House to the conclusion that there is no room anywhere for second chambers. If this is not acceptable, then I would make a second suggestion and that is that let the evil, be allowed to rest where it is, and it should not be allowed to spread and enlarge, and from that point of view, I support the amendment moved by Mr. Kamath, that there should be no provision for the creation of a second chamber where it does not at present exist. Let there be a provision for the abolition of second chambers, but there should not be any provision for their creation. I hope this point of view would be acceptable because otherwise we would probably be accused of taking away by one hand the powers that we are anxious to give to the masses by the other. It may be argued that the second chambers have not proved detrimental to the cause of the progress of the people so far and since we have had some experience of the second chamber existing in the last twelve years nobody has very seriously complained against them. But I do not think that would be the situation when we work the new Constitution. I am sure every time they will be used for various purposes that will impede the progress of the nation. The one fact which will make this difference is that we are introducing adult franchise. The composition of our lower House hereafter is going to be totally and radically different from what we have at the present day and the policy that would be pursued by these representatives sitting in the Legislative Assembly will be considered harmful by a certain set of people. this set of people happen to be in the second chambers there will be a lot

of impediment, lot of harm to the interests of the masses as a whole. I hope therefore that in any case the evil will not be permitted to enlarge itself and that the provision should be confined only to the abolition of those second chambers which have already been provided for.

Shri Jaspat Roy Kapoor (United Provinces : General) : Mr. President, Sir, I would like to accord my support to the adoption of article 148 A. I thought the adoption of this article would have gone a long way to satisfy those of us who were opposed to the introduction of Upper Houses in the provincial Legislatures. But I am surprised to find today that such friends of ours are now opposed to the adoption of this article. We have already adopted article 148 laying down that in the provinces which are mentioned therein there shall be a second chamber. Article 148-A gives even to such provinces the liberty at any subsequent date to abolish those chambers if they consider it necessary and desirable in the light of the experience which they may gain in course of time. This article should, therefore, have been welcome to those friends of ours who were opposed to the introduction of Upper Houses in those provinces which have been mentioned in article 148 as providing them another opportunity to move for then abolition in the Legislative Assembly concerned. This article is good and useful even for those provinces who have not so far decided to have an upper chamber. It subsequently, in the light of the experience gained, they consider it necessary and advisable to have for their provinces Upper Houses this article will enable them to have an upper chamber too and come in line with the other provinces which have decided to have an upper chamber. Therefore, from every point of view the incorporation of this article is a useful one. But I do wish that it were possible for the Honourable Dr. Ambedkar to accept at least one part of the amendment which has been moved by my Friend Prof. Shibban Lal Saksena. In part 2 of his amendment (No. 85) he desires that a proviso be added to this article which runs thus :

"Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be discussed in Parliament unless at least 14 days' notice of the same has been given."

What Mr. Shibban Lal Saksena suggests is nothing very novel. We have already, while dealing with several previous articles, accepted the procedures suggested in this part of his amendment. The resolution relating to the abolition or creation of an Upper House in a particular State is obviously in the nature of an extraordinary resolution and as such it is necessary that such a resolution before being made in the Legislature must be given due notice of. In this connection I would like to draw the attention of my honourable Friend Dr. Ambedkar to article 50 which we have adopted and which deals with the impeachment of the President. With regard to that, we have laid it down that a resolution whereby the President is to be impeached must be given notice of at least fourteen days before the date on which such a resolution can be discussed in Parliament. Article 50(2) says :

"No such charge shall be preferred unless the proposal to prefer such charge is contained in a resolution which has been moved after at least 14 days' notice in writing etc."

Similarly, in article 74 we have laid down a similar condition with regard to the moving of a resolution relating to the removal of the Deputy Chairman of the Council of States. Yet again, under article 77 which deals with the removal of the Speaker or the Deputy Speaker of the House of the People it has been laid down that a resolution demanding the removal of the Speaker or the Deputy Speaker must be given notice of at least fourteen days in advance of the day on which the resolution would be discussed. There are other similar

[Shri Jaspat Roy Kapoor]

provisions in the Constitution which we have already adopted wherein we have adopted the procedure contained in part (2) of Mr. Shibban Lal Saksena's amendment (No. 85). It may be said that it is not necessary to provide such a safeguard in this article because even if a resolution to this effect is passed by the Legislature of a State it will have absolutely no effect unless and until legislation to that effect is enacted by Parliament. True, it is so. But then why should we leave a loophole like this? If by giving only two or three days' notice as an ordinary resolution under the ordinary procedure governing the business of the Assembly of any State such a resolution dealing with this subject on which opinion is considerably divided is brought up and passed by a snatch vote at a time when the House is thinly attended, will it not lead to great squabbles between members of that Legislature? The only remedy open to the losing party will be to approach the Parliament and represent that the recommendation of the Assembly should not be accepted and that no Bill to that effect should be proceeded with in Parliament. Well, Sir, we should not leave such a loophole. We should not fail to make a provision like the one which has been suggested by Shri Shibban Lal Saksena lest we throw open a ground for squabbles and quarrels between the members of any particular Legislative Assembly.

There is no point of principle involved herein, to which my honourable Friend, Dr. Ambedkar, should object. I consider that it is necessary and desirable that the suggestion contained in part 2 of Shri Shibban Lal Saksena's amendment should be accepted.

Shri Brajeshwar Prasad: Mr. President, Sir, I rise to support the new article 148-A as moved by Dr. Ambedkar. But I am not in favour of the provision that Parliament may by law provide for the abolition of the Legislative Council where it has such a Council. It is all right to vest it with the power to create a Council in a State where there is no such Council. I do not think that the establishment of a second chamber is necessarily a retrograde step. It all depends on what kind of powers you are going to vest in this body. It also all depends on what kind of members you are going to bring into the Legislative Council. Personally, I feel Sir, that having due regard to the political facts of our life, realizing fully well that for the first time in our political history we are going to have an adult franchise which is a leap in the dark, and which I consider to be a complete subversion of all that is good and noble in Indian life, and which I consider to be dangerous to the stability of the State, I consider the establishment of a second chamber as desirable and useful for all purposes.

Sir, it is utter simplification of politics to say that if the second chamber agrees with the Lower House, it is superfluous; if it disagrees then it is pernicious. These two words 'superfluous" and "pernicious" do not exhaust the entire universe of discourse in politics. There are other shades which must be kept in view.

Sir, I shall speak more when I come to article 150.

The Honourable Dr. B. R. Ambedkar: I do not think any reply is called for.

Mr. President: I shall now put the amendments to the vote. I shall take up Prof. Saksena's amendment first and I shall put it in two parts.

The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148 A

(i) the words 'Notwithstanding anything contained in article 148 of this Constitution' be deleted;"

The amendment was negatived.

Mr. President : The question is :

"To clause (1), the following proviso be added :

'Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be discussed in Parliament unless at least 14 days' notice of the same has been given'"

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148 A the words 'or for the creation of such a Council in a State having no such Council' be deleted."

The amendment was negatived.

Shri R. K. Sidhva : Sir, I beg leave to withdraw my amendment.

(The amendment was, by leave of the Assembly, withdrawn)

Mr. President : The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, clause (3) of the proposed new article 148 A be deleted"

The amendment was negatived.

Mr. President : The question is :

"That new article 148 A be adopted"

The motion was adopted.

New Article 148-A was added to the Constitution

Article 150

The Honourable Dr. B. R. Ambedkar : Sir, I move :

That for article 150, the following be substituted :

"150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty five per cent of the total number of members in the Assembly of that State

Composition of the Legislative Council

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty

(2) The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualifications entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe"

The original article was modelled in part on article 60 of the first Draft of the Drafting Committee. Now, the House will remember that that article 60 of the original Draft related to the composition of the Upper Chamber at the Centre. For reasons, into which I need not go at the present stage, the House did not accept the principle embodied in the old article 60. That being so, the Drafting Committee felt that it would not be consistent to retain a principle which has already been abandoned in the composition of the upper chamber for the Provinces. That having been the resulting position, the Drafting Committee was presented with a problem to suggest an alternative. Now, I must confess, that the Drafting Committee could not come to any definite conclusion as to the

[The Honourable Dr. B. R. Ambedkar]

composition of the upper chamber. Consequently they decided to leave the matter that they merely decided to postpone the difficulty, to leave the matter to Parliament. At the present moment I do not think that the Drafting Committee could suggest any definite proposal for the adoption of the House, and therefore they have adopted what might be called the line of least resistance in proposing clause (2) of article 150. That, as I said, also creates an anomaly namely that the Constitution prescribes that certain provinces shall have a second chamber as is done in article 148-A, but leaves the matter of determining the composition of the second chamber to Parliament.

These are, of course, anomalies. For the moment the Committee has not been resolving those anomalies, and I therefore request the House to accept, for the present, the proposals of the Drafting Committee as embodied in article 150 which I have moved.

[Amendment No. 90 of List III (First Week) was not moved.]

Shri H. V. Kamath: Sir, I move

"That in amendment No. 5 of List I (First Week) of Amendments to article 150, in clause (2) of the proposed article 150, for the words 'the qualifications to be possessed by a person being chosen' the words 'qualifications and disqualifications for membership' be substituted."

The House will see that on a previous occasion with regard to the election of members to the legislature of a State they adopted various articles in the relevant parts. I would invite the attention of the House to article 167 for instance, which lays down the disqualifications for membership of the State Assembly in addition to the qualifications which have gone before. In providing for representation in the upper chamber and election of members to the Council I do not see why this House should not with equal validity, equal reason and equal force lay down not merely the qualifications of members to be chosen to the upper chamber but also what the disqualifications should be. Article 167 lays down how under various circumstances a member is to be disqualified for being chosen as or being a member of the Assembly or the Council of a State. Therefore I do not see any reason why the same thing should not be explicitly stated in article 150 moved by Dr. Ambedkar.

There is one other point about the article and that is this. The new amendment lays down that the strength of the Council shall not exceed one-fourth or 25 per cent. of the total number of members in the lower House. It also lays down further in a proviso "Provided that the total number of members in a Legislative Council of a State shall in no case be less than forty." How these two can be reconciled in particular cases passes my understanding. For instance we have adopted article 148.....

The Honourable Dr. B. R. Ambedkar: I would ask the honourable Member to read article 167 again.

Shri H. V. Kamath: I am talking of the next point.

The Honourable Dr. B. R. Ambedkar: What about the first point. Do you favour it?

Shri H. V. Kamath: I do not favour it. Dr. Ambedkar says that article 167 lays down the disqualifications.....

The Honourable Dr. B. R. Ambedkar: Both for the Assembly and the Council of States.

Shri H. V. Kamath: In this particular article which Dr. Ambedkar has brought forward today he has thought fit to refer to the qualifications only. Why repeat this and not the other? I am not convinced of the logic of the argument at all. If Dr. Ambedkar agrees that this article lays down only the qualifications why not then refer to the disqualifications as well? That disposes of the point which I raised earlier.

On the second point I would only say that this provision regarding one-fourth of the members and not less than 40, might create difficulties in particular cases. We have passed today article 148 which provides that in certain provinces and States which have no second chamber they can have a second chamber if the Assembly of that State is desirous of having a council for the State. Assam and Orissa are provinces which have a population of less than ten millions and therefore the lower chamber will consist of less than a hundred members. According to this article which has been brought forward by Dr. Ambedkar the total number of members in the upper house should not be more than one-fourth and not less than 40. I wonder how these two will be reconciled by the wise men of the Drafting Committee. Article 150 as it stood in the original Draft was much better. It merely said that it shall not exceed one-fourth or 25 per cent of the total number of members in the Assembly of that State without stating what the minimum should be. For as I have already said there are provinces like Assam and Orissa and States like Mysore and others which have acceded to the Union and become a part of India with a total population of less than ten million. The Assembly of those States would contain less than a hundred members. If you want to have a second chamber of not more than 25 per cent. of the lower House and not less than 40 I cannot understand this arithmetic. It is not the arithmetic which I learnt in school or college; we are devising a new kind of arithmetic lower or higher mathematics. I hope this difficulty when it arises will be met squarely by the Drafting Committee and a suitable way would be devised for getting out of the difficulty. If it means I do not know what it means that irrespective of the strength of the lower House it will not be less than 40, whether it be more or less than one-fourth of the total strength of the lower House, then it will make sense. In that case, I would like to plead that in Orissa, Assam or Mysore which has a lower House of less than one hundred (perhaps eighty or ninety) I do not think that an upper House is called for. The lower House itself is seventy or eighty and I do not think we should have an uppper House of 40 members. Therefore in my judgment this article is not necessary and article 150 as it stood in the original Draft was a much wiser provision and I move that the original article 150 be considered and the new article rejected by the House.

Mr. President: We had a number of amendments to the original article 150. Does any Member wish to move those amendments which are printed in this additional list?

Prof. Shibban Lal Saksena: Mr. President, I was surprised to hear the speech of Dr. Ambedkar when he confessed that there was an anomaly in his having to move this amendment. We have provided for second Chambers in the States and yet we are leaving the composition of those Chambers to be divided by the Parliament. I first of all object to the very principle that Parliament should make any part of the Constitution. In fact when we are making the Constitution, we must complete every portion of it. We have laid down that only by two thirds majority can it be changed. If the Parliament makes some law it will be changeable always by the majority and there will be no finality to it. I therefore think that leaving anything about the Constitution to Parliament is a very wrong procedure. Then, there is no reason why we cannot come to some agreement on this question of the upper Chamber. Once we have accepted this retrograde step, let us provide in the Constitution provisions for making these chambers really revising chambers where they can review the working of the lower chamber and

[Prof. Shibban Lal Saksena]

where they may be able to point out what mistakes the lower House has made. I think that the original article 150 should be amended in part (2) only. I agree with my honourable Friend, Mr. Kamath, that the number of members in the upper House must not exceed 25 per cent. of the strength of the lower House. To have 40 members in an upper House where the number of members in the lower House is only 60 or 80, is, I think, a very wrong principle. Clause (1) of article 150 says:

"The total number of members in the Legislative Council of a State having such Council shall not exceed twenty-five per cent. of the total number of members in the Legislative Assembly of that State."

I think this should remain and the fixation of the minimum limit at 40 or 50 will be a further retrograde step. For clause (2) of article 150, I want my amendment No. 133 to be substituted, which runs as follows:—

That with reference to amendments Nos. 2268, 2270, 2271, 2272 and 2273 of the List of Amendments, for clauses (2), (3), (4) and (5) of article 150, the following be substituted:

"(2) Of the total number of members in the Legislative Council of a State

(a) 15 per cent. shall be elected by an electoral college comprising all the members of the District Boards in the State;

(b) 15 per cent. shall be elected by an electoral college consisting of all the members of the learned professions and specialists in any branch of learning,

(c) 10 per cent. shall be elected by an electoral college consisting of all the persons holding the Bachelor's degree of any university in the State or holding a degree recognised by the Government of the State to be equivalent thereto;

(d) 5 per cent. shall be elected by an electoral college consisting of all the members of the Senates or the Courts of the various universities in the State,

(e) 5 per cent. shall be elected by an electoral college consisting of all the members of the Municipal Boards in the State;

(f) 5 per cent. shall be elected by an electoral college consisting of all the members of the trade Unions in the State registered with the Government,

(g) 5 per cent. shall be elected by an electoral college consisting of all the members of the various Chambers of Commerce recognised by the Government of the State;

(h) 30 per cent. shall be elected by the members of the Legislative Assembly of the State; and

(i) the remainder 10 per cent. shall be nominated by the Governor

(3) All elections in clause (2) of this article shall be in accordance with the system of proportional representation by means of the single transferable vote.

(4) the qualifications of voters and other details necessary for the formation of the electoral colleges for the elections mentioned in clause (2) of this article shall be defined by an Act of Parliament."

I want to submit to this House that now that we have accepted the principle of second chambers, the only proper function of the Chambers can be to revise what the Lower Chambers have done and to give them expert advice on problems on which they legislate. Therefore, I think Sir, that the Upper Chamber must be composed of the intelligentsia of the provinces. Of course, the representatives of the intelligentsia must also be popularly elected. Therefore, I have provided in my amendment for the election of 15 per cent. of the members by an electoral College comprising of members of the District Boards in the State. Every district Sir, has got a District Board which will now be elected by adult suffrage and in these District Boards we shall have the intelligentsia in the rural parts of our districts, and if they are allowed to elect 15 per cent. of the members, they will take more interest in their work and they will also be properly represented in the Legislatures. In fact local

bodies have to play a big part in the future Swaraj Government and I therefore think that all these local bodies should be allowed to have a say in the legislation which will govern the provinces. I therefore think that representation for the District Boards is very important and should be provided. Then Sir, come the learned professions and the specialists in any branches of learning, and for these there is 15 per cent. representation in my amendment, this means the professors, doctors, engineers, lawyers, and other professions containing learned men who can think how a particular measure will affect the interests of the State will be adequately represented in the upper House. These learned men will be able to contribute their expert and learned advice which will be of help in revising the legislation passed by the Lower House. Then, Sir, the graduates of universities are given 10 per cent. I think we all realize that today many of the intellectuals in the country are dissatisfied in that the representatives in the legislatures do not generally come from that class, and it is important that we should not lose their co-operation. Therefore, Sir, I think that at least in the Upper Chambers, they should be provided for, so that they can help us with their learning in revising the Acts passed by the Lower House. Then, Sir, the senates and courts are also given 5 per cent. We do want that universities should make a contribution to our future legislation and therefore they have been provided for. Then, Sir, the Municipal Boards in the States have been given 5 per cent. The Municipalities of the provinces will thus have a voice in the State Legislatures and they can put forth their demands and their needs. Then, Sir, 5 per cent. is given to Trade Unions. Here, Sir, I will point out that in our Constitution we have not given any special representation to labour. We know in India they cannot have popular representation in this manner because the numbers of Trade Unions are not concentrated in any particular areas in any of the States. We are therefore not giving any representation to the members of Trade Unions in the Lower House. Probably, except in Bombay, Calcutta, and some such big centres, labour will not have any big influence in the elections. I therefore think that labour should have some representation in the Upper Chamber. I have given the same representation to the Chambers of Commerce also, so that nobody may complain that we have been partial and they have not been represented. The Assemblies of the States have been given 30 per cent. representation under my Amendment and the remaining ten per cent of the members of the Council will be nominated by the Governor so that people who are specially fitted to help the Council in revising the legislation passed by the lower Chambers may all come in there. Sometimes, legislation is passed in a hurry in the Lower House and revision may be necessary. If the people in the Upper House are drawn from all the sections of the State who form the intelligentsia, they will be in a position to discharge their duties satisfactorily. Therefore, I suggest that instead of leaving this lacuna of not providing the Constitution of the upper chambers in the Constitution the existence of which Dr. Amberkar himself has admitted, these provisions may be made in the Constitution regarding the composition of the Upper Houses. I hope this amendment will be acceptable to the House.

Mr. President: Do you wish to move any other amendment standing in your name?

Prof. Shibban Lal Saksena: No, Sir.

Mr. President: I take it that no other amendment is being moved. The amendments and the article are now open to discussion.

Shri Mahavir Tyagi: Sir, I have to make a very small comment on article 150. I have been noticing a tendency which is slightly unfortunate. He have been seen whenever opinions have sharply varied between Members, the tendency

[Shri Mahavir Tyagi]

of the House is to leave things to the responsibility of the Parliament. My feeling is that the Constituent Assembly, by passing this clause as it is now proposed by Dr. Ambedkar, will really shove the responsibility which was really our own.

Now, a Constitution without defining the shape of the Upper House of the States will be extremely incomplete. If we cannot finally decide the issue as to how the Upper Houses in the States will be composed, and from what elements, from what groups, and from which classes of people members would be drawn and by what method. I am afraid, we shall be failing in the task allotted to us. There are so many other important things which we have postponed. The tendency has been to postpone decision on all such points which require wisdom or consideration. Whatever is controversial has finally to be decided by this august House, otherwise, the Constituent Assembly would have no meaning. A Constituent Assembly means that on matters controversial it takes final decisions for good, and that ends all controversy. The more controversial a matter is, the more we are warranted to come to a decision. Constituent Assembly cannot sit every year. I am afraid that by shoving this responsibility on Parliament we are shirking our responsibility and also neglecting our duty. As it is, the article says: "The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualifications entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe." Parliament could prescribe for everything. Every controversial point could be safely entrusted by the nation to its Parliament. After all, Parliament will also be a quite responsible elected body. But still they have left it to the Constituent Assembly to do the job. We have gone into very minor and frivolous details, about pay and allowances, houses and many other sundry details, which no other Constitution provides for,—indeed ours is a unique Constitution which has all the details as if we were enacting some penal code or a civil code. On the basic point of the Constitution, however, namely, the manner in which the Upper House in the States shall be constituted, we are shrinking a decision. This would I am afraid, give an impression that the Constituent Assembly had a vacant mind. After all, having prescribed for the existence of the Upper House, is it not for us to explain the genesis of it? We should have given to the nation an idea, an argument, as to why we sanctioned the constitution of an Upper House in the States. We should have stated that the members of the Upper House will come from such and such classes and we should have thereby given an idea that the Constituent Assembly was of the view when they passed the Act that such and such classes of people should be represented in these Houses so that full benefit could be had from their representation in the Upper House. In the absence of these details I do not know why an Upper House has been suggested at all. I could understand the original Draft; it was on the lines of the Irish Constitution, it had some meaning. Some classes were given there from the panels of which the Upper House would be elected. We could say that we created the Upper House in various States just to bring in such persons as would otherwise not enter the arena of political fight. For, sometimes political parties and factions degenerate themselves to such a pass that gentlemen mostly learned, those who are men of opinion, do not like to enter into the dirty pool of politics. If we had chosen to prescribe details about the composition of the Upper Houses, we could say that they were meant to rope in such elements of the Society as the real intelligentsia, men of opinion, who would otherwise not contest the elections. We should have a way of bringing them in and taking advantage of their learning, their experience and their opinion. I can understand the creation of an Upper House to bring in such

elements and have the benefit of their advice, while the future States make their legislation. But, we have failed to give any hint to the future generation as to what our motive is in creating the Upper House in the various States. I would therefore request Dr. Ambedkar to kindly throw some light as to why he has left it ambiguous and why he has shirked this. Dr. Ambedkar is the bravest among us; he faces all controversies; he is a man of controversy, and a successful man too. Why should he shirk this small matter? I want him to come out with what he has really at the back of his mind in shirking this responsibility, and why the whole composition of the Upper House has been left to the various States.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I desire to oppose the proviso to clause (1) of the proposed article 150. This is a most anomalous proviso and almost contradicts the body of clause (1). It is a strange survival of a most anomalous situation arising out of the history of development of this article. This article as it stood in the original Draft Constitution was good, but the Drafting Committee wanted to make it better and then for six months they kept on the agenda an amendment which was to say the least the height of mathematical absurdity. Even up to yesterday the amendment as it stood was highly absurd. It was only sometime during yesterday that the Drafting Committee or some vigilant draftsman was suddenly awakened from a deep slumber of six months and then found there was a serious anomaly and then there was a last minute attempt to repair the mistake and the present article is the result which is, even now, shorn of its mathematical absurdity, highly anomalous. In the draft amendment as it stood yesterday clause (1) was like this :

"The total number of members in the Legislative Council of a State having such a Council shall in no case be more than 25 per cent of the total number of the members of the Assembly of that State or less than 40."

This clause looked very simple and inoffensive and the effect was that the number of members of the Legislative Council shall not be more than 25 per cent.

The Honourable Dr. B. R. Ambedkar : Sir, I rise on a point of Order. My Friend is criticising a draft which is not before the House.

Mr. Naziruddin Ahmad : I was trying to show how this unsatisfactory state of affairs in today's amendment arose.

The Honourable Dr. B. R. Ambedkar : It is not before the Members.

Mr. Naziruddin Ahmad : The draft provided that the number of members of the Legislative Council shall never be more than 25 per cent. and never less than 40. The anomaly was this that in article 149 which we have already passed, in proviso to clause (3) we have provided that the number of members in the Legislative Assembly of a State shall never be more than 500 and never less than 60. Take the minimum 60. If the minimum number in a State is 60, the 25 per cent. rule would mean that not more than 15 members shall be the number of members of the Council but then the later portion of clause (1) of the amendment in question was that it should be never more than 25 per cent., *i.e.*, it would never be more than 15 and never less than 40 The maximum was 15 but the minimum was to be 40. In fact up to yesterday the clause stood like this that the minimum far exceeded the maximum.

Mr. President : Is it any use considering a clause which existed yesterday and which does not exist today?

Mr. Naziruddin Ahmad : Sir, I am coming to my point at once. There has been a last minute attempt to repair the blunder and I ask the House to kindly consider how the matter stands. In clause (1) as it stands today, normally, the number of members of the Council shall not be more than 25 per cent. Confining our attention to an Assembly of 60, according to present clause the number should not exceed 25 per cent. *viz.*, 15. Then the proviso says that it shall never be less than 40. The minimum in the proviso is about three times the maximum in the body of the clause. I ask the House to consider the anomaly Though the mathematical absurdity has been attempted to be repaired, still the practical absurdity remains. What happens is that in a State where the Legislative Assembly consists of 60 members, by virtue of this proviso the number of members of the Council shall be at least 40. The strength of the lower House is 60 but that of the Upper House would be 40. So there would be an utter disproportion between the number of members of the Legislative Assembly and that of the Council. In fact the great purpose of clause (1) of the present article 150 is to reduce the number of the members of the Council. The great point in reducing the number was that an Upper House must be a small House to be an effective ing revising House but in comparing the case of a State having a membership of 60 in the Assembly, the minimum number of members in the Council would be too large. It will be 60 in the Assembly and 40 in the Council I ask the House to consider the effect of this disproportion in a joint sitting It there is a joint sitting of the two Houses the Upper House could easily turn down the opinion of the Assembly. I therefore submit that either the minimum number in the proviso should be reduced or it should bear some kind of proportion to the number of members of the Legislative Assembly. As at present it is a survival of an illogical past. 40 is rather too much in many cases. and only when the Lower House consists of 160 members the 25 per cent. and the minimum 40 will agree, but if it is less than 160 then the minimum stated in the proviso would be too large. That is why I was trying to trace the history of this anomaly. I submit either the minimum number should be reduced or abolished altogether.

Shri V. I. Muniswamy Pillay (Madras : General) : Mr. President, while I generally agree with the amendment that has been brought before this sovereign body by the Expert Committee, I would like to draw the attention of the makers of this amendment in regard to certain representation of the minorities The original draft that was presented to us contained abundant provision for such of the communities that may not find a place through the general election and moreover the Governor himself has been given the power of nomination With the adult franchise and the reservation that have been accepted by this House, a certain proportion of the Scheduled Castes will naturally came to the Assembly and, providing the system of proportional representation by means of the single transferable vote; it was possible for the Scheduled Castes to get a certain percentage of representation in the Council of States. But in this amendment, I may point out, the power of choice and also the fixation of qualifications entirely go to the Parliament the composition of which of course we know and as far as the Scheduled Caste representation in the Council is concerned it is nebulous. So I would like to know from the members of the Expert Committee or rather I would wish to have an assurance from that body that the interests of the Scheduled Castes will not suffer by the acceptance of this amendment, because my only fear is that the reservation that has been fundamentally approved by this House as far as Scheduled Castes are concerned must be given a chance, that these classes should be given a chance to serve in the Councils of the States. I am sure the Honourable Dr. Ambedkar will make this point clear and also assure me that the representation of the Scheduled Castes in the future Councils of the States will be well protected.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Mr. President, Sir, I find it difficult to congratulate the Drafting Committee or its Chairman on its latest performance with regard to the provision of second chambers. The House is aware that on this specific subject, different provinces were called upon to take a decision as to whether they were going to have second chambers in their respective provinces. Each province met separately. The Members of the Constituent Assembly hailing from each province met separately and came to certain decisions. I think six out of nine provinces came to the decision that there should be a second House,—Bengal, Bihar, United Provinces, Madras, Bombay and East Punjab. That was then decided. But the whole trouble arose over the composition of the second chambers which were proposed to be installed in these Provinces. Sir, it is a very sorry tale that on this matter no decision had been reached in spite of attempts being made more than once, here and elsewhere. On slight points of difference the whole thing was jettisoned. And today what do we find ? The Drafting Committee with all its ingenuity has found a way out of this impasse, and that is, they are asking or rather they are authorising the Parliament of the country to settle the composition of these Chambers. Am I correct, Dr. Ambedkar ?

(The Honourable Dr. Ambedkar indicated assent.) Sir, I fail to understand this position. The Drafting Committee say they have chosen the line of least resistance. Yes, they have. But do not forget that you are providing the Constitution of the country, and I have yet to know a constitution in which the composition of the Council or a Chamber of the Legislature does not find a place. Our Draft Constitution is becoming a bulky volume and containing all manner of provisions, provisions regarding the Secretariat, the Auditor-General, the salaries of High Court Judges and things which should not normally find a place in the Constitution, in my humble opinion. All manner of extraneous matters have been put into this Constitution, but in the matter of composition of legislature which is the back-bone of any constitution—in fact the Government of the country has got to function through the legislature—even when certain provinces have decided that they are going to have second chambers, cannot find it possible to provide a solution. That is really amazing. If we cannot make any provision for it now, what is your prospect of doing it within the next three months in the Parliament ? For, before the Constitution comes into effect, you have to decide one way or the other, whether you are going to give any composition to these Councils or not. If the House was minded not to have second chambers, it should have boldly and fairly faced that situation, and said, "No Second Chambers". One could at least understand that position. When the majority of the provinces of India had decided on second chambers why should you find it so difficult to decide on the composition, and in desperation abandon the idea of making a provision for its composition, in the Constitution ? This I cannot understand. I do not at all feel happy over this article. You are only going to postpone the evil day. That is all the advantage you are going to have for the present. But mind you, before the Constitution comes into effect, you have got to take a decision on this; but certainly this Constituent Assembly would have been the best authority to decide on the composition of the Legislature and not Parliament. I, therefore, say that this has not been a happy performance. The Drafting Committee should have found a way out as it is not only a question of anomaly, but it has created a lacuna; in any case, it is an unjustifiable and undignified performance.

Prof. N. G. Ranga (Madras : General) : Mr. President, Sir, I am sorry to say that I cannot agree with the stand taken by my Friend Mr. L. K. Maitra. I think on the whole, the Drafting Committee has made a wise suggestion, that we should not here and now go into all these details, as to who should be represented within this quota of 25 per cent. in the Upper Chamber and to what extent and so on. Sir, I may say that I am not in favour of second chambers at all. But now that the House has decided to have second chambers, and al-

[Prof. N. G. Ranga]

in favour of giving special representation to certain classes of people or group of people or categories of people in our society in these second chambers, it is much better to leave these details, and the detailed settlement of this question, to Parliament where we have quite a leisurely procedure, so that it would be possible for the Members to make their suggestions and yet due consideration of their suggestions by Parliament.

Secondly, Sir, it is very easy for people to say that such and such groups of intellectuals or urban classes should be represented in the Upper Chamber and it is also equally easy for them to quote a number of precedents from various other countries. But it is very necessary to see that no one class of people comes to be given too much weightage in the second chamber. Already it is a notorious fact that all over the world second chambers have acted more as a reactionary influence and have prevented the passage of progressive legislation in due time. Therefore, we cannot be too careful to see that the second chambers are not loaded, specially with those people who are interested in the *status quo* or who are interested in preventing any kind of progressive legislation of progressive administration being developed and established. Therefore we were in favour of the Statement on page 4 of List III where certain categories of our society have been enumerated.

I think in another place and on another occasion we had a more or less detailed discussion of this particular matter and a number of us had agreed on this proposition that (a) literature, arts, science, medicine, (b) agriculture, fisheries, co-operative cottage industries and allied subjects, (c) engineering, architecture and building (d) social services and journalism, all these should be given this kind of special representation in the upper chamber. But on second thoughts we came to the conclusion that it is better to leave it to be decided by Parliament at a later stage. My honourable Friend, Pandit Maitra, is rather apprehensive that if we leave it to Parliament it might delay the coming into existence of these second chambers. I do not think there need be any such delay at all. Between now and the general elections that are to come next, and also even after the formation of the lower chambers in all the provinces there is plenty of time within which it may be possible for Parliament to take up this matter seriously and settle all these details, although they are not such details as could be disposed of in this House in such a summary fashion as can be done at this sitting. That is why I appeal to my honourable Friend, Pandit Maitra, not to be very particular about his own objections and to be generous enough to agree with us in accepting Dr. Ambedkar's amendment.

Shri T. T. Krishnamachari: Sir, I am afraid the debate over this particular article on the amendment moved by Dr. Ambedkar has taken the form of a criticism against the Drafting Committee for not having provided a ready-made solution for this problem of representation in the upper House of the provinces but leaving it to Parliament to decide this issue. I feel here that there is no need for the Drafting Committee to apologise for not having placed a complete solution other than the one that is contained in the amended article that is placed before the House. In fact it may be that in a case like this second thoughts are the best, and the Drafting Committee, after having taken into account the opinion of the Members of this House as indicated by the innumerable amendments that have been tabled to the original article 150, thought that they should review the position that they had taken up in the original draft. In fact one of the basic plans in the scheme envisaged in the original draft was the question of selection of candidates for the upper House by means of panels, a system which was borrowed from the Irish example. But we were led to understand subsequently both from the first-hand experience of our Constitutional Adviser who visited Ireland and also from the literature that was made available to us that the Irish system of electing panels and selecting members therefrom to represent the country in the upper house has not proved as successful as it

was originally thought it would. Sir, I would ask members of this House to go through the various amendments to article 150 that are given in the various lists of amendments. Is there any indication therein of any unanimity of opinion in the manner in which the members of this House want candidates to be chosen or they want the electorate to be created? I think the very baffling nature of the various suggestions made and the fact that no particular suggestion made by any one member has any particular merit as against any other suggestion made by any other member of this House has made us think whether without further and deep investigation it would be worth while asking this House to accept a proposition which has been cursorily decided on and which might in effect defeat the purpose of the creation of an upper House for the various States enumerated in the previous article.

Pandit Lakshmi Kanta Maitra: But how can you solve the question of the Council of States?

Shri T. T. Krishnamachari: I have the greatest respect for the judgment of my honourable Friend Pandit Maitra with whom I have had the pleasure and privilege of working in the legislature for a number of years. But I must say that in this instance he has allowed his temper to outrun his usual discretion. Let me here explain that the Upper House of Parliament has to be elected on the basis of representation of States, the Lower House has to be elected on the basis of adult suffrage. The lower Houses of the provincial legislatures are to be elected on the basis of adult suffrage. This decision does not want any investigation and any great thought; except a decision on the principle all that it wants further is how to delimit the constituencies.

Pandit Lakshmi Kanta Maitra: You could have done that if you had applied your mind; you did not do that.

Shri T. T. Krishnamachari: We had applied our mind to the end that we only wanted to provide representation for the States; it is the type of representation which is provided for the Upper House in all federal constitutions.

Pandit Lakshmi Kanta Maitra: Your practice has been that whenever there has been any difficulty you pass it on to the future Parliament; you offer no solution.

Shri T. T. Krishnamachari: I do not plead guilty to that charge because I think the honourable Member has not taken into account the difficulties of the Drafting Committee, particularly when the inquiry into the data available was insufficient or that data before us was inadequate to make up our minds. Let me take my honourable Friend who objects to this method of deciding this issue to what happened before the 1935 Act was passed. There was a Franchise Committee, I believe it was the Lothian Committee and subsequently there was the Hammond Committee, both of which visited the whole country. They went to every province and in the latter case co-opted members there it made detailed inquiries only because even for the lower House the franchise had to be decided on and for the upper House also it had to be decided likewise. In the particular instance before us owing to various circumstances for which neither the leaders who guided us nor the Drafting Committee were responsible, we had to depend on our own limited resources to frame proposals for an electorate for the Upper House of the States. And this is a very important matter. I think the generally accepted idea is to have an upper House which will act only as a revising body, help the lower House to make up its mind in difficult matters, which will provide that limited amount of delay which is necessary for people to make up their minds or to revise any matter where they have made up their minds already. If the intention is to have a proper type of legislative council it could only be created after proper inquiry into facts; and I can say without any sense of guilty or an attempt at an apology that the Drafting Committee or those concerned in the framing of this constitution have not had

[Shri T. T. Krishnamachari]

before them the full data that is necessary for providing a suitable electorate for an upper House and to meet the different circumstances existing in the various provinces. It may be that in the United Provinces some representation for the local bodies, the universities and perhaps the Chambers of Commerce would be thought necessary, whereas similar condition perhaps obtained in a province like Madras where the position of the local bodies is undergoing a change and we do not know in what shape or form they will ultimately remain. It may also be that if we provide particular constituencies for electing members to the upper House the strength of those constituencies will not be the same a few years hence. So it is very necessary that we should not bind down the mechanism for ever by making a provision in the Constitution but must provide for the changes that might be necessary from time to time in the matter of either the electorate for the upper House or in the matter of qualifications of candidates to be made without the elaborate process of an amendment of the Constitution but rather leave it to Parliament to vary the terms, if and when it is found necessary, by a Parliamentary Act. It has been asked, if that be done, how can the elections for these upper Houses be held? I think it is a perfectly easy thing to visualise that there will be a time-lag between the promulgation of this Constitution and the elections taking place. The time-lag may be a few months or a year. Within that period the Parliament, which will be this House or its successor will certainly be seized of the fact of providing a proper type of constituency for the Upper Houses, the qualifications of the electors and those to be elected and all that is envisaged in the amendment of Dr. Ambedkar. And an Act of Parliament will certainly satisfy my honourable Friend Pandit Maitra far more than any gerrymandered device that we might place before him at the present moment. That is why we are not placing entire scheme before him today.

I think there is therefore no need for apology. Parliament will in the course ask provincial Governments to submit their own proposals. Prior to the Draft Bill coming up before Parliament the government of the day will perhaps appoint a committee to scrutinise the suggestion of the Provinces. I think the draftsman who has to draft the Bill will have the resources and the initiative to vary if necessary the terms and conditions of representation provided for each of the provinces that want an Upper House. All this can be done at leisure and after an exhaustive enquiry with more care and attention that we can give to it now. The proposal put up by Dr. Ambedkar is the only proper, reasonable and just proposal that can be placed before the House now without making this House commit itself to do something which will not be proper or which has been decided in haste in a haphazard manner.

And what is the amendment of Mr. Shibban Lal Saksena about the claims of which he urged the House to consider? Five per cent. for this group of persons, five per cent. for something else and so on. It looks as though he is trying to make up the total of one hundred per cent. by bits here bits there and bits somewhere else. Even granting that the scheme suggested by him is adequate so far as United Provinces is concerned, it seems to me that it is completely inadequate and out of place with regard to provinces about which I have some knowledge. Therefore, without any apology I ask this House to accept the amendment moved by Dr. Ambedkar, which I think is the only proper course to adopt in the circumstances.

The question of having an Upper House or not does not come into the picture at this stage. We are already committed to that proposition. We have provided solutions against difficulties arising from the acceptance of this proposition, namely that the various Legislatures of provinces can do away with the Upper House if they choose, and the resolution of conflicts between the two Houses and so on. Having provided Parliament with the power of accepting a

resolution of the Lower House in a State to create an Upper House where it did not exist I think it is only fair that we should give Parliament entire power in regard to varying the composition, and determining the composition of the House in the initial stage. Sir, I support the amendment.

Shrimati Purnima Banerji (United Provinces : General) : Mr. President, Sir, I do confess that dealing with these articles regarding the Upper House, not knowing as to what is going to be the composition of the Upper House does put us in some difficulty. We passed article 148 as many of the provinces did agree to the creation of an Upper House mainly depending on the kind and nature of the House and we did it on the assumption that it would be something of the kind based upon the Irish model, a model which was supplied to us by the secretariat of the Constituent Assembly. We were always of the opinion that an Upper House could perform the very good and useful function of being a revising body, and that, while its views may count but not its votes, it should not be a House of vested interests. It was felt that those who could not enter into the rough and tumble of active politics could by their good offices advise the Lower House. Such people could get an opportunity to revise or amend legislations of the Lower House and would thus be performing a useful function. But, now by these articles, when we leave the entire composition to the future Parliament and yet vote for an Upper House we are actually groping in the dark I do not agree with my Friend Mr. Brajeshwar Prasad that it is because we are afraid of adult franchise which we consider a leap in the dark that we want to provide for Upper Houses. It was our experience in the Legislative Assemblies that it was useful to have associated in our governmental activities and in our legislative activities such useful people as were doing useful work for the country, people doing social service, service among Harijans or backward classes, some representatives of labour who were not organised or were not to be found in such large numbers as to form a constituency by themselves or members of a co operative association, men of letters or some such people whose advice would count, who would not be actuated by any motive to withhold any legislation which is good for the nation but whose voice may have a good effect upon us -it was for such an Upper House we voted and not for an Upper House whose nature and composition we do not know. For the moment we know that the present Upper Houses in the various Legislatures are Houses of vested interest as it is people having a certain amount of property qualification and people with large bank balances who are elected to the Upper Houses. Now, when we have left the entire qualifications to the future Parlaiment, we do find some difficulty when this Constitution-making body is yet required to vote these articles. I do not know if Dr. Ambedkar can give an assurance,—for what his assurance will count that it will not be a House of vested interests or of people with large properties who would stay any legislation which is necessary in the interests of the country. With these words, I hope that our views expressed in this House will be taken into account in the future Parliament and that an Upper House which will be only of a revising nature, which would be neither pernicious nor useless would be brought into being and that the possession of large properties by persons will not be considered a qualification entitling them to membership of the Upper Houses.

Shri Brajeshwar Prasad : Mr. President, Sir, I am thoroughly opposed to the article moved by Dr. Ambedkar. Professor Ranga characterised this proposal of Dr. Ambedkar as a very wise one. It would have been far better to entrust the entire task of making the future Constitution of India to the future Parliament of India. That would have been the wisest thing on earth. I hope everybody will realise that this is the proper place as it has been convened to frame a Constitution for India. To ask a Legislature to frame the constitution of an important organ of the State is a mistake.

[Shri Brajeshwar Prasad]

I am coming to the proposal embodied in amendment No. 852 [illegible]

"The total number of members of the Legislative Council [illegible] Council shall not exceed twenty-five per cent of the total [illegible] Assembly of that State."

I do not see any reason why the number of members of the Legislative Council should be reduced. I feel that the total number of members should be equal to that of the number in the Lower House. If the future Parliament is going to be entrusted with the task of allocation of seats, the number of elected persons and, the qualifications to be possessed, why not also entrust to Parliament to determine the total number of members as well? Why fetter the discretion of Parliament in this matter? Personally I am of opinion that the membership should be equal to that of the Lower House, that the Legislative Council should be a nominated body, nominated by the President or the Governor in his discretion. I do not want this matter to be left in the hands of provincial Ministers. I agree with my sister, Shrimati Purnima Banerji, when she says that it should not be a House consisting of vested interest. I do not want that the members should come from the capitalist classes or the landlords or the satellites of the Ministers. I feel that it should be a body consisting of the wise men of the province. The dominant theme of Indian history has been that we have been ruled by wise men. Our law givers were not legislators, Parliamentarians or democrats. They were wise men. Under the present circumstances it is difficult to find men of the type that have been envisaged in Plato's Republic. But, we can approximate to that idea. We can lay it down clearly in the Constitution that only those persons who are graduates can become members of this Council and the number of members shall be determined by the President or the Governor in his discretion. They shall be nominated for life. It shall not be a body which would undergo radical changes in composition after every three or five years. I feel, Sir, that having due regard to the political facts of our life, knowing fully well the dangers that confront the State and the elements of instability that are growing up in this country, we have done well in chalking out a line of defence in the measure that we have adopted, namely, that the Governor shall be a nominated person by the President. I feel, Sir, that the Legislative Council should be also a nominated body. This should be a second line of defence. I feel, Sir, that the consideration of this article should be postponed for some time, and before we adjourn, a proper constitution for the Upper Chamber should be determined and decided in this House.

Dr. P. S. Deshmukh: A number of honourable Members of this House have already advanced the plea that it is not proper that such an important item, as the constitution of the second chambers in the States, should be left to Parliament. I also rise to support this point of view. Since our Constitution is a written Constitution, it should be complete in itself and it should not be necessary to have recourse to partial legislation from time to time which will be a sort of supplement to the Constitution that we are passing. I am also apprehensive of the facts that more and more recourse is being had to this device. Wherever we find there is no unanimity or where certain complications arise, we try to throw the burden on Parliament, and this Parliament has then to pass legislation on the particular item which we do not want to tackle here. I feel, Sir, that it would be neither in the interests of the dignity nor respect which this Constitution should have and evoke in the minds of the people, to leave such important matters for future legislation.

So far as this item is concerned, it is bound, after all, to come before this very set of honourable Members sitting as legislators, because unless the constitution of the second chambers is complete I do not think the Constitution can come into force or be really put into practice. That being so, we are

merely playing for time in order to consider and finally approve of an arrangement by which these second chambers would be constituted. There is only going to be a difference of a few months if we make a provision of this kind for Parliament to decide about membership, composition, the qualifications of the various Members etc. I think, Sir, this should not be permitted. I feel I must express my dissatisfaction with the way in which we are trying to really undermine the dignity and the position of the Constitution we have been sitting here to frame. As a matter of fact, Mr. T. T. Krishnamachari gave away his whole case when he said that he was not sure as to how the second chambers should be composed : and if that is the state of mind of the members of the Drafting Committee, the more honest method would have been to scrap the second chambers altogether. If the members of the Drafting Committee themselves do not know which interests should be represented in these Houses, and if in spite of two and a half years of deliberation they have not yet made up their minds as to which are the interests which require protection, which are the representatives which are likely to stabilize our Governments in the future Constitution, then it is time that the whole idea of second chambers was given up.

I therefore submit that this is not a very satisfactory state of affairs—that we should talk of having second chambers and yet not know what they should be composed of. On the other hand, we hope somewhat vaguely that after a lapse of two months we shall come across some brain-waves by which we should know what should be done with regard to qualifications for members sitting in second chambers. I do not think this is in keeping with the dignity of the House nor of the Constitution that we are framing.

The Honourable Dr. B. R. Ambedkar : Sir, there are only two points of comment, which I think call for a reply. The one point of comment, that was made both by Mr. Kamath as well as by my Friend, Mr. Naziruddin Ahmad, was that according to the proposal now placed before the House, there is a certain amount of disproportion between the membership of the Upper House and the membership of the Lower House in certain provinces. He cited the instance I believe if I heard him correctly, that in the province of Orissa, the members of the Lower House, on the principles which we have laid down in article 149 of the Constitution, would be near about 60. Consequently, if the minimum for an Upper House was 40, in Orissa the Upper House would be disproportionate to the Lower House in strength. Now, I think my Friend, Mr. Naziruddin Ahmad, has not taken into consideration the circumstances which have intervened during the interval. He has for instance completely forgotten that Orissa is now a much bigger province on account of the merger of the several States, which were at one time independent of Orissa, and I understand that taking the area of the States and the population which will be included in the boundaries of Orissa, the Lower House is likely to be 150. Consequently, the possibility of any such disparity, as he pointed out, no longer exists. I may also at this stage say that if the House passes what is proposed as article 172 which regulates the question of difference of opinion between the Upper House and the Lower House, this question of disparity of principles between the Lower House and the Upper House loses all its importance, because under article 172 we no longer propose to adopt the same procedure that was adopted with regard to the two Chambers at the Centre, namely a joint session. What we propose to do is to permit the view of the Lower House to prevail over the view of the Upper House in certain circumstances. Consequently, the Upper House by reason of this different political complexion has no possibility of overturning the decision of a majority or a large majority of the Lower House. That I think, completely disposes of the first point of comment raised by my honourable Friend, Mr. Naziruddin Ahmad.

I come to the second question which was very strongly raised by my honourable Friend, Pandit Lakshmi Kanta Maitra. His argument was : Why

[The Honourable Dr. B. R. Ambedkar]

should you leave it to Parliament? How can it be left to Parliament? I think the answer that I can give to him, at any rate, so far as I am concerned, is quite satisfactory. I should like to point to him in the first instance that it is not to be presumed that the Drafting Committee did not at any stage make a constructive proposal for the composition of the Upper House in the Constitution itself. If my honourable Friend will remember there stood in the name of myself and my Friend, Mr. T. T. Krishnamachari an amendment which is No. 139 in this consolidated list of amendments to amendments which has been circulated and there he will find that we have made a constructive suggestion for the composition of the Upper House. Unfortunately that was not accepted in another place and consequently, we did not think it advisable to continue to press that particular amendment. He will therefore see that the Drafting Committee must be exonerated from all blame that might be attached to it by reason of not having made any effort to solve this difficulty, they did try, but they did not succeed. My honourable Friend will also realize that the Drafting Committee was presented with altogether 28 amendments on the subject. They range here in this list from 123 to 148. If he were to read the amendments carefully in all their details, he will notice the bewildering multiplicity of the suggestions, the conflicting points of view and the unwillingness of the movers of the various amendments to recede from their position to come to some kind of a common conclusion. It was because of this difficult situation the Drafting Committee thought that rather than put forth a suggestion which was not likely to be accepted by the majority of the House, it would leave it to Parliament.

Shri H. V. Kamath: Is Dr. Ambedkar sure that Parliament will be presented with less multiplicity?

The Honourable Dr. B. R. Ambedkar: If my honourable Friend will give me time, I will reply to that part also.

My honourable Friend Pandit Maitra, said: How is it conceivable that a part of the Constitution of so important an institution as the Upper Chambers could be left to be decided by Parliament and not be provided in the Constitution? I think my honourable Friend, Pandit Maitra, will realize and I should like to point out to him quite definitely what we are doing with regard to the Lower House both in the Provinces or the States as well as at the Centre. If he will refer to article 149, which we have already passed, what we have done is we have merely stated that there shall be certain principles to govern the delimitation of constituencies, that a constituency is not to have less than so many and more than so many, but the actual work of delimiting the constituencies is left to Parliament itself and unless Parliament passes a law delimiting the various constituencies for the Lower House at the Centre, it will not be possible to constitute the Lower House.

Pandit Lakshmi Kanta Maitra: That is inevitable.

The Honourable Dr. B. R. Ambedkar: Again take another illustration, namely, the allocation of seats. The actual allocation will have to be done by law by Parliament. Therefore, if such important matters of detail could be left to Parliament to determine by law, I do not see what grave objection could there be for a matter regarding the composition of the Upper Chamber being also left to Parliament. I cannot see any objection at all. Secondly, I feel personally that having regard to the conflicting view-points that have been presented in the 28 amendments that are before the House, I thought it would be much better for Parliament to take up the responsibility because Parliament will certainly have more time at its disposal than the Drafting Committee had and Parliament would have more information to weigh this proposal, because ...iment then would be in a position to correspond with the various provincial

Governments, to find out their difficulties, to find out their points of view and their proposals and to arrive at some common *via media* which might be put into law. Therefore, in putting forth this proposal I think we are not making any very serious departure from the principles we have already adopted and as my honourable Friend, Mr. T. T. Krishnamachari said, taking all these into consideration, there is nothing for the Drafting Committee to apologize but to recommend the proposal to the House.

Mr. President : I confess to a sense of disappointment at the Drafting Committee not being able to find a solution for this question. (Some honourable Members : Hear, hear). It is an important matter in the Constitution that the composition of the Chambers of the legislature should be laid down definitely and I should have thought that it would be possible to come to some conclusions which would be acceptable to the House as a whole, but unfortunately that has not happened. I do not blame the Drafting Committee for it. As Dr. Ambedkar has pointed out, there has been such a jumble of amendments suggested so many view-points put forward, that they find it impossible to reconcile all these and they take the line of least resistance of putting it off till the Legislative Assembly meets and decides the question. If it is at all possible, I would at this late stage suggest that the question might be referred back to the Drafting Committee. (Many honourable Members : Hear, hear). The Drafting Committee could make another attempt to solve this question and bring before this House a resolution of this problem; but it is, of course for the House to decide. I leave it to the House to decide.

Pandit Govind Malaviya (United Provinces : General) : I move, Sir, that the consideration of this article be held over.

Shri Brajeshwar Prasad : I beg to second this proposal.

The Honourable Dr. B. R. Ambedkar : I have no objection. We can have another go at it.

Mr. President : Then I take it that Members are agreed that this article should be held over.

Honourable Members : Yes.

New Article 163-A

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That in amendment No. 12 of List I (First Week) of Amendments to Amendments for the proposed new article 163-A, the following be substituted : -

'163-A. (1) The House or each House of the Legislature of a State shall have a secretarial staff of State Legislatures separate secretarial staff :

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both House of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of the House or House of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2) of this article, the Governor may after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.' "

This article is merely a counterpart of article 79-A which we considered this morning.

Shri Brajeshwar Prasad : I am not in a position to move any of the amendments standing in my name.

Shri H. V. Kamath : Mr. President, Sir, I do not propose to speak on the amendments which I am formally moving before this House. I would only like to remark in passing that I have noticed today an unfortunate tendency on the part of Dr. Ambedkar not to reply to points of substance raised in the course of the debate. Of course, he is free to act as he likes. I would only request him, in fairness to Members who raise points of substance, that he might at least attempt to answer them. Whether he would answer them satisfactorily or convincingly is another matter; but the House is entitled to that much from him. Honourable Members who raise points of substance must at least know the point of view of the Drafting Committee. In articles 70 A and 147 A, points of substance were made out by various amendments by my honourable friend Prof. Shibban Lal Saksena and myself. But when his turn came, Dr. Ambedkar was good enough, wise enough just to say that he did not wish to say anything.

The Honourable Dr. B. R. Ambedkar : I said no reply was called for.

Shri H. V. Kamath : That is left to his judgment. But, when certain substantial points are raised, they call for some sort of reply. Of course, he is buttressed, fortified by the foreknowledge of the fact that when he says, 'no' he will carry the House with him. It is of course up to him to decide what he will reply to and what he will not. But, the House is entitled to hear his views. If he is too tired, too fatigued, he may ask one of his wise colleagues.

The Honourable Dr. B. R. Ambedkar : Who is to determine whether the points are points of substance? If the President gave a ruling that the point is one of substance, I should certainly reply. I cannot leave the matter to be determined by Mr. Kamath himself.

Shri H. V. Kamath : You, Sir, are following the wise ruling laid down by you that the amendments which did not raise points of substance would not be allowed by you.

Mr. President : Are you moving the amendments? What are you discussing now?

Shri H. V. Kamath : I am moving them. Before doing so, I would like to say that when an amendment is allowed to be moved by you, it means under the rules we have made recently, that it has a point of substance. Any way, I move amendments numbers 92, 94, 96, 97, 98, 99 and 100 of List III (First Week). I do not think I should take the time of the House in reading the amendments. If you want, I shall read them.

Mr. President : Not necessary.

Shri H. V. Kamath : They are more or less on a par with the amendments that I moved earlier today. I formally move these amendments and commend them for the careful consideration of the House.

I move :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments in the proviso to clause (1) of the proposed new article 163-A, for the words 'be construed as preventing' the word 'prevent' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (2) of the proposed new article 163-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the word 'or' occurring in line 4 thereof, the words 'and, where necessary,' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163 A, the words 'as the case may be' be deleted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to the salaries and allowances, and the conditions of service of' be substituted

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'the Assembly or the Council' the words 'the House or each House of the Legislature of the State' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, all the words occurring after the words 'or the Council' be deleted."

Shri Lakshminarayan Sahu: (Orissa: General): *[Mr. President, Sir, I move:]

"That in amendment No. 149 of the Printed Consolidated List of Amendments to Amendments dated 10-7-1949, the following proviso be added to clause (2) of the proposed new article 163-A:

'Provided that the Governor may, in consultation with the speaker or the Chairman, as the case may be, by rule require that in such cases as may be specified in the rule no person not already attached to the House or to either House of the Legislature shall be appointed to any office connected with the House, or any of the Houses of Legislature, save after consultation with the State Public Service Commission.'"

Mr. President: How does this amendment fit in with the article as it has been now moved?

Shri Lakshminarayan Sahu: I want the following proviso to be added to clause (2) of the proposed article 163-A. Clause (2) says: "The legislature of a State may by law regulate the recruitment and the conditions of service of persons appointed to the Secretarial staff of the House or Houses of the Legislature of the State."

*[I wish the following proviso to be added:—

"Provided that the Governor may, in consultation with the Speaker or the Chairman, as the case may be, by rule require that in such cases as may be specified in the rule, no person not already attached to the House or to either House of the Legislature shall be appointed to any office connected with the House or any of the House of Legislature, save after consultation with the State Public Service Commission."

In this connection I want to say that we have made a provision for the Public Service Commission in order that fairness may be observed in regard to the services. We should ask for advice of the Public Service Commission in the matters relating to all the services. It would not be proper to entrust other people with this work. The Public Service Commission has not yet gained in our country the same status as it has in other countries, where there are democratic institutions. In the Dominion Parliament we do not accept the suggestions of the Public Service Commission as much as we ought to. It only recommends whether we can employ a candidate or not. But in countries like Canada and South Africa, where the democratic form of government is prevalent, the Public Service Commission has great powers. Therefore I want that whatever is taken in this respect, it should be on the recommendation of the Public Commission. Appointments should be made after consulting them. If we do not do this in a clean way, there will always be the doubt that there has been something wrong with the appointments. It is heard from all that the recommendations of the Public Service Commission are turned down and different appointments are made. Therefore I think that this

*[ ] Translation of Hindustani Speech.

[Shri Lakshminarayan Sahu]

help to improve matters. I have nothing more to add in this connection but I would like to point out that I seek to insert this proviso in this place while it is given as No. 149 in the printed List of Amendments.]

Mr. President: Does any Member wish to say anything?

(No Member rose to speak.)

Would Dr. Ambedkar like to say anything?

The Honourable Dr. B. R. Ambedkar: No.

Mr. President: I will then put the amendments to vote. The question is:

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments in the proviso to clause (1) of the proposed new article 163-A, for the words 'be construed as preventing' the words 'prevent' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (2) of the proposed new article 163-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 149 of the Printed Consolidated List of Amendments to Amendments dated 10-7-1949, the following proviso be added to clause (2) of the proposed new article 163-A:—

'Provided that the Governor may, in consultation with the speaker or the Chairman, as the case may be, by rule that in such cases as may be specified in the rule, no person not already attached to the House or to either House of the Legislature shall be appointed to any office connected with the House, or any of the Houses of Legislature, save after consultation with the State Public Service Commission.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the word 'or' occurring in line 4 thereof, the words 'and, where necessary,' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, the words 'as the case may be' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'the Assembly or the Council' the words 'the House or each House of the Legislature of the State' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, all the words occurring after the words 'or the Council' be deleted."

The amendment was negatived.

Mr. President : I put the article 163-A as moved by Dr. Ambedkar to vote.

The question is :

'That New Article 163 A, do form part of the Constitution"

The motion was adopted.

New Article 163-A was added to the Constitution.

Article 175

Mr. President : Shall we take up 172 now ?

The Honourable Dr. B. R. Ambedkar : We shall keep it back for the moment.

Mr. President : Shall we take up No. 175 ?

The Honourable Dr. B. R. Ambedkar : Yes.

Shri H. V. Kamath : What about 127-A ?

Mr. President : That will come up along with 210.

Let us take up now 175. There are some amendments to it.

(Amendments Nos. 16 and 17 were not moved.)

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I beg to move : that :

'That for the proviso to article 175 the following proviso be substituted :--

'Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom'."

Sir, this is in substitution of the old proviso. The old proviso contained three important provisions. The first was that it conferred power on the Governor to return a Bill before assent to the Legislature and recommend certain specific points for consideration. The proviso as it stood left the matter of returning the Bill to the discretion of himself. Secondly, the right to return the Bill with the recommendation was applicable to all Bills including money Bills. Thirdly, the right was given to the Governor to return the Bill only in those cases where the Legislature of a province was unicameral. It was felt then that in a responsible government there can be no room for the Governor acting on discretion. Therefore the new proviso deletes the word 'In his discretion'. Similarly it is felt that this right to return the Bill should not be

[The Honourable Dr B R Ambedkar]

extended to a money Bill and consequently the words 'it is not a money Bill' are introduced It is also felt that this right of a Governor to return the Bill to the Legislature need not necessarily be confined to cases where the Legislature of the province is unicameral. It is a salutary provision and may be availed of in all cases even where the Legislature of a province is bicameral

It is to make provision for these three changes that the new proviso is sought to be substituted for the old one, and I hope the House will accept it

Mr. President : I have notice of some amendments which are printed in the Supplementary List. Does any Member wish to move any of the amendments? They are in the names of Shri Satish Chandra, Shri B M Gupte and Prof Shibban Lal Saksena.

(The amendments were not moved)

Does any Member wish to speak on this?

Honourable Members : Yes.

Mr. President : Then we shall have discussion, but no amendments can be

Shri Satish Chandra (United Provinces : General) Sir, whether I move my amendment to this article or not, depends on the shape in which article 172 emerges from the House. But article 172 has been for the present held over There is no amendment to first paragraph of this article, and only one to the proviso has been moved by Dr. Ambedkar. So I may have to move my amendment to bring the language of this article in line with article 173, or the Drafting Committee may consider this point.

Mr. President : We shall consider that matter on Monday next The House now stands adjourned till 9 o'clock on Monday From Monday we propose to sit from 9 a.m. to 1 p.m. instead of from 8 a.m to 12 noon

The Assembly then adjourned till Nine of the clock on Monday the 1st August, 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

[PRESIDENT CONSTITUENT ASSEMBLY (Legislative)]

Article 175.—(Contd.)

Mr. President: We will take up Article 175 today before we adjourn. We will now proceed on article 175. The only point was whether the amendment to article 175 would be covered by the decision we have taken on article 172 or whether a separate amendment to article 175 would be necessary, which he had given notice to article 175. I shall first hear him on that point.

Shri T. T. Krishnamachari (Madras: General): Sir, may I submit that this article is very little to do with article 172. Article 172 seeks to give a certain power to the Governor as to Bills passed by the Legislature and which he returns and article 175 deals with the Governor's assent to Bills passed by the Legislature and which he returns and a Bill back to the Legislature for reconsideration. Anyway, the shape of the amendment to article 175 completely clears the position of all ambiguities. Therefore, I suggest that article 175 be considered apart from 172.

Mr. President: Would it not be better if we were to dispose of 172 first?

Shri T. T. Krishnamachari: That is entirely to be decided at your discretion. We may take up 172 first and then have the vote on 175.

Mr. President: Do you have any objection?

The Honourable Dr. B. R. Ambedkar (Bombay: General): I have no objection, Sir, I am entirely in your hands.

Mr. President: Then we shall dispose of 172 first and then go to 175.

Article 172

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I move:

"That for article 172, the following article be substituted:

Restriction of powers of a Legislative Council as to Bills other than Money Bills

'172. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council; or

(b) more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it, or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(a) the Bill is rejected by the Council; or

[The Honourable Dr. B. R. Ambedkar]

(b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it, or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly with such amendments if any, as have been agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill".

The House will remember that when we discussed the question of the resolution of the differences between the Council of States and the House of the People, we discussed the different methods by which such differences would be resolved, and we came to the conclusion that having regard to the Federal character of the Central Legislature it was proper that the differences between the two Houses should be resolved by a joint session of both the Houses called by the President for that purpose. It was at that time suggested that instead of adopting the procedure of a joint session we should adopt the procedure contained in the Parliament Act of 1911 under which the decision of the House of Commons with regard to any particular Bill, other than a Money Bill prevails in the final analysis when the House of Lords has failed to agree, or refused to agree, to the amendment suggested by the House of Commons after a certain period has elapsed. On a consideration of this matter, it was felt that the procedure laid down in the Parliament Act for the resolution of the differences between the two Houses of the Legislature was more appropriate for the resolution of differences between the two Houses set up in the Provinces. Consequently we have made a departure from the original article and introduced this new article embodying in it the proposal that the decision of the more popular House representing the people as a whole ought to prevail in the event of a difference of opinion which the two Houses have not been able to reconcile by mutual agreement.

Sir, I move.

Shri T. T. Krishnamachari: Mr. President, Sir, I move

"That with reference to amendment No. 9 of List I (Second Week) of Amendment to Amendments, in sub-clause (b) of clause (1) of the proposed article 172, for the words 'two months' the words 'three months' be substituted"

I would like to explain why this has been necessary. The amendment moved by Dr. Ambedkar to article 172 is a variation of the amendment in List I, No. 10. If honourable Members will scrutinise No. 10 they will find that in sub-clause (b) of clause (1) and sub-clause (b) of clause (2), the period that is allowed to lapse after the Bill had returned to the Legislative Assembly is mentioned as three months and one month respectively, but it is to commence from the date of reception of the Bill in the Upper House, and clause (3) of article 172 in amendment No. 10 prescribes how these three months are to be calculated and it also says that if there is any prorogation of the Upper House, the period of prorogation will not be counted to make up these three months. In actual fact, this particular amendment, as Dr. Ambedkar mentioned, closely follows the wording of the Parliament Act of 1911. But there is this difference between what happens in the British Parliament and what is likely to be in our case that while it is proper to stipulate that the total time taken including the time of prorogation shall be a particular period in case of the British Parliament we cannot do the same thing in regard to the Upper House, for this reason that while the British Parliament sits practically day to day for the bulk of the year, the Upper Houses in our provincial legislatures will sit only for a few days at a time and the aggregate period of their sessions may not even come to two months in the whole year. So it was represented to us by a very prominent Premier of one of the major provinces

that this would, in effect, mean that the delay would be inordinate. It may extend to over a year or more, because at no time will the Upper House sit for a period of three months continuously even in one year. The amendment moved by Dr. Ambedkar was a result of these representations and clause (3) was, so to speak, left out. But at the same time another variation has been made that the time to be calculated is to be from the date of the laying of the Bill before the Upper House, so that the reception date does not come into operation; and it was then felt that two months would be adequate. But on further reflection, since we have cut out clause (3), that is, that we shall not be taking into account the period of the prorogation of the House in the total time that might elapse, we felt that two months was inadequate and three months would be more reasonable. After all, the over all time that is to be taken for a Bill to be returned to the Lower House will be three months from the date on which it is laid before the Upper House which in my view and in the view of my colleagues in the Drafting is reasonable. That is why I have moved this amendment. It merely extends the period by one month and does not materially alter the scope of the amendment moved by Dr. Ambedkar. I commend the amendment to the House.

[Amendments Nos. 11 and 12 of List I (Second Week) were not moved.]

Mr. President: Now the article and the amendments are open for discussion. I know that the latter is provided by (c), but still, it is better to make it clear article as it stood originally and they do not arise now.

The Honourable Shri K. Santhanam (Madras: General): I just want to draw Dr. Ambedkar's attention to one or two minor mistakes in drafting. In clause (b) it should be:

> more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it in the same form in which it was passed in the Assembly,"

because a thing may be passed either in the same form or with amendments. I know that the latter is provided by (c), but still, it is better to make it clear that (b) also refers to such case.

Secondly, in clause (c) it says: "the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree"—now this is a later process, because when the Council passes a Bill, it does not know whether the Assembly will agree or not. Whenever the Council passes an amendment, it is in the hope that the Assembly will accept it. When the latter does not accept, the resulting position is covered. Therefore, (c) must read "the Bill is passed by the Council with amendments" and the other words should be omitted.

Shri Brajeshwar Prasad (Bihar: General): Mr. President, Sir, I am opposed to article 172 as moved by Dr. Ambedkar. The provision for a joint sitting in the old draft was a very salutary one. I see no reason why it should be deleted at this stage. We must be clear in our minds whether we want an Upper Chamber or not. If we want an Upper Chamber, it must be vested with certain powers. It has got a part to play. With the inauguration of the new Constitution on the basis of adult franchise, it is risky to vest all powers in the hands of the Lower House. I have no belief in the sovereignty of the Lower House. I believe that power must be vested in the hands of those who are literate; not only literate but wise too. I believe that power must be vested in the hands of those who are not only wise but who have got a sense of justice. I have no faith that the Lower House, constituted on the basis of adult franchise, will be able to do justice to anybody. People in India are not only illiterate, but narrow-minded, steeped in fanaticism and superstition. Therefore, I support the old provision of the

[Shri Brajeshwar Prasad]

article which lays down that there shall be a joint session [illegible] due regard to the fact of our political life, I was in favour of the Upper Chamber with co-equal power, but as a compromise [illegible] solution was the provision for a joint session. But now, [illegible] end of the session, a new article has been placed before us. I therefore oppose the article.

Secondly, the Upper House must be vested with [illegible] legislation. That is a well-established principle. The [illegible] prescribed a period of six months. Now it has been reduced to [illegible] month, two months or three months. I do not know what [illegible] accepted by the House. Personally, I am in favour of [illegible] This period will provide an opportunity for close introspection, so that the Bill passed in the heat of the moment, under the [illegible] may be reviewed and passions may wear off and with the lapse of time [illegible] may be in a position to take a sober view of things. This will [illegible] cracy and parliamentarism and vesting of all powers in the Lower House will lead to disaster. Sir, I feel that all those people who were killed in the Muslim war have been reborn as Congressmen. They have not only divided the country but they are now going to jeopardise the interests of even that portion of the country which is entrusted to their care. In the name of parliamentarism and democracy everything will go to the dogs.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, this is a very important article and I congratulate the Drafting Committee on the revised amendment which they have framed. I was not prepared for the opposition of my friend Shri Brajeshwar Prasad who doubts the responsible [illegible] Lower Chamber which is based on adult suffrage, and he feels that all [illegible] should go to the Upper House. I do not remember whether [illegible] about adult suffrage when it was passed. But I myself think that [illegible] one thing in this Constitution which is of paramount importance [illegible] this provision about adult franchise under which every sane adult in the country will be able to exercise his vote and decide the fate of the country. That is a thing for which we have been fighting from the very beginning and I am surprised that any one should come forward and say that the Lower House is an irresponsible body which cannot be trusted. This article has been very well drafted, I think, and it follows the practice in England. Everywhere the Upper Chamber is intended to be a revising chamber whenever there is any point of doubt or things have been done hastily; the Lower Chamber can consider the suggestion of the Upper Chamber and rectify a mistake. It is never intended that all power should vest in the Upper Chamber. I therefore support the amendment moved by Dr. Ambedkar as a very salutary one. But I will point out one thing. Article 172 does not provide for the calling of the Council and it is possible that the Council may not be called for two months. Some one should have the duty laid upon him to call the Council so that the matter may be decided in two months. I think on mature consideration my Friend Shri Brajeshwar Prasad will withdraw his objection and shed his fears about the Lower Chamber.

Mr. Tajamul Husain (Bihar: Muslim): Sir, the amendment moved by Dr Ambedkar amounts to this that if a Bill is passed by the Lower House in a State and goes up to the Upper House and the latter reject it or amend it or do nothing for two months, the Lower House may again pass it, with or without amendments. It goes again to the Upper House; if the Council again

reject it or amend it or do nothing for two months, the Bill will automatically become law and will go to the Governor for his consent. My honourable friend Shri Brajeshwar Prasad objects to this. I think the most important chamber in a State will be the Lower House as it will represent all the people. Such a procedure and practice are prevailing in England; of course it does not apply to Money Bills. The most important point to consider is, what is an Upper House? It consists of nominated people who represent certain limited interests, while the Lower House represents the people. If this power were not given to the Lower House as contemplated, it would amount to a veto exercised by a few people only over the rest of the people of the State. Democracy means the will of the people which is only represented in the Lower House. So, I support the amendment of Dr. Ambedkar.

Shri Nazaruddin Ahmad (West Bengal: Muslim): Sir, I rise to oppose the amendment moved by Dr. Ambedkar. I do not blame him personally for the amendment but he has to cater to outside opinion. I submit that this amendment will destroy the very object of having a Second Chamber. The very object of a Second Chamber is revision and delay. This is often very important as the Lower House consists of a large number of members. Especially when the Lower House is under pressure, it cannot have the benefit of Bills after a second thought and consideration at the hands of the Upper House. [illegible] Sir, I submit that the Upper House is not a mere rubber stamp which is to accept whatever comes from the Lower House. It has a definite role to play. Unfortunately there is considerable impatience on the part of the Lower House about the Second Chamber. They think that the Upper House is an unnecessary evil and its object is to frustrate the object of the Lower House. But that is not so. From my experience in Nepal, I think that a Second Chamber has proved to be necessary and its utility has been appreciated by the local Lower House as well. Sir, if the Upper House is to function it must be given sufficient opportunities to discharge its duties. Sub-clause (3) of clause (1) provides that if a Bill passed by the Lower House is [illegible] the House of People and by it is laid before the Council, it is sent back to the Lower House. In further consideration of the object that we are putting down a strict and rigid limit of two months, the result will be that the Upper House in many cases will not be able to exercise [illegible] For instance, a Bill is passed by the Lower House and is laid before the Upper House towards the end of a session, and then there is a long adjournment; the House does not meet for two months. In these circumstances the Upper House will not be able to get sufficient time to consider the matter and the Upper House with its members and staff will remain idle without having anything to do. If the Upper House is to function it should get sufficient time so as to enable it to give Bills due consideration and thought. I submit therefore that the two months' limit, rigid as it is, will frustrate the very object of the Second Chamber and it may be that the expense, trouble and bother will come to nothing.

Then again in clause (2) of the amendment, it is provided that if the Upper House fails to pass a Bill within two months, the result would be that the Lower House will again consider it and pass it with or without any amendment and then it is placed again before the Upper House. It is provided in this clause that if a Bill comes up before the Upper House and if it is not passed within one month of its being laid before the Council then the Bill as it was passed by the Lower House will be deemed to have been passed by both Houses. I submit Sir that in the example I have cited on the first occasion the Upper House has no chance to consider the Bill and on the second occasion the Upper House will not be able to give it sufficient thought as it may

[Mr. Nazirudin Ahmad]

discharge its functions within one month and may not in a similar [illegible] have any opportunity to consider it at all. First of all, the Bill itself is complicated; the Bill may be difficult; it may be controversial. It may be necessary to send it to a Select Committee or to send it for circulation, [illegible] we cannot foresee the varieties of situations that may arise. [illegible] that the Lower House and the Upper House both function in [illegible] no doubt they will. The Upper House may decide that it should be considered by a Select Committee or it must be examined by experts. On the second occasion, we put a limit of one month. I submit that this restriction would frustrate the very object of the Second Chamber. I therefore submit that the article as it originally was in the Draft Constitution was good. Somehow or other, the Drafting Committee, burdened as it is with heavy work has got despaired and is ready to accept any compromise or succumb to whatsoever. I submit these are important matters, and require careful consideration. Artificial limits of two months and one month are too rigid and would prove impracticable in actual working. The matter should be left to mutual goodwill. I submit this is a fundamental objection, would frustrate the object of the Upper House and would reduce the Upper House to nullity and insignificance. With these few words, I oppose the amendment.

Sardar Hukam Singh (East Punjab: Sikh): Mr. President, Sir, I have an amendment in the List that could not be moved on account of my objection. My submission is that the article as it is finally proposed is not very clear. The procedure laid down would be so difficult that [illegible] might be delayed extraordinarily. I want one or two things to be made clear. So far as sub-clause (b) is concerned, it lays down that more than [illegible] should not elapse before a Bill is passed by the Upper House, from the date on which the Bill was laid before it. Again sub-clause (c) of clause (2) says "the Bill is passed by the Council with amendment to which the Legislative Assembly does not agree". This is very ambiguous. When a Bill has been passed by the Council with amendments, then we send it back to the Legislative Assembly. It shows that, whether the Assembly does or does not agree that will require a second sitting and second passage by the Assembly. Then again under clause (2)(c) if the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, then it shall have to be considered by the Assembly for the third time, because otherwise it cannot be known whether the Assembly does or does not agree to any amendments proposed by the Legislative Council. So, consideration thrice by the Legislative Assembly and twice by the Legislative Council would delay legislation that might be required to be passed with some speed. The object of the Council is to check hasty legislation but there should be some reasonable limit and the legislation might not be delayed or defeated at all. This would give unnecessary powers to the Council. My honourable Friend Mr. Brajeshwar Prasad does not believe in this democracy and has said .....

Shri Brajeshwar Prasad: I entirely believe in democracy, but I do not believe in Parliamentarism. There is a world of distinction between the two.

Sardar Hukam Singh: I said "in this democracy" as laid down here in this provision. Perhaps he missed this word "this". He says that extraordinary powers should not be given to the Lower House. If we are going to try this venture, I beg to submit that we should do it wholeheartedly and with no reservations and therefore ample powers should be given to the representatives of the people so that when they consider necessary they may pass any legislation in the interests of the people. If only unnecessary haste is to be checked, then there are sufficient checks provided, for once the Legislative Council rejects it or returns it with certain amendments the Legislative Assembly has

to reconsider it. Then again, even when both Houses have passed it, it has to come to the Governor for assent and under the proviso the Governor can send it back for reconsideration with suggestions and with amendments. My proposal was that after the Legislative Assembly has passed the Bill for the second time, there is no need to send it again to the Council. The procedure would be cumbersome and expensive and would delay legislation and I consider it unnecessary. Then, after sub-clause (c) it is laid down "that the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made, suggested or agreed to by the Legislative Council....". I fail to understand whether "Legislative Council" is competent to make these amendments, to suggest them or advice to them. It is certainly an advisory body; it can make suggestions and send that back with those amendments and I do not know whether these three different words convey different meanings or they are put down simply to put force in the clause. I request the Honourable Dr. Ambedkar to make this clear also.

With these words, Sir, I oppose this draft as it stands now.

Dr. P. S. Deshmukh (C.P. & Berar : General) : Mr. President, Sir, it is becoming more and more clear that the provision of the Second Chamber in the States is proceeding more and more because of the distrust of adult franchise and nobody has made it clearer than Mr. Brajeshwar Prasad who thinks that the country is likely to go to dogs if there is no provision for the Second Chamber with more powers. His justification for intervention at this stage is only this, that the provision that we are now considering discloses that the only function that the Second Chamber is going to perform is merely to delay legislation. Mr. Brajeshwar Prasad is quite correct when he said that we have not left any effective powers in its hands to that extent, but the question arises whether, for the sake of merely delaying legislation all this paraphernalia of a Second Chamber with all the difficulties it has met with and the difficulties also about giving proper representation and not finding sufficient and proper interests which should be represented on this Second Chamber, it is worth while to have the Second Chamber at all. The delay also has been minimised by the provisions that are now embodied in article 172. The delay would be at the most of about six months. The Second Chamber has no power of initiating Money Bills and the only function, therefore, that it is going to perform is to delay a Bill that is passed by the Legislative Assembly and with which it does not agree. I think, Sir, that the expenditure of money as well as energy that this will involve is not at all commensurate with the insignificance of the functions that are being allotted to it. Since we have not even decided about the composition, about the nature of representation as well as even the membership, even at this late stage, I would like to appeal, if it is possible, that the Second Chambers in all the States may be dropped altogether.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I beg to support this amendment for the reason that we have noticed that there has been a large body of opinion against a Second Chamber in the provinces. They do not want Second Chambers at all and therefore, it has been left to the provinces themselves to have Second Chambers or not. Even as regards those who may start a Second Chamber, it is open to them after a period to resolve that there will be no Second Chamber. It is also open to any province which did not start with a Second Chamber to have a Second Chamber. When there is so much divided opinion in regard to this matter and the Second Chamber is intended only for delaying and to avoid certain mistakes, is it desirable that the Second Chamber should come within the ambit of legislation? If it is an advisory body, there is every chance of all the provinces also having a Second Chamber, so that whatever mistakes or incongruities might have crept in in the

[Shri M. Ananthasayanam Ayyangar]

Lower House might be corrected by the Upper House. On the other hand the Upper House will have a dominant voice and in a case where there are sharp difference of opinion the Upper House in a State will consist of not more than 25 per cent of the number of members in the Lower House, and it is the Upper House that will decide as to which way it ought to go. A joint sitting means that it will be decided by a few persons in the Upper House and we have not as yet decided what the composition of the Upper House ought to be. I am sure the composition, whether it is incorporated in the Constitution or is brought about by an Act of Legislature, will include certain representatives who are nominated by the President or the Governor and there will be representatives for Art, Education etc. Then it may so happen that these very nominated members will ultimately decide the fate of any particular social or other piece of legislation. Therefore, even from the start a number of provinces and States might set their faces against having a Second Chamber if we clothe the Second Chamber with enormous power. The only way in which it can be avoided is to leave this matter to the provinces to decide after a period of time. And whatever has been decided by the Lower Chamber ought to become law. This article has been copied from the practice in the House of Commons. We do not know what the composition is with respect to the U S A. or with respect to the various provinces in Australia. We have got only the models of both the Federal Constitution of Australia and the Federal Constitution in the U.S.A.

A joint sitting is provided for in Australia. So far as the Centre is concerned it is a different affair. We have provided for a joint sitting, in the case of the Centre, to resolve the difficulties arising out of difference of opinion between the Lower House and the Upper House, on the lines of the Australian Constitution. So far as the provinces are concerned, we have not got the Constitution of those States. Thinking independently of any of these Constitutions, I agree with this amendment that we ought not to impose an obligation to create a new right in the Council, which is an unwanted Council. Almost every province is against having a separate Council. In these circumstances, let us not impose a Council with enormous powers, a Council sitting on the fence and deciding one way or the other, making the considered opinion of the lower House a nullity.

Honourable Members will also consider another aspect. The lower House to which the Ministry is responsible, is fully in charge of Money Bills; so far as Money Bills are concerned, the upper House is not concerned except for discussing here and there. With respect to other Bills; it may be a matter of substance, and it may mean a vote of no-confidence so far as the Ministry is concerned, and the Ministry may have to go out of office. It will create a number of complications. In these circumstances, the only proper method is to see that, after a period of one or two sessions, if the Lower House persists in having its Bill pushed through and the Upper House does not consent, the Bill as passed by the Lower House automatically becomes law. That would avoid all conflicts with the Lower House and also encourage all States to have an Upper House and take their advice.

I support this amendment and I request honourable Members not to press their amendments to this amendment asking for a joint sitting.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, I could not hear my honourable Friend Dr. Ambedkar clearly. I cannot therefore say whether he explained the need for the latest amendment proposed by him to article 172.

It is quite open to the House to decide whether their should be a Second Chamber or not. The other day, there were differences of opinion amongst

honourable Members whether the Constitution of the Legislative Councils should be laid down in the Constitution or should be left to be provided for by Parliament. I think, Sir, that however the Legislative Councils may be constituted, they are likely to be creatures of the Government and the Lower House. They will seldom be in a position to express any independent opinion. As a rule, I think they will reflect the opinion of the majority in the Lower House. It seems to me that in these circumstances, there is not much use in having an Upper Chamber. But, if the House desires that there should be an Upper Chamber, then, I suggest that its powers should not be curtailed to such an extent as to make it unable even to consider carefully the measures that might be sent up to it by the lower House.

The Draft Constitution proposed that:

"If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council it is communicated to the Legislative Council more than six months elapse from the date of the reception of the Bill by the Council without the Bill being passed by it, or the Governor may, unless the Bill has lapsed by reason of a dissolution of the Assembly, summon the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill."

It was made clear that this did not apply to Money Bills. Further, clause (2) of the article that I have read out provided that:

"In reckoning any such period of six months as is referred to in clause (1) of this article no account shall be taken of any time during which both Houses are prorogued or the Legislative Assembly is dissolved."

There are two points in article 172 as included in the Draft Constituiton that are open to objection. One was that the mere refusal of a Legislative Council to consider a measure passed by the Lower House should make the Governor think of convening a joint session of both Houses in order to decide whether the measure in question has the approval of the legislature or not. Another point that was open to objection was that if the period of six months was to be reckoned in the manner laid down in the above-mentioned clause, it might be a year or more before the fate of a Bill passed by the Lower House could be definitely known. The Drafting Committee proposed two or three days ago an amendment to the effect that it altered the period from six months to three months, but otherwise made no important change in the provisions of article 172 as included in the Draft Constitution. The latest amendment of the Drafting Committee reduces the period to two months, and also alters the provision relating to the manner in which the period of two months should be reckoned. My honourable friend Mr. T. T. Krishnamachari, who is a member of the Drafting Committee has now proposed that the period allowed to a legislative Council to consider a Bill should be not two months, but three months. It is obvious from this that the opinions of the Drafting Committee on this subject are not fixed.

The opinions even of the ablest members of the Committee are fluctuating. The House is therefore entitled to know clearly why changes are being suggested from time to time on which the Drafting Committee itself has so long been unable to make up its mind.

Sir, I do not regret the omission of the provision relating to the manner in which the period that I have referred to repeatedly should be reckoned, but if there is to be a Second Chamber, we should consider what should be the reasonable period allowed to it to consider measures that it receives from the Lower House. Is the period of six months laid down in the Draft Constitution excessive or have the present Legislative Councils in the provinces shown any tendency to hold up unreasonably the consideration measures in order to delay their passage or to make their consideration impossible? So far as I remember, there have been no such instances. In the United Provinces to which I

[Pandit Hirday Nath Kunzru]

belong, very contentious measures have been considered by the
but so far as I am aware no complaint has been made
position to defer unreasonably the consideration of
to prevent the representatives of the people from
best interests of the people. I doubt whether
be introduced in any legislature then have been introduced
vinces Legislature and if in practice it has not been found
procedure has been abused, then the responsibility
the period suggested in the Draft is necessary
think considering the changes that have been made by the
itself from time to time there is no principle on which
honourable Friend Dr. Ambedkar says there is a very good

The Honourable Dr. B. R. Ambedkar: I say there is no principle

Pandit Hirday Nath Kunzru: I am glad my honourable Friend
there is no principle underlying the amendment that he has
House.

The Honourable Dr. B. R. Ambedkar: It is a matter of expediency and practicality.

Pandit Hirday Nath Kunzru: He admits that it is a question of
practicality. I ask the House to consider whether
Chamber, it should not be allowed more than two or three months in order
consider a measure, however important and however lengthy it may be
this provision is passed, then if the Upper House
three hundred clauses it will be its duty to

Prof. Shibban Lal Saksena: It is only on the second occasion

Pandit Hirday Nath Kunzru: My honourable Friend should
ment more carefully.

Shri M. Ananthasayanam Ayyangar: While the proceedings
House are going on, the Upper House is sleeping!

Pandit Hirday Nath Kunzru: My honourable Friend has
in a sleepy condition. The Upper House will not
House is leisurely considering what measures should
House. It will probably not be sitting. After notice of the
has been received by the Upper House, it
pass before the House meets. It will therefore
for the consideration of a measure. Considering the question
considering the reason for the existence of an Upper Chamber
if it pleases the House to vote in favour of its establishment
adequate time to consider measures passed by the Lower House
If even this measure of grace is not extended to
be absolutely no reason for its existence. I personally, as I have said, consider the circumstances in which we are proceeding, do not think that
Chambers are needed or, if established, will be able to serve any useful purpose,
will be able to exercise their independent judgment in any matter
House chooses to allow Second Chambers to be established
the period allowed to them for the careful consideration of measures should not
be reduced to such an extent as to make them look ridiculous

Shri V. I. Muniswamy Pillay (Madras: General): Mr. President, Sir, by
the second portion of the amendment of my honourable Friend Dr.
confirms my view that the existence or bringing into existence

[illegible] nations has attracted [illegible] Constituent Assembly. The amendments are carefully [illegible] hours could not possibly give their verdict; and there is [illegible] that is taken away from [illegible] certain clause [illegible] so [illegible] the second portion of [illegible] the second House from [illegible] amendment. The only procedure [illegible] Now if a Bill is rejected [illegible] second time, that shows that there is some defect, and [illegible] Sir, it comes necessary that the Council must [illegible] the Bills. It is common knowledge that after [illegible] many of the provinces have [illegible] that Constitution is passed, it will be more, [illegible] communities and other interests [illegible] Public Bills are to be summarily [illegible] that the interests of many communities [illegible] Second Chamber can examine the interests of communities [illegible] not protected

Mr. N. G. Ranga (Guntur Ceded Districts: Non-Muhammadan Rural): Mr. President, Sir, I have carefully followed the amendments moved by the Drafting Committee, and I feel that the Upper House or the Second Chamber should have no Second Chamber at all, or as you have come to call it, a very useful House. As I said the other day, the existence of Second Chambers in the Federal Houses and provincial Houses is a matter of historical accident. But it is proved to the House that in favour of Upper Second Chambers in certain States. Now, Sir, what are these Second Chambers and how the one is different from the other and what are they to be? Are they to be empowered to such [illegible] Lower Chamber and [illegible] Lower Chamber? Now I am sure the House is unanimous on the point that the Upper Chamber cannot only be expected to play the useful role of a revising chamber, a moderating chamber, a delaying chamber and nothing more. Now that will be [illegible] month. [illegible] Beyond that [illegible] common people it will be [illegible] to the Upper Chamber [illegible] to make the legislative [illegible] Lower Chamber more [illegible] and useful. Why do you want six months? Even if we have any time, why should you not be satisfied with three months? My honourable friend Pandit Kunzru, says that in three months it will not be possible for the Upper Chamber to give serious consideration and attention to the issues involved, and to the various clauses of the given Bill. Very well. What is the real position? The Lower Chamber has already given serious consideration to the particular measure and passed it on to the Second Chamber. It has passed it section by section, every bit of it, after careful consideration. The principle involved has been accepted by the Lower Chamber. And it is the Lower Chamber which is really responsible to the people as a whole, and so it must be expected to be the final authority so far as the principle is concerned. It is only with regard to the detailed manner in which the principle is to be embodied in legislative form that the Upper Chamber can be expected to come in. Under these circumstances why should it be necessary to give the Upper Chamber more than three months? Surely even as a practical proposition one ought to be willing to go to give not more than three months. And we should realise that even to give three months to delay is sometimes very dangerous indeed. We are going through

[Prof. N. G. Ranga]

times when—and in times to come it is likely to be [illegible] necessary to pass legislation expeditiously in order to [illegible] social upheavals, and in order to prevent people from [illegible] themselves at the instigation of certain interested people, people [illegible] rested in upsetting the social order and [illegible] Therefore, Sir, I plead with the House to give support to the [illegible] mittee in its suggestion that the period should not be more than three months.

Then there is the other suggestion made by several friends, including my Friend, Mr. Muniswamy Pillay, that there should be joint [illegible] chambers, or joint sittings. But we [illegible] joint sitting is necessary because it is likely to [illegible]

Shri V. I. Muniswamy Pillay: I did not want it.

Prof. N. G. Ranga: A joint sitting would be ridiculous for this reason that one-third or one-fourth of the second chamber is likely to be nominated.

Pandit Lakshmi Kanta Maitra (West Bengal: General): How do you know it? We have not yet decided that matter.

Prof. N. G. Ranga: We have already said so, we are going to [illegible] that way. I suppose we are going to decide that an element of [illegible] should be introduced, and in that case, you will be giving [illegible] much power to sit in judgment and delay legislation that [illegible] Lower Chamber. Secondly, two-thirds or three-fourths [illegible] is to be elected by the Lower Chamber itself. Then [illegible] that the Lower Chamber will be prevented from doing [illegible] as it should, by the very people it has elected.

Pandit Lakshmi Kanta Maitra: But why do you assume that the [illegible] Chamber will always be holding up the business of [illegible]

Prof. N. G. Ranga: My Friend seems to have [illegible] which second chambers are sought to be created by [illegible] Most of the people who spoke in favour of the [illegible]

Pandit Lakshmi Kanta Maitra: I regret that it will be [illegible] of old days, of the Government of India Act, 1935.

Prof. N. G. Ranga: My friends who have spoken here and [illegible] were keen that the second chamber should be a [illegible] be a delaying chamber. That is one thing. The next thing [illegible] it that second chambers of the future are [illegible] from second chambers of the past, we should remember that [illegible] all over the world have been [illegible] action. What is more even in this country it is intended that these second chambers should be citadels of reaction, of orthodoxy and Sanatanism [illegible] opposed to this orthodoxy, to this reaction or to this Sanatanism and I do not want these second chambers at all. But as a compromise, I am prepared to have the period put down as three months and not one day lower than that.

Shri Syamanandan Sahaya (Bihar: General): Mr. President, Sir, I have read and re-read the amendment moved by Dr. Ambedkar, but have failed to [illegible] what purpose or whose purpose his amendment is going to serve. We have just heard him say that in this amendment there is no question of principle involved, but that it is a question of expediency and of practical work. I do

not see what is the expediency about it. We are at present framing the Constitution; it is a sacred task, and therefore there is no use making provisions for having more than one chamber, if ultimately on account of the powers that we give Second Chamber, we find that it can or will serve no useful purpose but only to that extent, no more chamber will deserve as they would involve so much drain on public revenues. Sir, the whole case, as far as I have been able to make out, of the supporters of the amendment is based on an apprehension, and that apprehension is that the Upper Chambers will really be delaying chamber. Perhaps there might have been some room for this apprehension in days gone by, but considering the constitution of the Upper Chamber that has been laid down in this Draft that we are considering, I see no reason or any apprehension but for the feeling that the Upper Chambers will have nothing else to do than to delay all legislation. As a matter of fact, I hope I have been able to show that we can have a Second Chamber without any fear of the contradiction that the Upper Chamber has served a very useful purpose. I do not think, I will be wrong if I stated that almost all the amendments adopted by the United States Congress or in Bihar were ultimately accepted by the Legislative Council or Senate. That proves that the Upper Chamber has its usefulness and it can become useful if we have, to that end.

Now, I refer to Part 6 of the Draft we will find that the constitution of the Upper Chamber has been laid down, and if we go through it we should have no difficulty in agreeing to the proposition that the Upper Chambers will really not be composed of such people as will have reactionary tendencies. It will be seen that out of the number of members, one-half shall be chosen from panels of candidates constituted under clause (3) of the article.

Mr. President : May I point out that that article has not yet been accepted ?

Shri Syamanandan Sahaya : Quite true, Sir, but we have to proceed today on the assumption that this is the proposal of Dr. Ambedkar- the House may turn it down. Today we are considering the amendment moved by Dr. Ambedkar, therefore I am proceeding on the assumption that if his proposal about the constitution of the Upper Chamber will be accepted, his present amendment will become wholly unnecessary. That is what I am trying to show.

Well, Sir, if we look at the constitution of the Upper Chamber, you will find that the panels are composed of persons having special knowledge or practical experience in

(a) literature, art and science;
(b) agriculture, fisheries and allied subjects;
(c) engineering and architecture;
(d) public administration and social services.

There is no room for any Zamindar to come in. The second group, that is one-third the number, shall be elected by the members of the Legislative Assembly itself, and the remainder shall be nominated by the Governor.

Mr. President : The honourable Member has no reason to think that a Zamindar is the only person who can be a reactionary.

Shri Syamanandan Sahaya : Well, Sir, somehow or other that is the impression that has gone round, but I too say that it is wrong.

So, looking at the constitution of the Upper Chamber as it is in the Draft subject to any amendments that the House may like to make we find that there is no cause for any apprehension from a body constituted in the manner I have just explained. But apart from any other thing, I certainly like the

[Shri Syamanandan Sahaya]

declaration, for instance, from Prof. Ranga who says he [illegible] Second Chamber. That is perfectly clear but I cannot understand [illegible] ing to a Second Chamber [illegible] According to the amendment, in three months' time or [illegible] Bill is either to be passed or not passed by the [illegible] the use of having a Second Chamber like this? The [illegible] lative Assembly, in number, shall be very much lower than the [illegible] tive Council; so even with a joint sitting there is no apprehension of the House's views not prevailing; but actually it gives an opportunity to people experience of administration and other things to give to the Legislative Assembly their advice and explain to the House the [illegible] tration in democracy is administration by persuasion and reasoning. That is all that the original draft laid down when it said that there shall be a joint sitting. I therefore feel that the wording in the Draft Constitution which has been placed before us is definitely better than the amendment which has been proposed and I would, therefore, suggest to the House that the amendment should be rejected.

Mr. President: Shrimati Renuka Ray.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question be now put.

Mr. President: I have already called a Member. After she speaks, we shall consider the motion for closure.

Shrimati Renuka Ray (West Bengal: General): Mr. President, Sir, I rise to support this amendment which I think is an extremely wise [illegible] was one of those who believed that a Second Chamber was not a necessity and that in fact in many of the smaller Provinces it will be a very great luxury. All the same, it has been incorporated in the Constitution with the avowed object that the Second Chamber was necessary as a revising Chamber. It was pointed out that inadvertently or otherwise it may be possible for the Lower House to pass legislation which it would find difficult to revise later and the Second Chamber might serve the purpose of revision. That was the object put foward for which a Second Chamber was accepted by the majority. But now we find that there are some who would like to have it in the form of a chamber, with dilatory functions. For if we are going to allow six months, if joint sessions are going to be allowed it would mean that the Second Chamber would not only be just for the sake of revising a Bill which has some defects, and which the Legislative Assembly itself would like to revise, but it would also be tantamount to acting as a dilatory chamber which would be extremely retrograde. Because we have agreed to having Second Chambers in some of the Provinces, it does not mean that we should give it more powers and have a chamber with dilatory functions imposed in the Constitution. I myself am of the opinion that the purpose for which a revising chamber has been sought to be put in was also not necessary because the President or Governor has the power always to send back a piece of legislation to the Assembly and any mistakes could be rectified through the procedure. However if the majority felt otherwise and put the Second Chamber in the Constitution, there is no reason whatsoever to give it more power and thus hold up legislation, which may be very pressing and necessary. The dilatory powers would be injurious for the country and a very retrograde provision in the Constitution. I do feel that it seems to be the object of some of those who have spoken to bring in the type of Second Chamber that we had in the past. We talk of the composition being quite different, even if it is quite different, it is quite true that people, even if they were scientists or

doctors, who go through the process of political life into Upper Chambers—or Lower Chambers for the matters of that—have to enter the arena of politics and Party Politics. It would be said that Second Chamber would be for men like Rabindranath Tagore. Let the best scientists and men of literature are not likely to enter Party Politics and come in to the Second Chamber at any rate. In their opinion [illegible] correct, it has to be some[illegible] from outside the [illegible] Lower House in any case. [illegible] I would appeal that, although this House has agreed to a Second Chamber, it will not in any case proceed to circumscribing its powers, but accept this amendment which will give it only the functions of a revisory nature.

Mr. President: Closure has been moved. The question is:

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, as I listened to the debate, I find that there are some very specific questions which have been raised by the various speakers who have taken part in the debate. The first point was raised by my friend Mr. Santhanam and I would like to dispose of that before I turn to the other points. Mr. Santhanam said that a provision ought to be made in clause (1) of the article to provide for a case where the Upper House has not passed the Bill in the form in which it was passed by the Assembly. I think he on further consideration, he will find that his suggestion is actually embodied in sub-clause (c), although that clause has been differently worded. We have as a matter of fact provided for three cases on the occurrence of which the Lower House will take jurisdiction to act on its own authority. The three cases are: firstly, when the Bill is considered but rejected completely; secondly, when the Upper House is either sitting tight and taking no action or has taken action but has delayed beyond the time which is permitted to it for consideration of the Bill; and thirdly, when they do not agree to pass the Bill in the same form in which it has been passed by the Assembly, which practically means what my Friend Mr. Santhanam is suggesting. I therefore do not think there is any necessity to revise this part of the article. I must say incidentally that in devising the three categories or conditions on the occurrence of which the Lower House would have the power to act on its own authority, the words have more or less been taken closely from article 57 of the Australian Constitution.

Now, I come to the general points that have been raised. It seems to me in discussing this matter, there are three different questions that arise for consideration. The first question is how many journeys the Bill should undertake before the will of the Lower House becomes paramount. Should it be one journey, two journeys or more than two journeys? That is one question. The second question is, what should be the period that should be allotted to the Upper House for each journey, both going and coming back? The third question is, how is the period within which the Council is to act to be reckoned? To use the phraseology which is familiar to those who know the law of limitation, what is to be the starting point? So far as the present amendment is concerned, it is proposed that the Bill should have two journeys. It goes in the first instance, it comes back and it goes again. It may be possible to argue that more journeys than two are to be permitted. As I said, this is a question of practical politics. We must see some end, or dead end, at which we must allow the authority of the Lower House to become paramount, and the Drafting Committee thought that two journeys were enough for the purpose to allow the Upper House to act as a revising Chamber.

[The Honourable Dr. B. R. Ambedkar]

Now, with regard to the time to be permitted, to the [illegible] during these journeys to consider the Bill, the proposal of the Drafting Committee is two months. Now it may be three months, in the first case, and [illegible] accepting the amendment moved by my Friend, Mr. [illegible] and in the second case it would be one month.

My Friend Pandit Kunzru said that the Drafting Committee [illegible] mind, that it was changing from moment to moment, that [illegible], and he referred to the original Draft set out in the Draft [illegible] down six months. Here again, I should like to point out to him that the period to be allowed to each House is not a matter of principle [illegible] matter only of practical politics and the Drafting Committee [illegible] clusion that six months was too long a period. In fact [illegible] months was too long a period. But it is quite conceivable that a Bill [illegible] dari Bill, which has a large number of clauses, may [illegible] the Lower House and may be sent to the Upper House for consideration [illegible] exceptional cases, I think my Friend will agree that other [illegible] could not be of the same magnitude or the same substance. Consequently [illegible] that three months was a reasonable period to allow to the Upper House in the case when the Bill goes on its first journey, because after all [illegible] Upper House going to do? The Upper House in acting upon a Bill which has been sent to it by the Lower Chamber is not going to re-draft the [illegible] it is not going to alter every clause. It is only certain clauses which [illegible] feel of public importance that it would like to deal with, and I should [illegible] that for a limited legislative activity of that sort, three months in the first instance was a large enough period to allow to the Upper House and will not certainly curtail the legitimate activity of a Second Chamber. In the second case, we felt that when the Lower House had more or less indicated to the Upper House what are the limits to which they can go in accepting the amendments suggested by the Upper House, one month for the second journey was also quite enough. Therefore, as I said, there being no question of principle here but merely a question of practical politics, we thought that three months and one month were sufficient.

Now, I come to the last question, namely, what is to be the starting point of calculating the three months or the one month. I think Mr. Kunzru will forgive me for saying that he has failed to appreciate the importance of the changes made by the Drafting Committee. If this provision had not been there in Draft article 172 as it stands, I have no doubt—and the Drafting Committee had no doubt—that the powers of the Upper Chamber would have been completely negatived and nullified. Let me explain that, but before I do so, let me state the possibilities of determining what I call the starting point of limitation. First of all, it would have been possible to say that the Bill must be passed by the Upper House within a stated period from the passing of the Bill by the Lower House. Secondly, it would have been possible to say that the Upper House should pass the Bill in the stated period from the time of the reception of the Bill by that House. Now supposing we had adopted either of these two possibilities, the consequences would have been very disastrous to the Upper House. Once you remember that the summoning of the Upper House is entirely in the hands of the executive—which may summon when it likes and not summon when it does not like—it would have been quite possible for a dishonest executive to take advantage of this clause by not calling the Upper House in session at all. Or supposing we had taken the reception as the starting [illegible] would have also cheated the Upper House by not putting the Bill [illegible] not thereby giving the Upper House an opportunity to [illegible] thought that this sort of procedure was wrong; it would result

in penalising the Upper House for no fault of that House. If the House is not called certainly it cannot consider the Bill, and such a Bill could not be deemed to have been considered by the Upper House. Therefore in order to protect the Upper House the Drafting Committee rejected both these possibilities of determining the starting point, namely, the passing of the Bill and the reception of the Bill, a proposal which was embodied by them in the draft article as it stands. And they deliberately adopted the provisions contained in the new article as is now proposed, namely, when the Bill has been tabled for consideration if the Upper House does not finish its consideration within the particular time fixed by this clause, then obviously the right of the Upper House to deal with the matter goes by its own default, and no one can complain; certainly the Upper House cannot complain. My honourable Friend Pandit Kunzru will therefore see that rather than whittle down the rights of the Upper House the new proposal has given the Upper House rights which the executive could not take away.

Pandit Hirday Nath Kunzru: Does this childish explanation satisfy the honourable Member himself?

The Honourable Dr. B. R. Ambedkar: If my honourable Friend chooses to call it childish he may do so, but I have no doubt that the new clause is a greater improvement than the clause as it stood. I am sorry if Pandit Kunzru is not satisfied, but he did not raise any point to which I have not given an explanation.

Mr. President: The question is:

"That in sub-clause (b) of clause (1) of the proposed article 172, for the words 'two months' the words 'three months' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That proposed article 172, as amended, stand part of the Constitution."

The motion was adopted.

Article 172, as proposed and amended, was added to the Constitution.

Article 175.— (*Contd.*)

Shri Brajeshwar Prasad: Sir, I am not whole-heartedly in favour of article 175. Under this article the Governor has no power to veto a Bill in his own discretion or initiative but can do so only if he is so advised by his Ministry. I am not in favour of this provision. Then, he cannot veto a Bill that has been twice passed by the Legislative Assembly; even that is not acceptable to me. He has not got power in his discretion to veto a Bill or to reserve a Bill for the consideration of the President. There are two classes of cases in which a Bill can be reserved for the consideration of the President. It can be so reserved under certain article of this Constitution, and also if the Governor is advised by his Ministry to do so. I want that the Governor should have power in his discretion to veto a Bill passed by the legislature, whether passed once or twice by it. Secondly, I am in favour of the President having power to reserve a Bill for his consideration, on his own initiative and authority. He should have power to issue an order to the Governor directing that a Bill passed by the legislature should be reserved for his consideration, or that a Bill should be disallowed whether the Governor reserves it or not. I know that this proposition will not be in consonance with what is supposed to be the democratic tendencies of the age. People think they are living in a democratic age. But I feel that we are living in a totalitarian age. I want power to be vested in the hands of the Governor

[Shri Brajeshwar Prasad]

of vetoing unjust and unsound legislation. This provision occurs in [illegible] dian federation and I want this power in our Constitution [illegible] to the facts of our political life. I feel further that if the Governor [illegible] to veto a Bill and the President has power to disallow a Bill, it will [illegible] potential check on disruptive legislative tendencies.

The fear of disruptive legislation is real in this country. One who has [illegible] scrutinised the provisions of the legislative acts that have been passed [illegible] provincial legislatures will agree with me that this fear is not [illegible] this fear is very real. Sir, the proposal which I have placed before the House is in consonance, is in accord with the traditions of the Central [illegible] Government that has existed in this country up till now. It is in accord with the implications of Paramountcy that the British Government [illegible] over the Native States. Sir, I am in favour of veto power in the hands of the Governor and the President because I feel that this new experiment in Parliamentarism requires to be moderated, and regulated. I think it will be in accord with the facts of our life. I want, Sir, that this power of veto should be frequently exercised by the Governor in his discretion. To refer every Bill to the President will not be in consonance with the dignity of the Head of a State. I want that provincial legislation should be delayed by the Governor in his own discretion. I have no confidence in provincial Ministers.

Prof. Shibban Lal Saksena: Mr. President, Sir, I am very sorry I cannot agree with the amendment proposed by Dr. Ambedkar. The original proviso to article 175 said—

"Provided that where there is only one House of the Legislature and the Bill has not been passed by that House, the Governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned [illegible] shall reconsider it accordingly and if the Bill is passed again by the House [illegible] amendment and presented to the Governor for assent, the Governor shall [illegible] assent therefrom."

So, in the proviso as it originally stood, the Governor could send a Bill back with a message only when there was one House of the Legislature, but here in the new proviso even if there are two Houses, the Assembly and the Council in a State, even then the Governor is given the power to return a Bill with a message. We have just now had a long discussion over the power of the Legislative Council. The whole thing under the new proviso will come to this. Suppose a Bill is passed by the Assembly. It will go to the Upper House. It takes some time to be sent to the Upper House and then about two months in the Upper House. The Bill may be amended there. Thereafter the amended Bill comes back to the Assembly. The Assembly will then discuss it. A month may be taken over this. Then again it is sent back to the Council and there it will be considered again for about a month, so that on the whole it will take about six months after it first becomes law. Now, power is given to the Governor to return the Bill with a message. No time limit is given, how long he will take to return the Bill is not mentioned. So, if this proviso is accepted, what it will mean is this: that any contentious legislation will again go to Assembly and then to Council and it may take another six month in all that and so the legislation may be held back, if the Governor is not inclined to help. I think that the original proviso is much better. In those provinces where there is only one House, where the safeguard of a Second Chamber is not there, we may give the Governor the power to return a Bill, but where there is already a Council, where the Bill has been again discussed threadbare when every aspect of it has been examined thoroughly, the Governor should not have the power to send back a Bill. I think this is very reactionary and no quick legislation will be possible under this proviso. I therefore think that the

original proviso to article 175 is much better than the one which has now been moved. I completely disagree with my Friend, Mr. Brajeshwar Prasad, who seems to favour everything which gives power to the Governor and the Council. He wants that the Governor should have power to hold up any legislation.

Shri Brajeshwar Prasad: I think it is wrong. The Governor is not an outsider. He is the representative of the Government of India. His views should prevail either over the Lower House or over any other authority in the province.

Prof. Shibban Lal Saksena: I know he is the nominee of the President, but it is quite possible that the party in power in the province may not be the same as the party in power in the Centre and the President may not be *persona grata* with that party. I therefore think that it will introduce a very wrong principle to give the Governor this power to go against the express wish of the Assembly and even of the Council. I think that the original proviso should remain and the Governor should have power to send back a Bill only where there is no Second Chamber.

Shri T. T. Krishnamachari: Mr. President, Sir, I thought that after the discussion on Amendment No. 17 in List I the other day, there will be no need for further explanation for amending the proviso to this article. I am afraid my Friend Mr. Shibban Lal Saksena, has entirely misconstrued the position. If he contends that the amendment is worse than the proviso in the draft article and there are no formalities in the proceedings of the legislatures of the provinces or the States as the case may be, I would ask him to remember the particular point to which Dr. Ambedkar drew pointed attention, viz., that the Governor will not have any discretion in the matter of referring a Bill back to the House with a message. That provision has gone out of the picture. The Governor is no longer vested with any discretion. If it happens that as per amendment No. 17 the Governor sends a Bill back for further consideration, he does so merely on the advice of his Council of Ministers. The provision is merely being made to be used in an occasional case when the formalities envisaged in article 174 which has already been passed, do not—perhaps so I think, but there is some point of the Bill which has been accepted by the Upper House which the Ministry thereafter find, has to be modified. Then they will go out procedure, they will use the Governor to hold up the further proceedings of the Bill and remit it back to the Lower House with his message.

If my honourable Friend understands that the Governor cannot act on his own, he can only act on the advice of the Ministry, then the whole picture will fall exactly in its proper place before him. It may happen that the whole procedure envisaged in article 174 also goes through and then a case something might have to be done in the manner laid down by this particular proviso but it is perhaps unlikely. It is a saving clause and vests power in the hands of the Ministry to remedy a hasty action that they might have undertaken or enable them to take an action which they feel they ought to in order to meet popular opinion which is reflected outside the House in some form or another and for this purpose only the new proviso has been put in. It does not abridge the power of the responsible Ministry in any way and therefore, it does not detract from the power of the Lower House to which the Ministry is undoubtedly responsible, it does not confer any more power on the Governor. On the other hand it curtails the power of the Governor for the position envisaged in the original proviso which it seeks to supplant. I think with this explanation the House will agree to the amendments without any further discussion.

Mr. President: The question is:

"That for the proviso to article 175 the following proviso be substituted:—

"Provided that the Governor may, as soon as possible after the presentation to the Bill for assent, return the Bill if it is not a Money Bill together with a message

[Mr. President]

requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.'"

The amendment was adopted.

Mr. President: The question is :

"That article 175, as amended, stand part of the Constitution"

The motion was adopted.

Article 175, as amended, was added to the Constitution

Article 176

Mr. President: Then we go to article 176.

The Honourable Dr. B. R. Ambedkar: I suggest that it would be better if we take up 83-A and dispose it of.

Mr. President: I do not think there is much in article 176. We can take it up now. There is hardly any amendment. I find there are some amendments of which notice has been given printed at page 251 of the First Volume. Does any member wish to move any of those amendments ?

(Amendments Nos. 2482 to 2485 were not moved.)

There is another amendment to that in the Supplementary List, but that will not arise because it is an amendment to an amendment.

Now there is no amendment to this article 176.

Mr. President: The question is :

"That article 176 stand part of the Constitution."

The motion was adopted.

Article 176 was added to the Constitution.

Article 83-A

Mr. President: Shall we go back now to article 83 ?

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I move :

"That after article 3 the following new article be inserted :—

'83-A. (1) If any question arises as to whether a member of either House of Parliament has been subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the President and his decision shall be final.

Decision on question as to disqualifications of members.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.'"

This article is a replica, so to say, of article 167-A which we passed the other day which applies to similar cases in the provinces and I do not therefore think that any more explanation will be necessary.

Mr. President : The question is :

"That after article 83 the following new article be inserted :—

Decision on questions as to disqualifications of members.

'83-A. (1) If any question arises as to whether a member of either House of Parliament has been subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.'"

The motion was adopted.

New Article 83-A was added to the Constitution.

Article 127-A

Mr. President : I think we had better take up articles 210 and 211. Thereafter we shall come to article 127-A.

Shri T. T. Krishnamachari : Either way it does not matter because if this is accepted then articles 210 and 211 get automatically dropped.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move .

"That after article 127, the following new article be inserted :—

Audit reports relating to accounts of a State.

'127-A. The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor or Ruler of the State, who shall cause them to be laid before the Legislature of the State.'"

The House will remember it has now adopted articles whereby the auditing and accounting will become one single institution, so to say, under the authority of the Comptroller and Auditor-General. It is, therefore, necessary that we should make some provision that the reports relating to the audit and accounts of a particular State shall be submitted to the Legislature by the Governor or the Ruler for its consideration and that is what this article provides for.

Mr. President : Does any one wish to say anything about this article ?

Honourable Members : No.

Mr. President : The question is :

"That after article 127, the following new article be inserted :—

Audit reports relating to accounts of a State.

'127-A. The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor or Ruler of the State, who shall cause them to be laid before the Legislature of the State.'"

The motion was adopted.

New article 127-A was added to the Constitution.

Articles 210 and 211

Mr. President : We may then take up articles 210 and 211. The proposal is that article 210 be deleted. Does any one wish to say anything about it ?

(*None rose to speak.*)

I put this proposition to vote that article 210 be deleted.

The question is :

"That article 210 be deleted."

The motion was adopted.

Article 210 was deleted from the Constitution.

Mr. President: Similarly article 211. The question is:

"That article 211 be deleted."

The motion was adopted.

Article 211 was deleted from the Constitution

Article 197

Mr. President: Shall we take up article 212?

Shri T. T. Krishnamachari: Article 188 may be taken up, it has not to be deleted.

The Honourable Dr. B. R. Ambedkar: I was suggesting that article 188 and 278 may be taken together. It would be better if the whole thing is explained.

Mr. President: Then, we shall take up article 197.

The Honourable Dr. B. R. Ambedkar: Sir, I move.

"That for article 197, the following article be substituted:—

'197. (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

Salaries, etc, of Judges,

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pensions as may from time to time be determined by or under law made by Parliament, and until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment'"

This section corresponds to the other article which related to the Supreme Court Judges.

Mr. President: There is an amendment by Pandit Kunzru.

[Amendments 20, 21 and 22 of List I (Second Week) were not moved.]

Mr. President: There is no amendment moved to this. I shall put to vote the article as moved by Dr. Ambedkar today.

The question is:

"That for article 197, the following article be substituted:—

'197. (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

Salaries, etc, of Judges,

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament, and until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.'"

The amendment was adopted.

Article 197, as amended, was added to the Constitution.

Articles 212 to 214

Mr. President : Shall we take up article 212 ?

The Honourable Dr. B. R. Ambedkar : Sir, I would like articles 212 to 214 to be held over. I think article 275 may be taken up.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, articles 212 to 214 are sought to be held over. I think the House would like to have an explanation as to why they are being held over.

The Honourable Dr. B. R. Ambedkar : The explanation is this : that we have the prospect of some of the Settlements coming over to India like Chandernagore and other places. We have to make some provision for them, and this might be the appropriate place where provision for them might be made. It has been suggested that it is felt that it might be more properly dealt with in the Fundamental Rights. Consequently, we want some time to consider that question. Perhaps we might be in a position to take up these articles even to-day.

Mr. President : Then, we may take up article 188, and in that connection the hon. Member may move.

The Honourable Dr. B. R. Ambedkar : We might also take up article 275 which does not require any amendment.

Mr. President : Let us take up article 275.

Mr. Nazimuddin Ahmad : May I rise on a point of order, Sir ?

It is very inconvenient for some members to follow the procedure which is being adopted in the House. We have in the agenda paper today some articles which are not down seriatim. It was understood on the last occasion that articles will be taken up in the order laid down in the Order Paper. I do not wish to raise any technical objection, but the difficulty is that Members have got to come prepared to intelligently take part in the debate. Instead of following a regular procedure even after the recess we had, the House is expected to jump from one article to another backwards and forwards. I submit this is causing some amount of inconvenience and I submit that the House should be asked to proceed in some regular order. Otherwise, there would be no intelligent debate.

Mr. President : I am inclined to agree with Mr. Nazimuddin Ahmad that it is inconvenient to Members to jump from article 211 to 275.

The Honourable Dr. B. R. Ambedkar : I am prepared to take up article 212 and go on.

Mr. President : I think that is much better. If anything happens, we can provide for that later on regarding Chandernagore. Let us take up article 212.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendment No. 2713 of the List of Amendments, clause (2) of article 212 be omitted."

The reason why this amendment is being moved is because all provisions with regard to the States specified in Part III are being made separately in a separate Schedule. Consequently it is unnecessary to retain clause (2) here.

I also move :

"That in clause (1) and the proviso to clause (1) of article 212, for the words 'Governor or Ruler' wherever they occur, the expression 'Government' be substituted."

Mr. President : We have quite a number of amendments to this article of which notice has been given. I shall take them one by one.

(Amendments Nos. 2709 to 2711 were not moved.)

Shri T. T. Krishnamachari: May I request for your permission to move 2712?

Mr. President: Yes.

Shri T. T. Krishnamachari: I now move 2712 in Volume II of the Printed List of amendments which stands in the name of the Honourable Sardar Vallabhbhai Patel:

"That in clause (b) of the proviso to clause (1) of article 212, for the word 'wishes' the word 'views' be substituted and at the end the following new clause (3) be added:

'(3) In this article reference to a State shall include reference to a part of a State'

I do not think there is any need for me to add anything as the words contained in the amendment are self-explanatory.

Mr. President: Dr. Ambedkar, 2713.

[Amendments Nos. 2713, 2715, 2716, 2717, 2718, 190 of the printed Supplementary List, 27, 28 to 33 of List I (Second Week) were not moved.]

Prof. Chibban Lal Saksena: Mr. President, Sir, in this article we are providing for the Government of States contained in Part II of the First Schedule and in that Schedule are mentioned Delhi, Ajmer-Merwara, including Panth-Piploda and Coorg. From what Dr. Ambedkar said, it will include probably Chandernagore and other places also so that provision is being made for those places to be governed as Centrally administered areas. I do not know whether the passing of this article will also mean that we also approve the Schedule, but I wish to point out that this problem of the government of these places has to be dealt with in a more careful manner. I personally feel that this should be held over. The present condition of the administration in these places is not what we desire. We have all realised that States like Coorg, Ajmer-Merwara and Panth-Piploda must become parts of bigger areas, the adjoining provinces or Unions of States and I do not think it will be proper to frame a law unless we decided what we want to do with Ajmer-Merwara and Coorg. I have a feeling that the people in these places feel that they have no voice in the administration because Parliament hardly gets time to discuss these things and Government in their own States is entirely in the hands of District Magistrates or Commissioners. Delhi of course is a problem by itself but about Coorg, the other day I learnt from my Friend Mr. Poonacha that the Council there is a unique thing and the District Magistrate is the President of the Council and the Judge is the Minister of Justice etc. So we should not perpetuate this administration in Coorg. Besides in this article we are providing for Governments of Chief Commissioners' provinces without knowing for what provinces we want to legislate. I am told Coorg will be amalgamated with either Mysore or Madras. Similarly Ajmer-Merwara might join the Rajasthan Union so that only Delhi will be left. I think for Delhi this article will not suit and I feel that a separate clause for Delhi is necessary and I feel that for Chandernagore and other places like Pondicherry which have been brought up under the French we might have this article for the present. So I feel that the original proposal of Dr. Ambedkar to hold these articles over was much better because just now if we pass this article without knowing for what areas we are providing this article, it will be improper. So this thing needs careful consideration. As for the problem of Delhi, I will discuss it afterwards. I personally feel that it will be proper to hold back the article till we have a better picture of the new areas which we are going to have. It will not be proper to pass the article without knowing what parts of India will have this Constitution.

Shri Brajeshwar Prasad : Mr. President, Sir, I am in whole-hearted accord with the provisions of Part VII of the Constitution. This Part deals with the future pattern of the Government of India. Sooner or later, all the States will have to be put in Part VII of the Constitution. I feel that as we have not yet decided which of the States should be put in Part VII of the Constitution, it is open to me to suggest that some of the bigger provinces should be put in Part VII of the Constitution. It is not in accord with the majesty and dignity of the State that the Government of India should be put in charge of small bits of territories like Delhi, Coorg, Ajmer-Merwara and Panth-Piploda. If the Government of India should administer directly some areas in this country, then some of the bigger provinces should be brought directly under the administration of the Government of India. There is yet another reason why I make this suggestion, I feel that border States, i.e., those provinces which are on the border of foreign States, on grounds of military strategy, should not be left in the hands of provincial Ministers. Provinces like East Punjab, Bengal, or Bihar which is bordering Eastern Pakistan, or Assam, should not be left to be governed by Provincial Ministers, because the situation in India has become critical.

Mr. President : The honourable Member is going much beyond the scope of the article under consideration

Shri Brajeshwar Prasad : Sir, I said it is not decided till now which States should be put in Part VII of this Constitution. So is it or is it not open to me to suggest that such and such a State should be put in, and such and such a State should not be put in ?

Mr. President : You can do so, when we consider the Schedule.

Shri Brajeshwar Prasad : Probably it will be too late then. But if I will be allowed to speak on it when we are considering the Schedule, then certainly I will have no objection

Mr. President : At the time of the consideration of the Schedule you can say anything you like, but not at this stage, because this article relates to particular States which are mentioned.

Shri Brajeshwar Prasad : Sir, I will proceed on. I feel that the system of administration that exists in the Chief Commissioners' Provinces is a very sound one, and that there should be no change in the *status quo*. It is ridiculous to talk of provincial autonomy in Chief Commissioners' provinces like Panth-Piploda or Delhi It is hardly half the size, and contains hardly half the population of a district or sub-division of a Governor's province. The charge has been made that efficiency of administration has gone down in these areas I would like those who make this charge to go on a tour in the Governor's provinces and see whether administrative efficiency has or has not deteriorated there also. Sir, it has been urged that people must have autonomy. Is it desirable, or fair that when there is autonomy throughout the length and breadth of this country, the people living in the Chief Commissioners' provinces should be deprived of this right ? But I do not see any substance in this argument, because I feel that people are not keen about autonomy. People are not interested in politics. The present question that confronts us is the problem of food. That is the problem that we have to face and solve. People are interested in the food problem. They are interested in getting medical facilities. Peoples are interested in their sons and daughters getting free education. They want food. They want shelter. The average man is not interested in political questions. He is absorbed with the question of how to make both ends meet. Moreover provincial autonomy has failed everywhere. If it is so, why then commit the same mistakes again in the Chief Commissioners' Provinces ? If provincial autonomy has failed, then no provincial autonomy should be conferred on any Chief Commis-

[Shri Brajeshwar Prasad]

sioners' Provinces. Therefore, Sir, whichever way I turn I feel there is no reason why any change should be made in the constitutional status of these provinces which are directly governed by the Centre. I feel that in India there is place only for one Government and therefore, to create more governments will be a retrograde step. I am not in favour of even the existing Provincial Governments, and to seek to create more provinces will be a suicidal step and inimical to the interests of the people of this country.

Dr. P. S. Deshmukh : Mr. President, Sir, last time when we objected to the passing of the provision in regard to the Second Chamber, you came to the rescue of the House and persuaded the members of the Drafting Committee to hold back the article and to come again with some positive scheme before the House. May I take this opportunity of appealing to you, Sir, again, that this is one of the Parts which should also be considered more carefully before we pass it? Here we are making a very curious provision. If the device of leaving legislation to Parliament was necessary in any place, I think this was the one place where it should have been resorted to. The governance of these three areas could easily have been left for an Act to be passed by Parliament at such time as it may please. There would have been no inconvenience to anybody. We would have had more time to consider the whole thing. There would have been the wishes of the people inhabiting the various areas before us, and it would have been possible for us to consider their demands, whatever they be. But what we are doing here is something totally out of conformity with the provisions which we are embodying in the rest of the Constitution. Everywhere we are giving adult franchise to the people. We are providing not only one, but sometimes two Houses as legislatures. But in this particular case, we are legislating for not even a definite advisory council, so far as we can see. If the article as it has been framed is passed, to my mind, it may be within the sweet will of the President to have something of that sort. But there is no concrete provision in the Constitution itself as to how and how far the people of these areas would be consulted. So we are making them into a sort of "excluded areas" similar to those inhabited by hill-tribes, in the Act of 1935, where they had no representation, no votes. So the residents of Delhi, the residents of Coorg and Ajmer-Merwara are likely to be treated as hill-tribes and aboriginals, even after the solemn Constitution of the whole of India has been fashioned, framed and put into operation. So on that score, Sir, I think it is not proper that the administration of any area whatsoever should be left to the sweet will of the President, and he also is not to act on his own but through a Governor of another neighbouring province, who has to act through the Lieut-Governor. This is a subject which, if we leave as it is, I do not think it would do much credit to us. I would therefore like that the whole question and the drafts of these articles should be reconsidered.

There is one more point which I would like to urge, *viz.*, whether it is not possible to join these areas to some other areas, so that they may share the same responsibility and have similar democratic arrangements as other adjoining areas. We have the spectacle of huge areas being tagged to the rest: State after State merged together and formed into Unions, and such large States as Baroda having a population of thirty lakhs, equal to the population of a nation like Ireland being merged into a province within a twinkling of an eye. Here are a few lakhs of people who are not anxious to remain solitary because so far as Ajmer-Merwara is concerned, I am told there is a strong feeling for them to join Rajasthan. But in spite of the wishes expressed to the contrary, we are trying to have small islands of territories administered in a fashion which is absolutely unlike what is being done in other parts by the Constitution. I submit that this is not proper nor fair to the people of those areas, nor does

it conform with the scheme of things which we are trying to evolve. We are trying to eliminate small islands in our Constitution, and for that purpose we have removed the Rulers and we have destroyed boundaries so far as the formation of Unions and provinces are concerned. Why could we not have considered that scheme as applicable to the small territories of Coorg and Ajmer-Merwara? These are very tiny territories and they should not be kept aloof. And if they are to be kept aloof, and must remain separate, then the people inhabiting those areas must at least be given the same democratic institutions which other parts enjoy. There is no scheme behind these provisions as they are proposed here and I hope you will, Sir, persuade the Members of the Drafting Committee to refrain from pushing this through in this House, at this stage and in this manner.

Shri Biswanath Das: (Orissa: General): It is within the knowledge of honourable Members that we appointed a Committee to go into the question of the Minor Administrations. The Committee was presided over by our esteemed colleague Dr. Shri Pattabhi Sitaramayya, the Congress President. Unfortunately the report of the Committee was not available to the honourable Members of the House and as such could not be discussed in this House. In the result, the Drafting Committee assumed authority to embody what provisions have been made for Minor Administrations in the Constitution. You will please therefore allow the Members of the House a certain amount of latitude while discussing this question because the House had no opportunity to have its say on the report itself, therefore, I take it, Sir, that along with the consideration of the articles—I mean articles 212, 213 and 214, it is also necessary that we discuss the

Mr. President: May I point out that the report of that Sub-Committee was distributed to the Members but it was not considered by this House?

Shri Biswanath Das: That is exactly what I say. I have not said anything more.

Mr. President: I thought you complained that the report was not made available to the Members.

Shri Biswanath Das: I said and I repeat that the Assembly had not the opportunity to discuss this question. That is what I said and I stand by it.

Sir, the report, I am glad, is not unanimous and I am further glad that the honourable Shri Mukut Bihari Lal Bhargava, representing these areas—I mean Ajmer and Merwara province of these areas—has recorded his voice of dissent, and I will read the last sentence from his Minute of Dissent. He says:

> "Accordingly, I may impress on the Constituent Assembly the urgency of incorporating a suitable provision in this chapter of the Constitution so as to make it possible for each of these areas to join as a contiguous union."

Having stated the views of the representative of this area, in this House, I cannot very much congratulate the Committee for the performance they have shown in the report. What is the performance? The performance is that the Committee recommends responsible Government in the Minor Administered States in the provinces under the lines of the old antiquated Act of 1935, in which instead of the Governor they propose to have a Lieut-Governor and a Council not on the basis of the Constitution that you have framed, but on a separate basis altogether as given at page 3 of the Report. The basis represented is 5,000 persons subject to a maximum of 33 persons for Coorg, and 15,000 subject to a maximum of 40 persons for Ajmer-Merwara. That is the basis on which you will have, according to their proposals, a Council or an Assembly which will have its Prime Minister, Ministers and all the paraphernalia attached to the Act of 1935.

[Shri Biswanath Das]

I am thankful further to the Members of the Committee for having [illegible] the very mischievious expressions from the Act of 1935. [illegible] strong note of dissent in this House against this report because [illegible] to the people of these Minor Administered Areas in [illegible] discredited Act. The reasons are these :

First, the administrative set-up that they propose in this report [illegible] different from the administrative set-up that we have administered [illegible] vinces in this Constitution. Need I say that it is very [illegible] looked upon from the point of view of Free India

The second objection to this report is that they want [illegible] petuate in this Constitution a system of administration which [illegible] by all shades of public opinion in this country.

Thirdly, they bring to bear upon the administration an [illegible] costly machinery and the snare of having the possibility of perpetuating Minor Administrations in the garb of provinces. If this is the view, why should you do away with the smaller States who were out to [illegible] government ? It really surpasses my comprehension

Therefore, looked at from any point of view, the report of the Committee's set-up is not, and in no sense can be, acceptable to the honourable Members of this House in this year of 1949.

In this connection let me also refer to the report of the Simon Commission which went thoroughly into the question. They recommended that the time had come when these minor administrations should be made to merge in the neighbouring provinces and they justified it on two grounds. The first was economy and the second was efficiency in administration. They laid more stress on the efficiency of the administration because they said that the Government of India officials who were in charge of these minor administrations had no experience in provincial sphere and therefore necessarily the administration suffered in efficiency. Is it for these purposes that you are going to invest more money and perpetuate an administration which has been condemned outright not only by public opinion in India but also by a most reactionary body like the Simon Commission ? This is out-Heroding Herod. Under these circumstances I cannot congratulate the Committee on its performance.

Why do you have a province like Coorg ? It is a province of 1,600 and odd square miles, which is adjacent to Madras and equally adjacent to Mysore. Madras is a province of our own and Mysore is a State which has also responsible government that is practically on a par with Madras. Added to it, the Kanarese people on the basis of linguistic distribution of provinces lay claim to the same area. It may be very soon in the day that you may have linguistic provinces and a separate province of Kanara. If that becomes possible Coorg merges itself automatically into it. Is it, therefore, fair to perpetuate the existing conditions and add to our financial difficulties and that at the expense of efficiency ? I submit that it is doing least justice to the country and to the honourable Members of this House.

Again, with regard to Ajmer-Merwara the honourable Member representing the area has had his say and I have nothing more to say except to commend what the honourable Mr. Mukut Biharilal Bhargava has stated in this connection.

Then you have Panth-Piploda, comprising of ten and a half villages, which you can as well put in any other place.

You have thereafter the province of Delhi. Why on earth have a province under Delhi administration? You can add it to the East Punjab or the United Provinces.

We have then only two other areas, namely, the City of Delhi and the Islands of Nicobars and Andamans. As regards the City of Delhi you can have it on the lines of the British Constitution and have a corporation for the Metropolis of Delhi on the lines of London or on American lines according as is desirable and necessary. Under the circumstances I fail to understand why you should add to Delhi a small area merely to call it a province, having a machinery and a legislative assembly with a Premier and ministers and all the other paraphernalia. Under the circumstances I do not agree with my honourable friend of the Committee.

I come to other area which remains is the Andamans. It is a strategic area.

Shri Brajeshwar Prasad: Andamans is not in Part VII of this Constitution.

Shri Biswanath Das: You may have it under the Home or Defence Ministry. The point is why should you burden the Constitution with these provisions? I feel that part (1) of article 211, and articles 213 and 214 are unnecessary, undesirable, and undesirable, and the set up is expensive. Under the circumstances, I strongly oppose the inclusion of these provisions and I see no utility in them except adding to the bulk of the Constitution for which we have earned a reputation and adding to our financial commitments. We are going through very hard times. Our civil administration today has multiplied three to four times at pre-war level. Why then add more commitments and pile up to the expenses that we are already incurring? Therefore no option is left to me but to oppose these articles, especially 211.

You, Sir, took a very bold step on Saturday by requesting the House to reconsider certain articles. Need I appeal to you that the provisions under reference do need reconsideration and revision of the decision already taken?

Chaudhri Ranbir Singh (East Punjab: General): *[Mr. President, Sir, I have come forward to support this article. But in supporting it I cannot but say that it is not in the interest of the country to retain these small territories in the form of separate provinces. I think that with the exception of New Delhi, Pondicherry and Chandernagore, it will be detrimental to the interest of the country to retain these small territories in the form of provinces. Take for instance the case of Delhi. There is no doubt that New Delhi presents a different problem. We will have to retain it as a separate province because it is the seat of the Central Government. But to retain Old Delhi and the villages of Delhi, which hardly number 300, as a separate province and to maintain a top-heavy administration, is not in the interest of the country.

A few days back a Bill for adjusting the financial relations of Ajmer and Delhi administrations was presented for the consideration of the Standing Committee of this House. The scales of pay of the Officers proposed in that Bill were the same as those in big provinces. The same is the case in regard to other departments although there are hardly three hundred villages in Delhi and it is not even as big as a Tehsil of a Province. If we make it a separate province, we would be compelled to maintain a top-heavy administration. Therefore, I support this proposal and hope that, except New Delhi, the rest of the city of Delhi and its villages should be integrated with the Punjab.

Shri Mahabir Tyagi (United Provinces: General): Why should it not be integrated with the United Provinces?

*[ ]Translation of Hindustani speech.

Chaudhri Ranbir Singh: My Friend, Shri [illegible] integrated with the United Provinces. [illegible] Provinces, a natural boundary, *viz.*, the [illegible] it is integrated with the Punjab, it would [illegible]

Import of gram from Punjab into Delhi is not [illegible] though no natural barrier like that of the Jamuna [illegible] Besides, many villagers have fields in the Punjab as well [illegible] way we are confronted with a great problem. But if [illegible] and the rest of the area of Delhi is integrated with the Punjab [illegible] great facility. The idea of integrating it with the United Provinces [illegible] on other considerations too. The United Provinces is already [illegible] extensive that it is not an easy task to manage it [illegible] which is a small province, would in this way add to it only [illegible] ten lakhs. Besides, it would have a proper boundary [illegible] proposal I want to emphasise that the rural area of old Delhi and New Delhi should be integrated with the Punjab and the Constituent Assembly [illegible] come to a decision in this respect.]

Shri R. K. Sidhva (C. P. & Berar: General): Mr. President, Sir, I have no quarrel with persons like my Friend Mr. Brajeshwar Prasad [illegible] that all the provinces in India should be governed by dictators called Ministers. But I really cannot understand the arguments [illegible] Friends who have all along been advocating that there should be [illegible] government everywhere but who want to deny that right [illegible] Delhi and Ajmer-Merwara. Here are these two provinces [illegible] them such. I am purposely omitting Coorg because it is so small that it cannot be given a legislative body. At the same time I do not want [illegible] be administered in the manner it is being administered today. [illegible] merged with some adjoining province. Therefore, there remain only [illegible] provinces, Delhi and Ajmer-Merwara, both having a population [illegible] twentyfive lakhs of people. You cannot ignore the right of the [illegible] of people to govern themselves. I fail to understand why, when [illegible] given the right to the most backward classes of people to govern themselves under our Constitution, this intelligent class of people in these two provinces should be told that they cannot have a popular government. If it is felt that Ajmer-Merwara should be merged into some adjoining province I have no quarrel, but I would prefer that Delhi and Ajmer-Merwara should be continued and given a proper legislative body as in the case of other provinces.

It is argued that in a capital city we cannot have any provincial government. It may be a mere matter of sentiment and I do not see any really substantial arguments in that. Did we not have two governments in Calcutta having a Lieutenant-Governor and the seat of India at Calcutta? Did we not have two governments in Calcutta exactly on the lines I want to advocate? And what was wrong? If at all it is felt that from the point of view of status or sentiment the capital should not be in Delhi, let the capital be in Ajmer. I have no objection. But to deny this right to these people is a most unheard of attempt when we are preparing a Constitution for the entire population of this country. I therefore feel very strongly that the Constitution should not be passed without mentioning distinctly and clearly as to what is going to be the fate of Delhi and Ajmer-Merwara as far as their administration is concerned.

Imagine the position of Delhi today so far as the local self-governing organisation is concerned. There are four Municipalities in the City of Delhi. At a distance of every three miles there is a small Municipality. Not even the word 'Municipality' is there. It is a 'Municipal Committee', a third-rate name that is given for the local self-governing body at the Capital, and still from

the sentimental point of view you say that Delhi should remain under the Chief Commissioner. Old Delhi has got the name Municipal Committee. New Delhi, at a distance of three miles has another Municipal Committee. In the Civil Lines there is a Notified Area Committee, again at a distance of three miles. At Shahadara there is a similar Committee. I have never heard of any city having within a distance of about eight miles more than one Municipality. Go to Bombay. Bombay has a circumference of 18 miles and there are so many suburban towns, but it is not that there are small local bodies within a city. I do not think that there should be a Municipal Corporation for Delhi. I was really very glad to learn when the *Interim* Government came into power that a Committee was appointed to go into the question of having a Corporation for Delhi, combining the small municipalities into one. The Committee has given a very fine report, advocating that there should be a Municipal Corporation for the whole of Delhi and that the small municipalities should be merged into it. That report, I think, has been shelved. It is now two years since they presented their report. You are not prepared to give local self-government to the people of Delhi. I do not know for what reasons. Why should there not be a Municipal Corporation for Delhi instead of four small municipalities at a distance of three miles each? You are not prepared to give them the right from the civic point of view also. I therefore desire that in the future map of this Capital you must immediately take steps to see that these powers are vested in the people of these two provinces.

Shrimati G. Durgabai (Madras: General): Sir, the question may now be put.

Mr. President: The question is:

"That the question be now put"

The motion was adopted

Mr. President: The question is:

"That in clause (1) and the proviso to clause (1) of article 212, for the words 'Governor or Ruler', wherever they occur, the expression 'Government' be substituted"

The amendment was adopted.

Mr. President: The question is:

"That in clause (b) of the proviso to clause (1) of article 212, for the word 'wishes' the word 'views' be substituted and at the end the following new clause (3) be added

'(3) In this article reference to a State shall include reference to a part of a State'"

The amendment was adopted.

Mr. President: The question is:

"That with reference to amendment No. 2713 of the List of Amendments, clause (2) of article 212 be omitted"

The amendment was adopted.

Mr. President: The question is:

"That article 212, as amended, stand part of the Constitution"

The motion was adopted.

Article 212, as amended, was added to the Constitution

Article 213

The Honourable Dr. B. R. Ambedkar: Sir, I move.

"That with reference to amendment No. 2722 of the List of Amendments, for article 213, the following article be substituted:—

[The Honourable Dr. B. R. Ambedkar]

'213. (1) Notwithstanding anything contained in the [illegible]

Creation or continuance of local Legislatures or Council of Advisers or Ministers.

law create or continue for any State [illegible] in Part II of the First Schedule [illegible] Commissioner or Lieutenant Governor

(a) a body, whether nominated, elected or partly nominated [illegible] function as a Legislature for the State; or

(b) a council of advisers or ministers or both with [illegible] functions, in each case, as may be specified in the law

(2) Any law referred to in clause (1) of this article shall not be deemed to be an amendment of this Constitution for the purposes of article 304 thereof [illegible] it contains any provision which amends or has the effect of amending [illegible]

Sir, the principal change sought to be effected by this amendment is that In the original Draft the power of creating a body, whether nominated or elected, for purposes of representation and a Council of Advisers or Ministers was a matter which was left to the President. The new Draft gives it to Parliament and not to the President. That is the only substantial change which has been effected by this new article. Otherwise the provision is the same.

Shri Brajeshwar Prasad: I am not moving my amendment No. [illegible] of First Week.

Prof. Shibban Lal Saksena: Sir, I move

"That in amendment No. 45 above, in clause (1) of the proposed [illegible] Notwithstanding anything contained in this Constitution be deleted"

I personally feel that the article, as it is, is complete and that there is no need therein for the words "Notwithstanding anything contained in this Constitution".

Sir, this article is in fact giving a Constitution for the States in Part II of Schedule I which includes Delhi, Coorg and Ajmer Merwara. I agree that Coorg and Ajmer-Merwara should be attached to their contiguous provinces as per recommendation of my friends Messrs. Poonacha and Pandit M. B. Bhargava. I also think that for Delhi there should be a separate Constitution. I think this article should apply only to Chandernagore, etc. For Delhi there should be a separate provision other than that under article 213 which says that there shall be a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State or a council of advisers or ministers. I think that for Delhi we should have a special provision which should not be of the pattern for the Centrally administered areas. Delhi should be a province by itself and provision for that should be made separately. I therefore suggest that this article should not apply to Delhi.

We have recently seen a note circulated by Shri K. M. Munshi in which he has pointed out that Delhi is something like the city of Bombay in respect of its growing population and is the capital of India. To satisfy the needs of the capital its citizens may have autonomy like that of Bombay. I feel that if a new article is added for this purpose it would be better.

I am opposed to giving the right to Parliament to adopt a constitution for Delhi. This should be done in a separate article incorporating the provisions contained in the note of Shri K. M. Munshi. I therefore suggest that this article should not apply to Delhi. As this is the only occasion on which I could speak about Delhi, I suggest that New Delhi may of course be under the control of the Central Government, but the rest of the area must be given full autonomy with a separate legislature and so on. In fact the report which was submitted by the Committee has recommended full autonomy to the province of Delhi. I only exclude New Delhi from it. There 80 per cent. of the

[illegible] assessed by the Government and therefore, New Delhi may remain under the control of the Central Government, but the remainder must be given full autonomy. But the question may be investigated whether the remainder cannot form part either of East Punjab or the United Provinces. If it thus forms part of an existing province it might be very helpful, because Delhi by itself may not have the resources needed for a major province. I personally feel that Delhi is the natural centre of East Punjab, it may form part of the province of East Punjab. It will then become the Centre of East Punjab as Calcutta is of West Bengal. I therefore think that there should be a separate provision for Delhi. If we are of the opinion that it should form part of East Punjab we must make a suitable provision for it. But I am opposed to giving the future Parliament the function of drawing up a Constitution for it. As the new Constitution is to come into force on 26th January 1950, we will probably finish constitution making by the end of November or so. There will thus be hardly time to frame a Constitution for Delhi at all. The things will have to be rushed through. I feel that the question must be decided here. We must make [illegible] Delhi should form part of an existing province or be [illegible] Pondicherry [illegible] Delhi. I [illegible] been [illegible] [illegible] One difficulty will probably be [illegible] For that reason they must be [illegible] by the Centre [illegible] I am [illegible] [illegible] directly com- [illegible] Centre [illegible] [illegible] [illegible] to an autonomous [illegible]

Shri Deshbandhu Gupta (Delhi): Sir, I [illegible] amendments together [illegible] which is based on the unanimous recommendation of [illegible] which was appointed by this House. Although I do not propose to move it I must frankly say that I do not feel happy about the amendment that has been moved by my friend Dr. Ambedkar to article 243. In fact the total population of Delhi is very much disappointed and I am bound to say so from that we have received a letter [illegible]

[illegible] from [illegible] the unanimous wish of the people of Delhi and other Centrally administered areas that they have been given the full autonomy. From the very beginning it was evident that it was the intention of the Hon. the Prime Minister to settle the principles of the constitution for the Centrally administered areas when we were asked to consider the question of Centrally Administered Areas.

The Draft Constitution is not published. Though it has been placed before the House in the form of the Constitution of Delhi and of the Centrally administered areas, the reason for not publishing the draft is not clear. But the new amendment has done away with that provision. It was only after a good deal of thought by the representatives of the Centrally administered areas and it was pointed out by them that when a new clause like Constitution of the whole country there was no reason why the Centrally administered areas which had been denied autonomy so far should continue to be denied, that a Committee was appointed to go into the question of the Draft Constitution. That Committee was presided over by Dr. Pattabhi Sitaramayya and Pandit and others and I am grateful to the eminent person that Shri Gopalaswami Ayyangar was invited on that Committee. The Committee recommended unanimously a radical new plan for the future Constitution of Delhi and other Centrally administered areas.

Mr. President: Will you please read out the recommendations?

Shri Deshbandhu Gupta: The amendment which stands in my name and that [illegible]

[Shri Deshbandhu Gupta]

to which I have made reference is No. 2706 which reads

"That for the existing articles 212 and 213 the following be substituted

'212 (1) The territories immediately before the commencement of the Constitution known as the Chief Commissioner's Province of Delhi shall be administered by the President acting to the extent he thinks fit through the Governor with a Council of Ministers and a Legislature of the State

(2) The Lieutenant Governor shall be appointed by the President by and with the advice and consent of his hand and seal and the legislature of the State shall consist of the Lieutenant Governor and the Legislative Assembly one House to be known as the Legislative Assembly

Mr. President: You are reading amendment No. 2706. Are you moving that amendment?

Shri Deshbandhu Gupta: I was only referring to the amendment

Mr. President: Read out the amendment which you wish to move

Shri Deshbandhu Gupta: The amendment that I wish to move runs thus:

That in amendment No. 45 of List I (Second Week) of Amendments to Amendments after clause (1) of the proposed article 213 the following new clause be added:

Shri Brajeshwar Prasad: We have not got a copy of the amendment

Shri Deshbandhu Gupta:

"(1a) Any law as aforesaid may contain directions as to the representation of such State in the House of the People on a scale different from that provided in clause (3) of article 81 of this Constitution and may also vary the allocation of seats to representatives of such State in the Council of States as provided in Schedule III B"

This is the amendment, Sir, which I proposed to move now to the amendment moved by Dr. Ambedkar and I have no doubt that the House will accept it. The reason is very simple. We have denied autonomy to the Centrally governed areas including Delhi which stands on a slightly different footing inasmuch as besides being the Capital of India it has got a population of about twenty lakhs today which may go up to thirty lakhs in a few years' time. We have already passed article 67, and in spite of the fact that we have not given any definite democratic Constitution to the Centrally governed areas, we have not considered the desirability of even providing some additional representation for these areas in the Central Legislature. Up till now, the Central Legislature has been acting as the Parliament for these areas. All legislation affecting these areas have to be passed by this House. It was therefore only fair that provision should have been made for giving some additional representation to Delhi and the other areas which are Centrally governed. I think it does not require much argument to convince the House that such a provision is necessary and feel that the House will pass my amendment and not oppose the idea of a few extra seats.

In this connection I wish to point out that Delhi and other Centrally governed areas have not been receiving a fair deal either from the House or from those who are in authority today. The attitude of the Drafting Committee and others responsible for their draft proposals about the Centrally governed areas, particularly Delhi, has been rather disappointing. Whenever a demand was made by us to liberalise the provisions with a view to give them some measure of autonomy, and we went to the Drafting Committee with such a request, fresh restrictions were introduced in the Draft. To give an illustration: In the original Draft, article 213 provided specifically a local legislature for Delhi and other Centrally governed areas but the amendment which Dr. Ambedkar has now moved uses a new phraseology and says that it will be a body wholly or partly nominated which may act as the legislature. There are so many other qualifying words which have been introduced in the

amendment for the first time To give another example Dr Ambedkar had on an earlier occasion given notice of amendment No 3333 which specifically provided

"a Council of Advisers or Ministers to aid and advise the Chief Commissioner or the Lieutenant Governor in the administration of the State"

I do not know why the Drafting Committee now seeks to remove even the provision which they themselves had drafted at an earlier stage The only one merit that one can claim and is being claimed for Dr Ambedkar's amendment is that it is a comprehensive amendment that it is equally applicable both to Panth-Piploda and to Delhi My contention, Sir, is that it is really very unfair to treat Delhi and Panth Piploda alike The right course for the Drafting Committee would have been to treat Delhi as a separate unit while drafting its Constitution Where as all other Centrally governed areas are likely to be amalgamated with the adjoining provinces sooner or later, Delhi stands on a different footing altogether, as the position of Delhi is not going to be altered in future except that its population may go up and is bound to go up Otherwise there is not even a suggestion that Delhi is going to be amalgamated with either of the neighbouring provinces In the case of Ajmer Merwara, Coorg Panth Piploda and the other Centrally governed areas which have come into existence recently there is a clear indication and it goes without saying that they sooner or later will be merged with the neighbouring provinces The Drafting Committee should have therefore drafted the Constitution of Delhi on the lines suggested by the *ad hoc* Committee Delhi has already got a population of about twenty lakhs and this is bound to go up further in a few years' time Thus it makes a very good unit to be treated independently but my friends of the Drafting Committee in their wisdom have thought it fit to treat Panth Piploda and Delhi alike and include both of them in the same clause There we found to be one difficulty, therefore *and I agree that if a comprehensive clause was to be drafted which could cover all these areas, the Drafting Committee perhaps could not have done otherwise* But I hold that it was wrong to do so and would request the House to bear with me and judge whether so far as Delhi is concerned, it does or does not require a different treatment Delhi is the Capital of India and it is being contended that it cannot be given any measure of self government because Washington has not got it and because Canberra has not got it, but I submit Sir, that it would be unfair to compare Delhi either with Washington or with Canberra The reason is very simple, Delhi is a town which has got a history of its own a civilization of its own It is a commercial as well as an industrial town whereas Washington has been built as a capital There the people had the choice to settle or not settle in that town and whosoever wanted to be a citizen of Washington, he migrated to that place But here the capital has migrated to Delhi and not that Delhi has been built as a capital originally How can you then ignore the legitimate aspirations and demands of the people of Delhi? On this basis, I claim that Delhi should be treated differently The analogy of Washington might apply to New Delhi in some degree but I hold that even to New Delhi it cannot apply as New Delhi is no longer a separate city from Old Delhi The population of both the cities is intermingled. Transport electricity, water supply and all other essential services are common to both and even the population is common Many people have got their business in Old Delhi but they are living in New Delhi Some have their business in New Delhi and are living in Old Delhi To say that New Delhi and Old Delhi are two separate entities and to compare New Delhi with Washington or Canberra is therefore not fair I would not like to elaborate this point further

No less a person than our respected leader, Pandit Jawaharlal Nehru has publicly told the people of Delhi that he is in sympathy with their demand and

[Shri Deshbandhu Gupta]

that a Bill shall soon be introduced in the Parliament providing for a constitution for Delhi which will give the people of Delhi as large a measure of responsibility as possible. I have no doubt, Sir, that this assurance will be carried out and before other parts of India are governed under the new Constitution, Delhi also will have its own constitution passed by the Parliament.

Sir, I have heard some people say that Delhi is much too small a place and that the demand for autonomy is being made merely to satisfy the aspirations of some local political leaders. This is a very cheap jibe, if I may say so and cannot be taken seriously. Such an argument could be equally applicable to our demand for self-government or independence in a wider sphere. I can assure the House that it is not as a matter of luxury that the people of Delhi have demanded autonomy or a measure of self-government or a voice in their administration. Their difficulties are real. Few of the Members of this House probably are aware of the difficulties from which the people of Delhi are suffering. To mention a few may I point out that till recently even the premier Municipality of Old Delhi used to have an official president, and it still has about one-third of its members as nominated ones. The New Delhi Municipal Committee is a wholly nominated body and its Chairman is still an official. This is how Delhi is treated in the sphere of local self government. Then, several Ad Hoc bodies have been appointed like the Improvement Trust, the Joint Water and Sewage Board, the Delhi Central Electric Power Authority which have got official majorities and no effective representation of the people of Delhi. They plan and take big decisions about Delhi, but the people of Delhi have no effective voice in the administration of these bodies.

Then, Sir, more than all this, what is most deplorable is that Delhi has been tagged on to the East Punjab. We get all our services from there, the magistracy, the Police and so on and so forth, but we have no voice in their selection. Even the High Court is that of East Punjab. The Delhi people have been making a demand for the last so many years that there should be a Circuit High Court in Delhi, but to no avail. I am told (and I have good reason to believe that the figures are correct) that the value of the civil appeals dealt with by the East Punjab High Court which go from Delhi is about 65 per cent. and the percentage of the civil cases which go from Delhi is 35 per cent. of all the cases dealt with by the High Court. In spite of this the modest demand persistently made by the Citizens of Delhi for the last three years that there should be a Circuit Court in Delhi, has not been listened to. Whatever demand is made by the people of Delhi, is treated with indifference by the East Punjab Government and no one pays any heed to the difficulties and to grievances to the people of Delhi.

As regards the services, few people realize that although Delhi has got a population of about 20 lakhs, there is no scope for its young men in Government services. Take for instance the Provincial Civil Services; they have no place in either United Provinces or East Punjab and Delhi has no cadre of its own. They only know that they have to be governed by officials brought from either United Provinces or from East Punjab. Are not these difficulties real? Some people believe that Delhi has benefited from the location of India's Capital here. Let us examine this. It is the right of every big municipality to own, control and run the essential utility services like electricity, transport, water-works, etc. and they form a big source of their income. Do you know that they have never been entrusted to the Municipality of Delhi? The fact is that Old Delhi has been made to serve as a maid to New Delhi, which has been built as a Capital. I can say that Old Delhi has not benefited to the

extent people are made to believe by New Delhi having been made the Capital There is pressure on its roads and its sanitation is so bad, that today really speaking, the whole of Old Delhi has become a big slum and still nobody cares for the poor people of Old Delhi. A suggestion has been made by some kind friends in the course of their speeches that Delhi should be joined with East Punjab I am afraid, Sir, the way in which East Punjab Government has behaved in the past and is behaving now towards Delhi is so bad that it cannot encourage the people of Delhi to entertain any such suggestion To give one just illustration of its callousness, may I point out that there are more than 300 villages attached to Delhi situated on the border of East Punjab and U.P. and if you go today to these border villages you will find that while gram is selling at Rs 7 per maund in the East Punjab villages just within one mile from the border, the people living in Delhi and its villages have to pay Rs. 9 to 12 per maund. The same is the case with Chara (fodder) While Rs. 4 per maund is the rate of fodder in Gurgaon and Rohtak, in Delhi it is Rs. 9 per maund To remove this anomaly and hardship there has been a persistent demand that Delhi should be included in the East Punjab for the purposes of rationing but no one listens to it They want to include Delhi in East Punjab for the purposes of High Court, but they would not like to have the advantages of East Punjab in this respect with Delhi There has always been an opposition to that from their side Then again, Sir, nobody will deny that Delhi was the biggest centre for cloth trade in Northern India but during the last four or five years this trade of Delhi has been ruined While the old Government had made allowance for this fact and while allotting cloth quotas for the Delhi province, they had taken into account the fact that Delhi was the distributing centre for Western United Provinces and Eastern Punjab under the new regime, I am sorry to say even that advantage has been taken away The quota now allotted to Delhi is just enough for the population living in Delhi, with the result that Delhi has ceased to be a distributing centre for cloth and all its trade has thus been ruined Not one, I can give you instances after instances to show us to how the people of Delhi have been made to suffer during all these years They have suffered quietly and patiently in the past in the hope that after the attainment of freedom it would be all right Nobody can say that Delhi lagged behind in making sacrifices which the nation was called upon to make in the struggle for freedom Delhi is proud to think of persons like the late Hakim Ajmal Khan, Dr Ansari, Swami Shradhanand who were closely associated with its political life It has produced men of the calibre of Lala Hardayal who have contributed so much to the freedom movement of India Delhi, I claim, has been second to none in the whole of India so far as its contribution to the fight for freedom is concerned In view of all this why should one apprehend that if autonomy is given to Delhi, its people will misbehave and that might create difficulties for the Centre ? I submit that not one Delhi, but hundreds of Delhis can be sacrificed in the larger interests of the country and I as representative of Delhi can give an assurance to the House that if it is considered by the House that any measure of autonomy given to Delhi will prejudice the best interests of the country, I will be the first person to say "well, keep back autonomy, we shall be content to be governed as heretofore". But I can say that there is no reason to entertain such a fear. If the Central Government cannot look after a tiny province like Delhi, and feel that they can carry the people of the Capital with them, I am afraid it will lose its title to rule over the whole country

Under these circumstances, I would urge upon this House that although I am not moving my original amendment, I hope this promise given in the amendment proposed by Dr. Ambedkar will not prove to be just an eye wash Dr. Ambedkar's amendment can be interpreted in any way, it is a comprehensive one; under its terms Delhi can get a legislature, it may get responsible

[Shri Deshbandhu Gupta]

Government or may get nothing. This is how it is worded. I rely therefore, Sir, more on the assurance given by Panditji recently in the Political Conference which was held in Delhi that the people of Delhi will get a measure of autonomy.

I do not wish to take this occasion to criticise the administration of Delhi. Otherwise, I can quote many illustrations to show as to how the administration of Delhi has deteriorated and how much it has added to the difficulties of the people of Delhi. Delhi is perhaps the only city which has received our refugee brethren with open arms. My friends from the United Provinces, who are always claiming new territories, and making new conquests, when the question of receiving refugees came, raised all sorts of obstacles in their way of settling down in the United Provinces. Other provinces also raised the hue and cry that there should be a fixed quota. But, so far as Delhi is concerned, the population of the city has almost doubled. The number of refugees today in Delhi is not less than five lakhs. During the last two years, nobody can say that at any time, the citizens of Delhi have raised any cry of refugees *versus* Delhi wallas. It is an important point to note that the people of Delhi, in spite of the fact that their economic interests have suffered very largely, have been keeping quiet. In these circumstances, and in view of this conduct of the citizens of Delhi, I would say that they do deserve better consideration.

I have already dealt with the suggestions made that Delhi can be added to East Punjab. I repeat that I am definitely opposed to that idea. There was a time, Sir, in 1927 when a scheme was adopted by the people of Delhi which provided for the enlargement of the Delhi province by the inclusion of Meerut and Agra Divisions from the United Provinces and Ambala from East Punjab. That was taken up at the Round Table Conference as well and if I may say so, had received the blessings of Mahatmaji and others. But, unfortunately, that scheme did not go through. Even today I feel that if that scheme had been accepted at that time, perhaps the country would have been spared the agony of the partition of India. But, that was not listened to at that time. I have no doubt that the people of Delhi would be content with the measure of responsible Government which the House and the Leaders may safely give to them. I assure them that there need be no such apprehension that Delhi being the Capital of the country there would be difficulties in the way.

There is another aspect of the question. These five lakhs of refugees living in Delhi have come here from an autonomous area. Is it suggested that these people who had no choice but to come to a place like Delhi, should be deprived of their right of having a voice in the administration? If there is not going to be a responsible Government in Delhi, then it means we would be virtually depriving all these people also of their right of having a voice in the administration. Some people say "why do these Delhiwallas cry? They have already been given an Advisory Council." I wish to point out, Sir, that if you look into the record of the work done by the Advisory Council during the last two years you will be sorely disappointed. This Advisory Council is the biggest hoax that has been played upon Delhi. I may tell you, Sir, that I have a feeling that the resolutions passed by the Council are not even read by the ministries concerned; no attention is paid to them. Even the budget is not referred to this Council in time, for opinion. Any time spent in the Council is really a waste of the time of the members of the Advisory Council: the resolutions they pass never receive any attention. We have today absolutely no voice in the day-to-day administration of the province. If our leaders wanted to give some measure of autonomy, they should have at least laid

down a convention that in the day-to-day administration, the representatives of the Advisory Council would be consulted; their advice is not sought even on important occasions. I am sorry to say that in all such matters, the Advisory Council has been studiously ignored. Under these circumstances, the people of Delhi can justifiably entertain the fear that those in authority do not understand or appreciate their difficulties and do not wish to give them that measure of self-government which is their legitimate due. I hope that this fear is not justified and as the Honourable the Prime Minister has said on more than one occasion early steps will be taken to give Delhi a constitution which it deserves.

Before concluding, I would like to quote the Honourable the Prime Minister. On an earlier occasion he had said :

"A constitution, if it is out of touch with the peoples' life, aims and aspirations it becomes rather empty, it falls behind their aims, it drags the people down."

This is what our Prime Minister had said in this House during the last session speaking in another connection. I hope that this will be borne in mind and whatever pattern of responsible Government will be given to the people of Delhi, it will not be a mere toy or an eye-wash.

Before concluding I would like to point out one thing more, I am strongly of opinion that whatever constitution may be given to the people of Delhi, Delhi deserves some special representation in the Parliament and in the Upper House, for the simple reason that even if it is given some restricted autonomy, most of its legislation will be passed by the House of the Peoples. Today, there is just one representative of Delhi in the Central Assembly representing a population of about twenty lakhs. Under the new Constitution according to article 67 Delhi will probably have three; my contention is that Delhi has got a special claim and it should be given more representation in the Central Legislature both in the Council of States and House of the People. The amendment which I have moved makes it possible for the Parliament to provide for such additional representation and I do hope that it will not be opposed by anyone in the House. I do not wish to take more time of the House. I hope that the recommendations of the *Ad Hoc* Committee, although they have been ignored by the Drafting Committee, will be borne in mind by the Parliament when a Bill is drafted providing for the future constitution of Delhi. In this connection I may make it clear that if the Act of 1935 does not provide for amending the Constitution of Delhi, I hope the legal pundits will find some solution of the difficulty and it will be made possible to give Delhi whatever constitution is decided upon, simultaneously with other parts of the country. I hope it will not be difficult for the constitutional lawyers to make some provision in the Constitution so that the Parliament can take up the Bill in the next session of the Parliament.

Before concluding, I assure once again the Prime Minister and other friends that so far as the people of Delhi are concerned, you need have no apprehensions about them. They have behaved in the past and they will behave also in the future under all circumstances, whether you give them autonomy or not. Sir, with these words I conclude.

The Honourable Shri Jawaharlal Nehru (United Provinces : General): Sir, may I indicate in a few sentences the attitude of Government in regard to this important matter? Obviously the question of Delhi is an important point for this House to consider. It was for this reason that over two years ago this House appointed a Committee for the purpose and, normally speaking, the recommendations of the Committee appointed by this House would naturally carry great weight and would possibly be given effect to. But ever since

[The Honourable Shri Jawaharlal Nehru]

that Committee was appointed, the world has changed, India has changed and Delhi has changed vitally. Therefore to take up the recommendations of that Committee regardless of these mighty changes that have taken place in Delhi would be to consider this question completely divorced from reality. But the fact remains that this question has got to be considered and all of us or nearly all of us here sympathise very greatly with those citizens of Delhi and representatives of Delhi who feel that this great and ancient city of Delhi should not be left out of the picture when this Constitution comes into effect. Therefore we have to give thought to it. Now giving thought to it, the first thing that comes up for consideration is this that the situation in Delhi is not a static situation; it is a changing situation and if we put down any clauses in the Constitution, we rather petrify that situation. It is far better to deal with it in a way which is capable of future change, *i.e.* by Act of Parliament rather than by fixed provisions in the Constitution.

Again, these provisions do not deal with Delhi only but with other areas which are called Centrally administered areas or the like. It may be that still further areas may come into our ken. Therefore, anything that we may put down in the Constitution must be something which applies to all. That is a difficult thing to do because those areas are completely different. These areas, whether it is Coorg or Ajmer-Merwara or Panth-Piploda or Delhi, they are completely different and it is frightfully difficult to find a common formula for them. For all these reasons it seems inadvisable to put in the Constitution any precise form of approach to this question except to indicate that something should be done and leave it open to Parliament to do it.

Now Mr. Deshbandhu Gupta has brought forward two amendments. I do not know if he has moved them formally or not; anyhow he spoke about them. One was rather a general disapproval of the present amendment—not on any precise ground—but because he thought that it rather led away from the previous Draft. Now, I have little to say about it except I think that the amendment moved by Dr. Ambedkar seems to cover the entire ground fairly well. It is up to this House to apply it in any way it likes to Delhi but please do not try to change that amendment simply thinking in terms of Delhi and thereby put difficulties in your way if you have to apply that to some other areas. That is point one.

The second point is in regard to a clause that he wishes to add to this present amendment of Dr. Ambedkar. So far as the principle of that clause is concerned, I have absolutely no objection. My only difficulty is that I should not like to put in something in a hurry without careful consideration of the drafting of it. But so far as I am concerned—and I think I speak for most of the members of the Drafting Committee—they accept the principle and they intend to bring that in somewhere in the Constitution at some later stage. That is to say, the principle of some kind of representation in the Central Legislature of these areas—that principle is accepted and will be provided for somewhere or other in the Constitution.

Now finally, I should like to say that it is our intention, that is, the Government's intention to bring forward some kind of a Bill to deal with Delhi in the course of this year. We cannot do so, so far as I understand the Constitution, we cannot do so till this Constitution itself is passed or till this House enables us to do so. Therefore in any event we have to wait—till whether

October or November I do not know—but we hope to proceed with this matter. Meanwhile we shall think about it and will bring it up later dealing with Delhi.

Mr. President : Pandit Thakur Das Bhargava : Are you likely to take long ?

Pandit Thakur Das Bhargava (East Punjab : General): Not very long: about twenty minutes.

Mr. President : I think we had better take it up tomorrow. The House now stands adjourned to nine o'clock, tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Tuesday, the 2nd August, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 2nd August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

Shri Shantilal H. Shah (Bombay: General).

DRAFT CONSTITUTION (Contd.)

Article 213 (Contd.)

Mr. President: We shall now take up the discussion of the article that we were [illegible] Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava (East Punjab: General): [Mr. President, Sir, article 213 as it is to be moved is at present before the House is quite different from what it was in the Draft Constitution. It can be said about the present form of the article which is before the House that it is even more retrograde, and is worse than in its previous form. It is no doubt a fact that some authority is conferred on the President under the previous proposal as well but there the President exercised his authority under article 213, he had power to establish a local legislature or a Council of Advisors or both. But there was no option not to establish a local legislature which acting under article 213 it had a right to constitute a body which though termed a legislature was in fact not a legislature in the correct sense of the term. Now, to call a legislature implies that it should consist of Ministers, should have enough rights and should consist mostly of elected members. But the amendment now moved says that the right will belong to the Parliament. So far as the amendment goes, it is quite proper and I think it is good that the authority is being given to the Parliament. But I do doubt the wording of the latter portion of the proposed which says that "A body, whether nominated, elected or partly nominated and partly elected, to function as a legislature for the State". And the other thing that has been suggested is the Council of Advisors and Ministers. In this connection I would submit to the House that it should not accept the change that there should be such a body instead of a legislature. In these days we wish that all the blessings of Swaraj should be uniformly shared by every part of India. It should not be that a region is provided with such a body and where the inhabitants do not consequently acquire any right as regards their administration or get any opportunity to manage their affairs. We do not want such a body. The fact is that this article includes even regions which are under developed. This makes such a provision for them by which I understand that the Constitution wants to decide that the right to settle the Constitution of Delhi, Coorg, Ajmer-Merwara should be given to the Parliament. In the circumstances obtaining at present, this is proper to a certain extent. I do not

[ ] Translation of Hindustani speech.

[Pandit Thakur Das Bhargava]

know what else the Constituent Assembly can do in the circumstances. Today the fate of small regions like Ajmer-Merwara is still undecided. About Ajmer Merwara it is suggested that it should be made a part of Raja than about Coorg it is suggested that it should be merged in Mysore or in Madras and similar suggestions are made in respect of Panth Piploda. The position of territories like Cutch and Himachal Pradesh is still uncertain. In the circumstances it is difficult for the Constituent Assembly to take a decision in respect of every territory. It will not be proper to create such a solid or concrete scheme till the conditions permit. Therefore this proposal is, in a way, quite proper and in accordance with the spirit of the times, but I do not like that there should be any such territory which has no local legislature of its own and in which the people do not possess the right to manage their own affairs. The article provides for a body "whether nominated, elected or partly nominated, and partly elected". If the whole body is nominated, I fail to see for which territory it would be suitable, for I do not think that there is any territory so backward as to deserve such a body. Coorg has already got an Assembly. That Assembly sits for six days in a year. The Chief Commissioner is the President of that Assembly. The District Magistrate is the Home Member and the District Judge is Law Member. In these days when even the smallest provinces can boast of legislatures such a provision ceases to have any meaning whatever. I submit that this matter should be decided according to the circumstances of each region. So far as the Himachal Pradesh is concerned it is a unit newly created. It consists of some new portions and some old portions of the East Punjab. It would have been better if the whole of it had been merged with the East Punjab. Time will show to what extent this policy of the Government of creating small provinces and constituting territories into Centrally administered areas is proper. Centrally administered area is defined as one where the local people do not manage it and the Central Government manages it. If you adopt article 213, you will be adding new powers to those already existing which, I think, will not be a proper thing to do. According to this article any area which is not well managed will be made a Centrally administered area.

As Shri Deshbandhu Gupta said, this can be made applicable to Delhi also and I support his suggestion. Perhaps at present the administration in Delhi is not as good as the provincial administrations are said to be. In 1911 Delhi was separated from East Punjab and formed into a separate province. During 1946-47 I asked certain questions in the Parliament regarding Delhi. Through them I pointed out that there was a less number of hospitals and schools in Delhi than in East Punjab and that there were so many difficulties there. When the Capital was shifted from Calcutta to Delhi, it was said that if a city was the Capital of two provinces there were bound to be difficulties in its administration. In regard to Delhi it was said that it was being made the Capital of India because it was not the Capital of any province and it would be free from every influence. I cannot say how far this is correct. There are many capitals in the world which are the capitals of the provinces as well as those of Central Governments. Besides this, the issue that is raised in regard to Delhi by today's amendment, has two aspects. One of them is that if Delhi is retained in its present form what rights it would enjoy, and the other is whether the same treatment should be meted out to it as is meted out to small territories.

With your permission, I want to speak on these two points and I seek the indulgence of the Honourable President and of the House. The people of Hariyana Province are very much interested in this matter. This is a small province consisting of 353 villages. This has for centuries been a part of Hariyana Province. The three battles of Panipat were fought for the occupation of this Hariyana Province.

During the Mutiny too, when the people rose in revolt, this territory was a part of Delhi Because the people of this area had mutinied against the British in 1857, this territory of Delhi *i.e.*, Haryana Province, which includes the four or five districts of Hissar, Rohtak, Gurgaon and Karnal, was integrated with the Punjab as a measure of punishment The result was that our territory became the Cinderella of the Punjab and we began to be treated as depressed classes No rights were granted to the people of our area Canals were constructed in the Western part only We were deprived of all facilities We were not granted irrigation or educational facilities and were subjected to a high-handedness which has its own history I want to submit that the people of this area have been expecting for a long time that on the advent of self-government, all their difficulties would be removed

In 1909 we started a movement in which we put forward the demand that our territory should be separated from Punjab In 1919 and 1928, this movement gained great strength His Excellency Mr Asaf Ali and Lala Deshbandhu Gupta who have come over to Delhi from East Punjab, were the leaders of this movement We, the workers, aided them in this movement and struggled hard for the cause of this territory In 1928 both Mahatma Gandhi and Mr Jinnah accepted that Ambala Division should form a part of Agra and Meerut Division A scheme was also formulated to that effect by Mr Corbett known as the Corbett Scheme But at that time our demand was not conceded and the Round Table Conference gave its decision against our demand If this demand had been conceded at that time the history of our country would have been altogether different

After that the Cabinet Mission arrived, and we raised our voice at that time too The Cabinet Mission wanted to include this territory of ours in the area of Pakistan We raised our voice against this proposal as strongly as we could We did not want that this territory of ours which had suffered for a very long time should be integrated with an area from which it could never separate itself and from the iron clutches of which its people could never free themselves By the grace of God our national leaders arrived at a correct decision and partition was accepted in such a form that East Punjab could remain free from its clutches

We have been striving for a long time to join together the province of Delhi, some districts of East Punjab, which were previously the districts of Delhi itself, and some districts of United Provinces to form a small province They could be formed into a province as the ways of life and the language of these territories are the same This could not be done at that time, and now it is no more practical politics to do so I never want that our country should be split into small parts so as not to be able to shoulder the responsibility of our newly achieved freedom and that we should be always engaged in these trifling things I want to submit that if anything is detrimental to the freedom of India, it is provincialism. I want that this demon of provincialism should be exercised completely out of our country If it is not exercised, it will disrupt us and there will be a sort of civil war in India

I suggest that the solution of the problem of Delhi and New Delhi is that New Delhi should be separated from Delhi and whatever administration is thought to be best for it, may be established But so far as Delhi is concerned, the correct solution of its poblem is that old Delhi and 353 villages of Delhi, *i.e.* Hariyana should be integrated with East Punjab Himachal Pradesh should also be included in East Punjab. We shall establish good relations with all those who are integrated with us and we shall together solve our difficulties The people of Hariyana Province, of which Delhi is a part, want that Delhi should be integrated with East Punjab

[Pandit Thakur Das Bhargava]

Besides, I want to submit that the United Provinces is a big province and it has a population of more than five crores. As Shri Gupta said yesterday, it would be better if a part of it is integrated with Delhi province. But with all respect to my friends from United Provinces, I want to say that they tell us that we should not come near them. The Division of Meerut is an adjoining area of Hissar and there is no difference in the ways of life and the manners of the people of these areas. It would be proper if one crore people of Agra and Meerut Divisions are integrated with East Punjab, which includes PEPSU, Himachal Pradesh and Delhi. Small provinces have no future and they can have no relations with or influence on the Centre or the Federation. Therefore we should all integrate.

Shri Gupta said yesterday that the people of East Punjab wanted to cut their connection from the Delhi people. Whether he thinks, that is right or wrong, I want to tell him that he is mistaken. You might be knowing that only yesterday a Congress of the businessmen of East Punjab was convened in Delhi in which the demand was placed that in regard to foodgrains Delhi and East Punjab should be taken to be one area, and as a matter of fact for purposes of food, Delhi should be integrated with East Punjab. If we entertained that sort of idea we would not have placed such a demand in that Conference yesterday. I emphatically say that whatever Shri Gupta has remarked is altogether wrong. I told the Honourable Prime Minister in 1947 that Delhi should be made the capital of East Punjab and that New Delhi may be separated from it and reconstructed in whatever way they liked. It may be converted into another Washington. We would have no objection to it. A complaint has been raised that the High Court is situated at a great distance. I want to humbly ask whether the people of Meerut in United Provinces do not have to travel a distance of three hundred miles to reach Allahabad. Do not the people of Hissar and Rohtak have to go to Simla? If a High Court is to be established it should be established in Delhi. The reason for it is that if Delhi would be the capital of East Punjab, the High Court too should be situated there.]

Shri Deshbandhu Gupta (Delhi): *[Then according to your scheme everybody will have to learn Gurmukhi.]

Pandit Thakur Das Bhargava: *[My humble submission is that you will have certainly to learn the language of the State to which you belong. The question is whether important decisions should be taken on petty matters as these. If there is any solution of the problem of Delhi, it is that New Delhi should be separated from Delhi and it should be administered as best as it is thought proper. But the rest of Delhi should be integrated with East Punjab. I have already stated that it is not our wish that our country should be split into small territories and that they should be formed into separate provinces. There would be great disorder in the country because of this, and we would not be able to retain our freedom. So far as the solution of this problem is concerned we have before us only one solution and it is that the 353 villages of Delhi should be integrated with East Punjab. If you do not want this, the Government is competent to take a different decision. But I am saying all this not on my behalf but on behalf of the people of the area whom I represent and who share this view. I have come in contact with those people and am placing before you their views. I ask Shri Deshbandhu not to have in his view Connaught Place and Government House only but the real interest of the province of Delhi as a whole.

*[] Translation of Hindustani speech.

But if the Government holds that the people of Delhi should get greater representation than is laid down in Section 67, it may grant it. But if it is decided that Delhi should have a legislature with some rights, I submit it should have only those rights as are enjoyed by other Centrally administered areas. Delhi and other like provinces should however be granted greater representation. This would be the most proper scheme. I want humbly to submit that the present population of Delhi is about twenty lakhs. The refugees number five lakhs and the remaining population of ten to fifteen lakhs consists of those who belong to a part of Haryana Province.

The people of Delhi are in no way different from the people of Haryana. The population of Delhi is in fact an admixture of all sorts of people living in the Punjab. I have brotherly affection for Shri Deshbandhu for having welcomed the refugees. The backward people of Punjab came here and he gave them a place. I submit that whether the people of Delhi join the Punjab or do not join it, they are entitled to have the same rights under the Central administration as are enjoyed by the people of other provinces. It is our duty to give them the same rights under the Central administration as are enjoyed by the people of other provinces, whether they belong to Panth Pipleda or to any other place. If freedom has been achieved for the whole of the country, they should be given full rights in the legislature by decentralising the Central administration so that they might fulfil their rightful aspirations.]

Shri Mahavir Tyagi (*United Provinces: General*): Sir, I agree with most of what my honourable friend Mr. Deshbandhu Gupta said yesterday. I think it will not be quite fair for this august House to leave these small islands of slavery as they have been in the past. Swaraj has come and every province has got some representation, but isn't it a pity that these small areas in the country shall remain governed by the service men mostly? I refuse to believe that any Minister in the Centre could look into the details of the local administration. I have seen the Government of the Centre run for about two years now. It is not possible for any Minister to look into the smallest little detail of administration; even in respect of their own little business, I find them unable to cope up. They are too busy. I therefore submit that so long as these small areas are kept attached to the Centre under the administration of the Central Government these people will never get their political rights and Swaraj will remain denied to these small areas. I do not think there is any logic behind the argument advanced by Pandit Nehru that almost the whole of New Delhi being the property of the Government of India, no separate Government need be set up for Delhi. What is this? I cannot understand it. If Delhi is to be treated as London or New York you can do it. I can understand that. But even in London there are local authorities and people have their voice in the administration, whereas in Delhi people have none. Instead of keeping these small areas as Lieutenant Governor's province or Chief Commissioner's States, I would really prefer their being amalgamated with neighbouring States. Coorg could go into its neighbouring State. If we are not going to decide this because it is controversial, then what are we going to decide? This is a matter for the Constituent Assembly to decide. After all the decision of the Legislative Assembly or Parliament will not command the same respect as that of the Constituent Assembly, because decisions of Parliament are as a rule party decisions. They cannot have the same force as decisions of this august All-party House, for every Parliament goes by the vote of the majority party. There is a majority party, a leader of the majority party and there is a Whip of the majority party. Even today if I were to sit in Parliament I shall not be able to exercise my vote as freely as I can do here, for I can flout the decisions of the party in the Constituent Assembly. The Congress Party in the Constituent Assembly is only a party of convenience—it is just to facilitate matters and to help us arriving at decisions. I do not take its Whip as a mandatory whip and I do not obey it,

[Shri Mahavir Tyagi]

unless I am myself convinced of it. In the Constituent Assembly the party will have a bigger voice than the voice of the individual for everybody represents the whole nation here, speaks in the interests of the nation as a whole. But in Parliament, Members have to go by their party whips, and therefore a decision of a Parliament is always necessarily a decision of the majority party. Its decision cannot therefore have the same dignity or the sanctity attached to it as the decision of the Constituent Assembly.

Here the quesion is of giving political rights to the people residing in the small areas. They have been very unfortunate really in that they have had no representation in the past. Now Swaraj is there, but still they are denied their right of representation. How will one or two representatives in Parliament make their influence felt? There was an amendment to consider giving some representation to these small areas. But even if you give them two members they cannot influence the day-to-day administration as we do in the big provinces. I know how people have a voice in the Provincial Government. But and so long as the citizens living in Delhi, Coorg and Ajmer-Merwara are guaranteed the same voice in their day-to-day administration, I would not mind the name or nature of the constitution you provide for them. If you guarantee them their rights at least in the provincial field in the future, say for five years and grant them due representation in local administration, we will be satisfied. If you do not do that I submit we shall be unfair to these small areas. As regards Delhi, her case is analogous to Droupadi of Mahabharat. Let us not be unfair to it, only because the bigger brother has gambled her away. I appeal to honourable Members that they should decide the question of Delhi fairly and squarely. Delhi has made sacrifices. It has been the centre of so many political activities. Let Delhi not suffer. Let us consider the question of Delhi anew and let us attach the small centrally-governed areas to the neighbouring States. In the case of Delhi I will give up my claim in favour of right of my province (United Provinces) to have Delhi. Let it be attached to Punjab. Delhi belongs to Punjab naturally. The civilization of Delhi is Punjabi. Its civilization is now that of the Punjab. Lacs of the West People of West Punjab have come to Delhi and therefore Delhi is theirs. They will be happier with the Punjab Government and will again make friends with the Ministers there. Therefore let Delhi go to its own family. It belongs to those people who have occupied it afresh. Let us decide it. If we cannot decide about Delhi and Coorg, how can Parliament decide this question? Parliament has no voice in deciding such matters. It is we who have to decide the question. Why should we delegate our power to the Parliament? If my friend Shri Deshbandhu Gupta and others agree, instead of leaving this question to be decided by Parliament, we may decide to hand over Delhi to Punjab and Coorg and Ajmer-Merwara to their neighbouring States. This will result in some savings also. That is my proposal.

Shri Jainarain Vyas (Jodhpur State): Does he want also New Delhi to go to the Punjab?

Shri Mahabir Tyagi: Let it go to heavens.

Shri Mohan Lal Gautam (United Provinces: General): *[Mr. President, the issue regarding Delhi deserves a serious consideration. I do not think that there is any one in this Constituent Assembly who would like to confer less rights on one part of the country and more on another. It is plain, therefore, that no one here would wish to retain Chief Commissionership in any place. Retention of Chief Commissioner's rule in any part of the country would in

*[ ] Translation of Hindustani Speech.

effect mean a diminution of the rights of the people of that territory. We are, therefore, in complete agreement that the office of Chief Commissioner should not be retained anywhere. I have no doubt that the several Chief Commissioner's provinces that are in existence at present will be merged one by one with some territory or the other. But Delhi and more particularly New Delhi do not fall in this category for the circumstances governing a decision in their case are somewhat different. I, therefore, request the House that while considering the question relating to Delhi it should treat New Delhi and the countryside of Delhi as distinct entities by themselves. There can be no difference of opinion on the question that New Delhi, where three-fourth of the property belongs to the Government of India, where the Foreign Embassies are situated, which is the seat of the Government of India, should not be included in a petty province of some Lieutenant-Governor. At any rate I would not approve of any such proposal. Therefore you should, while considering this question, exclude New Delhi from your calculations. Once this is done the issue would be considerably simplified. I am therefore of the opinion that New Delhi should be separated and put under the direct administration of the Government of India, without any body having the right to interfere.

We can now take into consideration the question as to what is to be done with the rest". If you object be to develop the remaining territory suitably, do you think that a Lieutenant Governor's Province would be sufficiently big for doing so? Would it be in a position to secure the same rights to its people as are enjoyed by the people of the Governors' provinces? When the administration is under a Lieutenant Governor or the authority is divided between the Government of India and the Members of this House, the public will not have the same rights as are enjoyed by the adjoining provinces of the Punjab or the United Provinces.

The next question for consideration is whether 200 or 300 villages and a small city will be able to bear the financial burden of a Lieutenant Governor. It can be said emphatically that it cannot do so. The administration of this region would not therefore run efficiently. It is clear that the administration of such a small unit would not be able to function efficiently. It is thus plain that such a small unit cannot support its existence. The next solution that naturally occurs to the mind is its merger with a neighbouring province. So far as the United Provinces is concerned, Shri Deshbandhu has referred to the imperialism of the United Provinces and stated that it goes on absorbing territory after territory. I would like to state it plainly that United Provinces has no desire to absorb any territory within itself. If three small States have been merged with it, it is because they could not be merged with any other province. They were three islands in the United Provinces. When the question of Dholpur and Bharatpur arose, the President of our Provincial Congress Committee clearly stated that they should join Rajasthan. So the United Provinces can only consider such a case when there is no other solution. When no other Doctor can provide a cure, the United Provinces has to come to the rescue. The United Provinces is not prepared to consider the case prior to that. So you must leave aside the question of the United Provinces. It will be better if Shri Deshbandhu keeps apart the issue of Imperialism. Our Province does not want to impose any imperialism. The question we have at present to consider relates only to the part left after the separation of New Delhi. The other Province with which it can be merged is the Punjab. Pandit Thakur Das Bhargava has advanced so many historical and sentimental arguments to prove that from the historical and psychological point of view Delhi should be merged in Haryana of the East Punjab. But my arguments are somewhat different from his. I put this to you, have we or have we not to rehabilitate the East Punjab which has suffered most and which has not yet been rehabilitated so far in the last two years. It is your frontier province. We have to strengthen it.

[Shri Mohan Lal Gautam]

If that remains weak, our whole country will be weak. What [illegible] to rehabilitate her? First of all you give her a capital, give her a [illegible] her, Government can be established, which can become the seat of [illegible] Today the condition is such that Simla is the Capital of the Government of the Punjab, the ministers live in Jullundur, the University is at Amritsar and the College is at Ludhiana. How long will such conditions continue in the Punjab? If you want to rehabilitate the Punjab, her first need is a Capital, if you cannot provide her with a capital, you cannot rehabilitate her, and that will mean more delay and delay will mean that the whole Union will continue to have weak defences. Hence the first requirement is that the East Punjab should have a Capital, where her ministers can live, where it may have its own administration where it may have a university, where there may be centre of all her institutions. Formerly that centre was in Lahore and that has been cut off from her. Now there is no developed city in the Punjab, where they could build another Capital. If such a thing had happened in the United Provinces, it would have been a different thing, for the political life of the U.P. is not centred in one city. There is Kanpur along with Lucknow, and Benares along with Allahabad. If one city is cut off from her she can transfer her capital to the other. But this was not the case with the Punjab. There the whole of its political life was centred at Lahore. So Punjab has been a sufferer due to the cutting off of Lahore. So I propose that excluding New Delhi, the Delhi and the Civil Lines and all the villages should be merged with the East Punjab and the other proposal is that Punjab's Capital should shift to Delhi. I am suggesting this, for perhaps Shri Deshbandhu may like to merge the East Punjab in Delhi. You may merge the East Punjab in Delhi, and its capital could be located in the Civil Lines of Delhi, where the old Secretariat, the old Governor General's Lodge are situated, and you can provide a number of buildings there for the purpose. If Delhi becomes the capital, I think the rehabilitation of the East Punjab would have begun.]

Shri Deshbandhu Gupta: *[Why not combine the United Provinces, Delhi and the Punjab into one unit?]

Shri Mohanlal Gautam: *[I have no objection to that course if Mr. Deshbandhu would agree to adopt it and others also approve of it. But I am afraid that even Mr. Deshbandhu himself may not like to entertain this proposal for in the firm that I am proposing he would be the senior-most partner, but if the United Provinces is combined with Delhi, he would have to remain satisfied with being a junior partner therein, a prospect which I am afraid he would not welcome. But if he really likes the proposal, I cannot have any objection to it. If the interest of the country demands that Delhi be combined with the United Provinces and you also desire to accept this proposal I would most gladly accept it?

There is another cause for this. The main reason why I wish to suggest that Delhi should be capital of the Punjab, is that all the people who had to flee from Lahore have come to Delhi only. If there is any leadership anywhere in East Punjab, whether you view that from the standpoint of education or industry, banking or any other field, it is in Delhi at present. You would not find anywhere in East Punjab the like of what obtains in Delhi. All the big banks have moved to Delhi and they do not want to establish their branches in the East Punjab. All the big businessmen have shifted to Delhi and they do not want to leave this city. If Delhi is separated from the East Punjab, the latter would be deprived of its leadership.

*[ ] Translation of Hindustani speech.

I am therefore of the opinion that this issue should not be left to the Parliament, but should be settled here. The portion called New Delhi should be entirely separated and the rest should be amalgamated with the East Punjab and Delhi should become the Capital of the East Punjab.]

Chaudhri Ranbir Singh (East Punjab : General) : [Mr. President, it is, in my opinion, no use leaving this for the Union Parliament to decide. If a decision is taken about the future Constitutional set-up for Delhi, and if it be decided that old Delhi and its rural areas as also the Himachal Pradesh be merged with the Punjab, and a decision is also taken by Constituent Assembly about similar other small regions, I think it would facilitate the Drafting of a Constitution for the Centrally administered areas, and it would not be necessary in my opinion to leave this question for the Union Parliament to decide. We too had in view the same objective, which Mr. Gupta is aiming to realise. Our leader will see that it is fulfilled some day. We do wish that Delhi should be constituted as an autonomous province, but the fact is that the conditions obtaining at present do not admit of this course being adopted. I would request Mr. Gupta to wait patiently for some time more, just as he has waited so far patiently, for the materialization of his dream and I am sure his dream would be fulfilled one day.

In this connection I may point out that the United Provinces is a very big province. I think the people there cannot run the administration of such a big province with efficiency. Some day they will have to divide the province into two units. If that happens the neighbouring regions are sure to be joined with us. The Punjab also, in future, may be divided into two parts and I hope that when this happens its Hindi speaking areas will be joined to the divided part of United Province to form a unit. Thus two units would come into existence, that is, one Punjabi-speaking unit and a Hindi-speaking unit. In this way the demand that Mr. Gupta put forth here yesterday may be satisfied and his dream may materialise. But if Mr. Gupta does not accept my advice and persists in his demand for the formation of an autonomous province of Delhi, he may rest assured that his dream will ever remain a dream only. If his demand is conceded, we the Hindi-speaking people in Punjab will remain a perpetual minority there. I would, therefore, advise my friend Mr. Gupta that for common but effective he should demand that old Delhi and its rural areas should be merged with the Punjab. Once he takes the decision to follow this course he can urge his ideas through his daily journal, and I am confident that in that way he would be able to achieve complete success in his mission.

The second point that Mr. Gupta made here and which I do not want to repeat is that it is an undeniable fact that almost all the administrative Services of Delhi were manned by personnel loaned from the Punjab, and in particular this has ever been the case in regard to the Civil and Executive services of Delhi. Judicial appeals from Delhi Court go up even today to the Punjab High Court. The people of Delhi have to go to Simla for this purpose. But this is an inconvenience which we also have to put up with. But if the High Court were located at some other town, it is quite probable that the people of the distant districts, will be put to a greater an inconvenience as we suffer from.

Mr. Gupta referred here to one other point yesterday, which I would like to challenge. If on this matter, the opinion of the people of Delhi, of course excluding New Delhi, is taken, I claim that more than 60 to 70 per cent. of the people, I even hope that 80 to 90 per cent. of the people, will vote for Delhi being joined to East Punjab. About the rural areas of Delhi I can most emphatically say that the people of these areas would like their areas to be joined to the Districts of Rohtak, Gurgaon and Karnal. There is no doubt that

[ ] Translation of Hindustani speech.

[Chaudhri Ranbir Singh]

at least 99 per cent. of the people of the rural areas of Delhi would support such a proposal. So far as the question of Delhi proper is concerned, a Conference of the people of Delhi was held yesterday under the presidentship of Shri Thakur Das Bhargava and a resolution specially demanding the merger of Delhi into Punjab, at least for the purpose of ration, was adopted. I also attended this Conference and there too I put forward the demand that the regions of Hariyana and Delhi should be constituted into one unit. If for some reasons this cannot be done, then we demand that both the regions—Hariyana and Delhi should go to Punjab.

So far as the rural areas of Delhi are concerned I can most emphatically say that 99 per cent. of the people of these areas would favour the demand made by me.

Without taking any more time of the House I would conclude with the remark that the question of Delhi should be solved here. We need not leave this issue for the Parliament to decide, because it is certain that so far as Delhi proper is concerned it would be retained as a Centrally administered area. This question should, therefore, be decided here and should not be left over to the Parliament for decision. If the question of New Delhi is not brought in to complicate the matter it would be easy to take a decision, for then all cause for hesitation and indecision would have disappeared and decisions could be taken without any difficulty and according to the popular will. We need not therefore hold over this question for long. I think within these remaining eight or ten days of the current session of the Assembly we can take a decision on this matter. I agree with Mr. Gupta that it is better this question is decided by the Constituent Assembly.]

Mohd. Hifzur Rahman (United Provinces: Muslim): *[Mr. President, Dr Ambedkar's amendment regarding Delhi is worthy of our deep consideration After listening to the speeches so far made in the House, I realise its importance far more.

Delhi is the unfortunate province, which even after the achievement of freedom, has been denied democracy and the application of republican principles Today, after the country has become independent, we are not going any more to put up with that misfortune. Therefore, I think that Delhi, owing to its historical and political position, deserves to be made a separate province on a permanent footing. The difficulties that are said to lie in its way are not of much importance to me. Both Mr. Bhargava and Mr. Gautam, have repeatedly pleaded for the inclusion of Delhi into the Punjab on historical grounds. I fail to understand what are those historical grounds on which Delhi is regarded as a part of the Punjab. Hariyana was regarded a part of the Delhi province, but in the History of the Punjab Province Delhi has never been regarded as its part. I think that in its history Delhi has its own permanent place, and even today it occupies a high position. This is not a question of carving out small provinces; Delhi is unlike Ajmer-Merwara or Coorg. Their position is quite different, so far as population and importance is concerned. Delhi's position is quite different from that of the other Chief Commissioner's provinces. It is intolerable for Delhi to continue any more as a Chief Commissioner's province. Our experience of the Chief Commissioner's Advisory Council has been that it is no better than a farce or a plaything. But this does not mean that whenever the question of giving an independent status to Delhi province is raised it should be put off by saying in so many beautiful words that not Delhi, but East Punjab would be merged in Delhi, and that East Punjab would be regarded as a part of Delhi province. That would not change the real issue.

*[ ] Translation of Hindustani speech.

Sir, I would like to say that realising Delhi's importance East Punjab is trying to make Delhi its Capital, and to get Delhi merged with it. The United Provinces people say that they are not prepared for that. This refusal in itself is an admission that they are agreeable to that. This argument of theirs also shows that Delhi should be given the status of a province. Accordingly, I would tell you that Delhi had got the distinction and also capacity to give refuge to the emigrants of Lahore and the West Punjab, and it is also sheltering the trouble-stricken people of the United Provinces. Delhi's history shows that it has absorbed the influences of these two provinces of the Indian Union. But it does not mean that Delhi is a part of the Punjab or of the United Provinces. Delhi has got its permanent status like any other province. So far as I could understand, everyone is of opinion that Delhi should be made a separate province and it may not be made part of any other province.

The statement made by Honourable the Prime Minister the other day was reassuring to a great extent. But I do not think that Delhi need be separated from New Delhi. Delhi has got its own history, and we understand its difficulties as a Capital city, and I do not say that no safeguards may be provided to surmount those difficulties. I say that you may provide safeguards but New Delhi and Delhi, with its 200 or 300 villages, should be formed into a province—a separate province. Delhi must get the same rights and privileges, which are enjoyed by other provinces.

With regard to the question of leadership, that all the big leaders of the East Punjab are present at Delhi, I would say that not only of the Punjab but leaders from all over India are at Delhi now-a-days, and all of them gather together here. If the leaders of the Punjab reside here then it does not mean that Delhi should be made capital of the Punjab. Delhi has got its own history and nothing can be said against that. Take the example of Washington; although it is the capital of U.S.A. even then it has got all the privileges which are enjoyed by any other town. If it not be the case in Washington, there is the example of other European Capital cities, which enjoy the status of a separate province. Delhi also clamours for the same status; it does not want to be under an advisory Committee. It cannot accept the present system of election. Delhi should also get the same right of vote, which other provinces have got. It should also get the same freedom which is enjoyed by other provinces.

Delhi should get the same freedom and a High Court, as U.P. or Punjab have got. Delhi should get equal freedom and equal democratic privileges with other provinces. This can no more be tolerated that Delhi is a part of U.P. or Punjab. As I have said earlier, Delhi has got its own position, and it should get the same privileges which have been given to other provinces. It is not right to say that Delhi should be merged with the East Punjab, and therefore I would say that the position of Delhi should be cleared here and now.

Whatever Lala Deshbandhu Saheb has said, he has said in the capacity of a representative. He is the representative of Delhi. And whatever he said yesterday was on behalf of the whole public of Delhi. That is the voice of Delhi—the opinion of the entire citizens of Delhi. Therefore, I would like to submit that this question which is being raised is not a proper one. And I want to say that in view of the conditions prevailing in Delhi, in view of the history of Delhi and in view of the opinion of the people of Delhi, you ought to give Delhi the status of an independent province and let it enjoy all the privileges of democracy. Do not consider it a part of the East Punjab. And do not keep it under the Advisory Committee. Decide this matter here and now. The special committee which was formed has decided with unanimity that Delhi should be given the status of an independent province and it should be given the same independence which is given to other provinces. I fail to understand why this

[Mohd. Hifzur Rahman]

thing has been overlooked, and why the Drafting Committee did not take notice of it. If you still want that the decision of this Special Committee should materialise, it is not too late; I should say, better late than never.

If this matter is to be put up before the Parliament, it should be done and some decision should be sought. This matter should be clarified. A plan should be chalked out, in which it should be mentioned what type of independence would be given to Delhi. In connection with this discussion about Delhi, it is to my mind a useless thing to say that somebody is anxious to get a ministership. In these days of democracy every province, be it small or big, wants its independence and is always trying to attain it. To say about any one who wants his independence that he is doing this for his ministership is not proper and it cannot be tolerated. And if any one takes interest in such matters it does not at all mean that he is desirous of ministership. If any one was tied down in this manner during the British regime and his independence transferred to the Central Government, it cannot be tolerated in Free India these days. You ought to prepare a plan for it, and if necessary it should be discussed in the Parliament. But I would submit that this problem should be solved here. And it should not be forgotten that Delhi is neither a part of the East Punjab nor of U.P. I shall once more say that Delhi has got its own history and it possesses an independent entity. It should get back its independence. Delhi should get back its right which has been in abeyance since the days of Rajas and Kings. By doing so you can keep your present democracy firm. In the same way as other Provinces, namely the Punjab, U.P. and Madras are today in possession of complete independence and are not like toys in the hands of Chief Commissioners, Delhi should also get its right.

In so far as civil service is concerned, you know it has been divided in two parts. One half of the personnel is taken from the Punjab and the other half from the U.P. If it is a Capital, this should not be done. Personnel should be recruited from various civil services, so that they could carry on their administration. At present you recruit one half from the Punjab and the other half from the U.P. Does it mean that men from Delhi cannot carry on the administration? If you maintain this division for the reason that men only from these Provinces can perform the best services, then this means that with the exception of the Punjab and the U.P. men of other provinces, cannot do this job. I say Delhi cannot tolerate this. Therefore, I would like to submit that like other Provinces Delhi also should be a separate Province and given such rights which are enjoyed by other provinces. Delhi consists of at least three hundred villages and both New and Old Delhi are included in it. So I would like to request you to make Delhi an entirely separate and independent Province.]

Mr. President: Babu Ram Narayan Singh.

Mr. Tajamul Husain (Bihar: Muslim): Sir, I move that the question be now put. We have had enough discussion.

Mr. President: I have already called one honourable Member.

Shri Ram Narayan Singh (Bihar: General): Mr. President, My Friend Mr. Tajamul Husain says that I have no concern with Delhi and that I should not speak about Delhi. The fact is that Delhi is the Capital of the country and representatives from all over India have come here. We may not be deriving any monetary benefit from Delhi, and it may be that we may not be living on the cereal produce of Delhi, but there cannot be any doubt that we at least drink the water and breath the air of Delhi. In view of this it is the duty of the Members here to see that if they cannot secure anything better for

Delhi they must at least see that justice is done to her. Besides, Delhi being the Capital of India people from all parts of the country continue coming into or going out of Delhi. Therefore, we should establish here an administrative set-up that may produce a salutary effect on the whole of the country. In view of this, it is our duty to set up, after giving careful consideration to the matter, such an administration in Delhi that may serve as a model for India and the world. The representatives from East Punjab claim that Delhi should go to them and those from the U.P. demand that it should be merged with their province. I am pained to hear such things here. The Central Government, however, holds that Delhi should be a 'centrally administered area'. I fail to understand whether all this is said with regard to the land and bricks of Delhi, or with regard to its people. When we talk of justice and democracy it would not be proper for us to merge Delhi into the Punjab or the U.P., because the people of these provinces demand this. But at the same time it should not also remain under the direct administration of the Central Government. How can the idea of keeping Delhi a subject region be entertained or supported at all? The question involved is one of self-government. Naturally, therefore, we should find out what the people of Delhi really desire, Mr. Deshbandhu Gupta is representing the people of Delhi here, and we can learn from him what the people of Delhi really demand. But if you are not prepared to accept that he correctly represents Delhi in this House, I can understand it. But then you must ascertain the wishes of the people of Delhi by holding a public meeting or a plebiscite, and you must proceed to make the constitutional arrangement for Delhi in accordance with the opinion of the people, an opinion, ascertained in the manner just now stated by me.

I would like to add one thing more in this connection. It is that nothing in this connection should be done on the basis of the opinion of some big or small personalities of some big organisation. Justice demands that democratic government should be established in Delhi in accordance with the desire of its people.

Mr. President: The question is:

"That the question be now put"

The motion was negatived.

Mr. President: Mr. B. Das

Shri K. M. Munshi (Bombay: General): Sir, I am afraid the House did not understand what the question was. Many Members on this side say that they did not hear the question.

Mr. President: You may move again.

Shri B. Das (Orissa: General): Sir, I support the amendment moved by Dr Ambedkar and I oppose the amendment sponsored by Shri Deshbandhu Gupta and Pandit Thakurdas Bhargava. I support Dr. Ambedkar's amendment on principle only but I do not accept at present what will be the provinces that should be administered by the Centre. Let this House decide it at a subsequent stage. I am surprised that astute lawyers like Pandit Bhargava and Deshbandhu Gupta sponsored such an amendment and they want safeguards, special privileges reserved for small petty areas like Delhi, Ajmer-Merwara, and Panth-Piploda in the Council of State or in the Central Parliament. That is not democracy and that is not expected of Pandit Bhargava.

However, if I can give out my views as to which should be Centrally administered areas, I consider only the Andaman and Nicobar Islands should

[Shri B. Das]

have to be maintained as a Centrally administered [illegible] of India and because it is going to be a place where [illegible] will settle down. Delhi, Ajmer Merwara, Coorg [illegible] created by the foreign rules to maintain their rule [illegible] remember Delhi for the last thirty two years [illegible] Old Delhi.

Shri Deshbandhu Gupta: You have forgotten [illegible]

Shri B. Das: You were not in Delhi then. Old Delhi [illegible] to give honours and respects and parties to the foreign rulers that lived in New Delhi and also in Old Delhi. Does my friend want to perpetuate that sort of slavery to the officialdom? Why should Delhi be cried for a province. It is part of the United Provinces. In culture, in ideology [illegible] as the Allahabad or Lucknow. It should not become [illegible] Why should Delhi be claimed by East Punjab? The Delhi [illegible] culture of U.P.

Shri Deshbandhu Gupta: U.P. culture is the culture of Delhi.

Shri B. Das: Then go to U.P. I was pleased to read the [illegible] last evening in the "Evening News" in which Right Angle wrote:

> "New Delhi may still be saved from the ignominy [illegible] Chief Minister has valiantly decided to resist it by [illegible] be purely under the Central Government."

Then it says further:

> "Municipal councillors with Chandni Chowk [illegible] with its affairs even if one of them [illegible] Governor and some others [illegible]"

It is the standard of municipal administration [illegible] authorities that I have seen for the last thirty two [illegible] always ashamed that Delhi is so subservient. My [illegible] from New Delhi and merged in U.P.

East Punjab must build up its own culture and its own [illegible] are afraid and they want something for nothing. They do not [illegible] build their High Court and Capital town and their Ministers remain awe in Simla. Why should they not come down and build their own standard of life and civilization at Chandigarh? They cannot expect that Delhi should be given to them so that they get something for nothing without any effort. Two years have passed and East Punjab people have made no efforts to build up their Capital for which I condemn the people of East Punjab and the Ministry.

As for Ajmer-Merwara it was maintained to over-awe the mighty monarchs of Rajasthan. The moment the union of Rajasthan was decided, Ajmer Merwara including Panth-Piploda ought to have been merged with Rajasthan and it should be the whole-time or part-time capital of Rajasthan. Instead, the anachronism is going on.

As for Coorg, its 40,000 people rule the administrations of India and Mysore and they occupy highest posts in the Madras Government too. Coorg provides most of our Army generals—the Cariappas, the Thimmayas and most of army officers. Coorg was maintained for European planters. Is this House of democracy going to perpetuate it? Coorg must go to Mysore State as it is part of Mysore in culture and in ethnical relations. It is high time Coorg is merged with Mysore.

One thing I must say in defence of Coorg. Coorg does not receive any charity from Centre. Delhi which had a population of 6 lakhs in 1936—though Lala Deshbandhu Gupta said yesterday it is now twenty lakhs being uprooted people from Frontier province, West Punjab and East Punjab—includes only 700 villages and receives a subsidy of 1½ crores, annually from the Centre. We are not concerned with the transitory population. My Friend Lala Deshbandhu Gupta will admit that Rs. 1½ crores grants-in-aid does not include the subsidies that are given to numerous refugee camps. Further, Delhi received 3½ crores in capital grant. Why should the Centre finance Delhi with these abnormal grants when none else get it and how can even twenty lakhs of people demand a province? Let them go with the United Provinces, if they want their culture. Their representative Lala Deshbandhu Gupta is a Punjabi by birth and perhaps he likes to have his Hariana province. I knew Hariana cows but I only heard of Hariana province in the days of Round Table Conference when some veterans of Punjab wanted to separate from West Punjab and have a Hariana province by taking one or two divisions from U.P. That question has now been settled by act of God- by Partition. Now there is no question of Hariana province. Culturally I maintain Delhi must go to U.P. Yesterday our Premier made a statement and reminded the House and my Friend Sjt. Gupta that changes have occurred. Then what is the special reason adduced by Sjt. Gupta to create a separate Lieut-Governor's province for Delhi? You have done away with all reservations and special privileges.

Shri Deshbandhu Gupta: Because you are denying the ordinary privileges to the people of Delhi.

Shri B. Das: No, those privileges were denied to them by their former masters. The question today is that all of us should enjoy equal privileges, and the right thing for you is to merge in the United Provinces. Sir, this is not a mere question of supporting the amendment of Dr. Ambedkar. His, Honour is getting committed to financial subventions and Centrally administered areas will have to be maintained at a decent level of administration. But as I have said before, the only Centrally administered area will be the Andaman and Nicobar Islands, and their representative in both Houses of Parliament will be the Home Minister under whom that Centrally administered area will.....

Shri Brajeshwar Prasad (Bihar: General): On a point of order, Sir, we are discussing Part VII of the Constitution and not dealing with the Islands of Andaman and Nicobar.

Mr. President: The honourable Member is not really discussing the Andaman and Nicobar Islands but Delhi, Ajmer Merwara and other provinces.

Shri B. Das: My Friend Sjt. Brajeshwar Prasad will find that in one year's time there will be no other Centrally administered area than those two groups of islands that I have mentioned. We are discussing the constitutional position of Centrally administered areas, and I hope the House will have the wisdom to see that there remains no other Centrally administered area except the Andaman and Nicobar Islands.

Mr. Nazimuddin Ahmad (West Bengal: Muslim): Mr. President, Sir, the small question has raised practically a storm in the House. We must, however consider the matter from the practical point of view. There are two opposite suggestions placed before the House. One is that Delhi should be taken away and amalgamated with East Punjab. The contrary suggestion is that East Punjab should be amalgamated with Delhi. I submit that the question really is the same.

[Mr. Naziruddin Ahmad]

and so much controversy should not have arisen. It is just like posing the question as to whether the husband should marry the wife or the wife should marry the husband. I think, Sir, that the question should be left at that.

I submit that the question should be looked at from a practical point of view. Delhi, Old and New, have associations of thousands of years and it is the seat of the Government of India. Here are located a large number of Ambassadors and foreign representatives. Here the Dominion Legislature and the Houses of Parliament will sit and a large number of members will stay, and if these two cities, Old and New Delhi, are amalgamated with some neighbouring province, it may be that the seat of that Government will be removed and the difficulty would be that the Central Government and the high foreign and local officials and members of Parliament will find it highly embarrassing to look for everything to a Provincial Authority away from the Centre. My suggestion, therefore, would be this: Delhi Province should be divided into three parts. The villages to the east of Jumna should be made over to the U.P. That would be geographically a very sound thing. And then the Provincial boundary will be the river Jumna—a very natural boundary. So far as the other villages are concerned near about Delhi, they should be amalgamated with East Punjab. But so far as the two cities are concerned, they should be combined into a Union City, run by a Corporation. There may be small units of municipal bodies here and there but on the whole, there should be a Corporation. In fact, Old and New Delhi should be treated entirely separately and not as a part of a Provincial area.

Shri T. T. Krishnamachari (Madras: General): Sir, the question may now be put.

Mr. President: The question is:

"That the question be now put."

The motion was adopted.

Mr. President: I will now put the amendments to vote. The first one is No. 46, moved by Professor Saksena.

The question is:

"That in amendment No. 45 above, in clause (1) of the proposed article 213, the words 'Notwithstanding anything contained in this Constitution' be deleted."

Shri Deshbandhu Gupta: Sir, before the amendments are put to vote, I would request you to allow Dr. Ambedkar to give his reply to the debate.

Mr. President: I am sorry I forgot to ask Dr. Ambedkar to reply to the debate. If Dr. Ambedkar wishes to say anything, he is welcome to do so. I will put the amendment to vote, once again.

Shri T. T. Krishnamachari: In fact the Prime Minister has practically replied to the debate, yesterday.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, with regard to the amendment moved by my Friend Lala Deshbandhu Gupta, I am quite certain that this is not the place where the amendment properly come in. The amendment also raises a question of principle, namely, that it provides for a weightage in representation to certain areas. Now, the House will remember that at one stage, this question of weightage in representation was debated at considerable length and the House accepted the principle that weightage should not be allowed. However, I might say that by reason of article 67 where certain

principles of representation are laid down, it might be possible that if some territories of India are unable to obtain even a single representative by reason of the rule, we will have to make some special provision. We cannot allow by reason of a mathematical rule to deprive any territory of representation in the State. In that connection, this matter may have to be considered, and I can say at this stage that when such areas are brought into existence, and the Drafting Committee is called upon to make some provisions with regard to their representation, then the whole matter might be examined and a fresh article, something after article 67, say article 67-A, might be incorporated. Beyond that, I cannot at this stage, say anything more.

Mr. President: I will put the amendment to vote now. As I said, I will put Professor Shibban Lal Saksena's amendment to vote again.

The question is:

"That in amendment No. 45 above, in clause (1) of the proposed article 213, the words 'Notwithstanding anything contained in this Constitution' be deleted"

I think the Noes have it.

Shri Mahavir Tyagi: Sir, there seems to be some misunderstanding. The question may again be put.

Mr. President: Yes, there seems to be some misunderstanding. I shall put the question once more:

The question is:

"That in amendment No. 45 above, in clause (1) of the proposed article 213, the words 'Notwithstanding anything contained in this Constitution' be deleted."

I think the Ayes have it.

The amendment was adopted

Mr. President: Then I will put Mr. Deshbandhu Gupta's amendment to vote

Shri Deshbandhu Gupta: In view of the statement made by the Honourable the Prime Minister yesterday and by Dr. Ambedkar today, I do not press my amendment at this stage. I hope necessary provision will be made at the proper time when article 67 is revised.

Mr. President: Has the honourable Member the leave of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I will put article 213 as amended by Mr. Shibban Lal Saksena's amendment, to vote.

The question is:

"That article 213, as amended, stand part of the Constitution"

The motion was adopted.

Article 213, as amended, was added to the Constitution

Article 213—A

Mr. President: Then we go to article 213-A

The Honourable Dr. B. R. Ambedkar: Sir, I move

'That after article 213, the following new article be inserted

High Courts for States in Part II of the First Schedule

'213 (1) Parliament may by law constitute a High Court for a State for the time being specified in Part II of the First Schedule or declare any Court in any such State to be a High Court for the purposes of this Constitution

(2) The provisions of Chapter VII of Part VI of this Constitution shall apply in relation to every High Court referred to in clause (1) of this article as they apply in relation to a High Court referred to in article 191 of this Constitution subject to such modifications or exceptions as Parliament may by law provide

(3) Subject to the provisions of this Constitution and to any provisions of any law of the appropriate Legislature made by virtue of the powers conferred on the Legislature by or under this Constitution every High Court exercising jurisdiction immediately before the commencement of this Constitution in relation to any State for the time being specified in Part II of the First Schedule or any area included therein shall continue to exercise such jurisdiction in relation to that State or area after such commencement

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court in any State for the time being specified in Part I or Part III of the First Schedule to, or from, any State for the time being specified in Part II of that Schedule or any area included within that State'

Sir, it will be remembered that when the House discussed the constitution of States in Part I, it was decided that every State should have a High Court State in Part II are also States; consequently the provision which applies to States in Part I, namely, that each State should have an independent High Court, must also apply to States in Part II. Unfortunately, this provision had not been made in the Draft as it stands now. Consequently it has become necessary to introduce this article 213-A in order to provide that even in States included in Part II there shall be a High Court, or if there is a High Court that High Court shall be treated as a High Court. Provision is also made in clause (3) of this article that if there is no High Court and if it is not possible to create a High Court exclusively for any particular area included in States in Part II, it will be open for Parliament to declare that a certain other Court situated in any adjacent area may be treated as a High Court for purposes of that particular area. That is the purpose of this article.

Mr. President: There is no amendment to this article. Does anyone wish to say anything on it? Then I shall put it to vote.

The question is :

"That new article 213-A stand part of the Constitution."

The motion was adopted.

Article 213-A, was added to the Constitution.

Article 214

Mr. President: Article 214. There is an amendment by Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: Sir, I am not moving my amendments.

Mr. President: Then we will take up amendment No 52 standing in the name of Dr Ambedkar

The Honourable Dr. B. R. Ambedkar: Sir, I move

"That with reference to amendment No 2728 of the List of Amendments for article 214, the following article be substituted -

'214 (1) Until Parliament by law otherwise provides the constitution, powers and functions of the Coorg Legislative Council shall be the same as they were immediately before the commencement of this Constitution

(2) The arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall, until other provision is made in this behalf by the President by order continue unchanged' '

There is nothing new in this article except that the two parts in this are separate while they were lumped together in the original article

Mr. President: Then amendment No 142 standing in the name of Shri Brajeshwar Prasad

Shri Brajeshwar Prasad: Sir, I am not moving it

Mr. President: Then there are amendments Nos 181 and 190 standing in the name of Prof. Shibban Lal Saksena He is not present in the House.

There are no other amendments to article 214 Does anybody wish to say anything about this article?

I will put the article to vote. The question is

"That proposed article 214 stand part of the Constitution'

The motion was adopted.

Article 214, was added to the Constitution

Article 275

Mr. President: Then we go to article 275 Amendment No 111, Dr Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move .

"That for article 275, the following article be substituted :—

'275 (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

Proclamation of Emergency

(2) A Proclamation issued under clause (1) of this article (in this Constitution referred to as 'a Proclamation of Emergency')—

(a) may be revoked by a subsequent Proclamation,

(b) shall be laid before each House of Parliament,

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament;

[Dr. B. R. Ambedkar]

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (a) of this clause and the Proclamation has not been approved by resolutions of both Houses of Parliament before the expiration of that period the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(3) A Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof."

This article is virtually the old article 275 as it stands in the Draft Constitution. The changes which are made by this amendment are very few. The first change that is made is in clause (1). The original words were "war or domestic violence". The present clause as amended would read as "war or external aggression, or internal disturbance." It was thought that it was much better to use these words rather than the word "domestic violence" because it may exclude external aggression, which is not actually war, or less than war.

The second change that is introduced is in sub-clause (a) of clause (2). Originally it was provided that the Proclamation shall cease to operate at the expiration of six months. It is now proposed that it should cease to operate at the expiration of two months. Six months was felt to be too long a period.

The proviso is also a new one and it provides for a case where the Proclamation is issued when the House of the People is dissolved or the Proclamation is issued during the dissolution. The provision contained in the new proviso is that if the Proclamation is issued when the House has been dissolved, or between the dissolution of the old House and the election of the new House, then the new House may ratify it within thirty days.

The last clause is self-explanatory and it merely provides what I think is the intention of clause (1) that even though there is not the actual occurrence, if the President thinks that there is an imminent danger of it, he can act under the provisions of this article.

Shri Brajeshwar Prasad: I do not wish to move any of the amendments standing in my name.

Shri H. V. Kamath (C.P. & Berar: General): Sir, may I move the amendments standing in my name all at once, because there are some in the printed list as well?

Mr. President: But is it necessary to move them now?

Shri H. V. Kamath: The new article, except for certain portions, is the same as the old one, with the result that some of the amendments in the Printed List are relevant.

Mr. President: No. 2989 is only a verbal one; so also No. 2990, No. 2991 does not arise.

Shri H. V. Kamath: I do not propose to move 2994 and 2995.

Sir, I move :

"That in sub-clause (a) of clause (2) of article 275, after the words 'may be revoked' the words 'or varied' be inserted."

Then I come to List II, Second Week.

I move, Sir :

"That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 275, after the word 'President' the words 'acting upon the advice of his Council of Ministers' be inserted."

Sir, I move :

"That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (3) of the proposed article 275, the words 'by war or by external aggression or' be deleted."

Sir, I move :

"That in amendment No. 111 of List I (Second Week) of Amendment to Amendments, in clause (3) of the proposed article 275, for the words 'occurrence of war or of any such aggression or disturbance' the words 'occurrence of such disturbance' be substituted."

Before proceeding with these amendments, Sir, you will kindly permit me to make a few general observations on this very important article 275. I have ransacked most of the constitutions of democratic countries of the world —monarchic or republican— and I find no parallel to this Chapter of emergency provisions in any of the other constitutions of democratic countries in the world.

The closest approximation, to my mind, is reached in the Weimar Constitution of the Third Reich which was destroyed by Hitler taking advantage of the very same provisions contained in that constitution. That Weimar Constitution of the Third Republic exists no longer and has been replaced by the Bonn Constitution. But those emergency provisions pale into insignificance when compared with the emergency provisions in this chapter of our Constitution. I urge therefore that this House should bestow its earnest consideration and mature judgment and all its wisdom on consideration of this chapter. The chapter as it proceeds to its grand finale annuls to a very large extent even the fundamental rights conferred by part III of the Constitution. I shall deal with it anon when that article is reached; for the present we are concerned with this article 275.

As Dr. Ambedkar remarked, there have been two or three changes made in the Draft now before the House. The first is that besides "war" the words "external aggression" also have been inserted. It is possible in these days, when guns go off even without a formal declaration of war, that there may be external aggression without actual declaration of war. The second world war began in that fashion. Hitler did not declare war on Poland, but subsequently however Chamberlain declared war on Germany. The war in China waged by Japan since 1931 was also an undeclared war. Therefore this proposed change is very necessary and the trends of the modern world perhaps justify it, because war today can be distinct from external aggression. So it is, to my mind, necessary.

The second change refers to time-limit. Whereas the original article 275 restricted the operation of this proclamation of emergency to six months, it has now been reduced to two months. In the light of that I have not moved my amendment which sought to restrict it to six weeks.

The other changes are of a minor nature; for instance, "domestic violence" is replaced by "internal disturbances".

[Shri H. V. Kamath]

Coming to the provisions of this new Part [illegible] my amendments seriatim, one by one. My first amendment seeks to change in sub-clause (a) of clause (2) of this article, which refers only to the revocation of the Proclamation. It is conceivable that circumstances may so change that a Proclamation may not completely be revoked but may be varied in a certain manner. Therefore to my mind it will be more comprehensive to include a variation along with one of revocation.

My next amendment (No. 147) deals with [illegible] point to which I wish to draw the earnest attention of the House. The draft article lays down that if the President is satisfied he might issue a Proclamation of emergency. Sir, when this House was discussing article 102 which dealt with the Ordinance making power of the President, you, Sir, raised a very vital point as to whether under this Constitution the President would be bound by the advice of the Council of Ministers. The Constitution provides for the President a Council of Ministers to aid and advise him in the exercise of his functions, but there is no injunction laid upon him to accept their advice. In reply to that Dr. Ambedkar observed that that matter would be gone into by the Drafting Committee and suitable changes would be made, but up till now, so far as I know, no changes in that direction have been brought before the House. Therefore that lacuna still exists today this new article invests the President with an extraordinary power which, as I said before, finds no parallel to the powers exercised by the executive head nominal, figure-head, titular or otherwise—of any other democratic State in the world, monarchic or republican. Therefore this safeguard is to my mind absolutely necessary. The President must not act on his own but must consult his Council of Ministers and act upon their advice. If they advise him that such a grave emergency has arisen, then only should he be empowered by the Constitution to issue a Proclamation to that effect. He must not be invested with the sole and absolute right to issue a Proclamation by merely stating that he is satisfied, etc. This is not a mere academic point. This is a moot point. It is conceivable—God forbid that such a thing should arise—that the President and the Council of Ministers may not be seeing eye to eye with each other on various matters; there may be friction between them and the President may act on his own in the event of an emergency, without consulting his Council of Ministers. If that should happen, I shudder to think of what might befall our country. If the President goes ahead setting at naught the Council of Ministers, then the way will be paved for, firstly, a dictatorship and then perhaps to revolts and revolutions and things of that kind. It has been recognised by students of politics that the very provisions in the Weimar Constitution of the Third Republic of Germany giving extensive powers to the executive, coupled with the use made of the power of dissolution, contributed to the rise of Herr Hitler and paved the way to his dictatorship, resulting in what we all know. Compared to that article 48 of the Weimar Constitution, the provisions we are making under Chapter XI are far more drastic. I therefore earnestly appeal that this Chapter should not be passed in a hurry. It should be amended in such a way that not merely the liberty of the individual, but also the freedom and powers of the constituent units are not unduly suppressed. We should alter and revise the Chapter so as to see that the liberties guaranteed in this Constitution are real.

Then, Sir, in passing, I would like to make one observation. In this Constitution we have already provided for the ordinance-making power of the President. When Parliament is not in session the President has been empowered to issue ordinances if he is satisfied that the circumstances so require. Now I want to show how such powers can be abused. We, in good faith, pass certain articles giving certain powers hoping that they will be rightly used:

but in connection with this ordinance-making power, a couple of days ago, a certain thing happened which, from my meagre knowledge of the provisions in the Government of India Act as adapted, is an abuse of the power vested in the Governor-General. Now I am not speaking of the merits of the particular Ordinance. The Ordinance for the Recovery of Abducted Persons was repromulgated on Sunday last, two days ago. Here I would invite your attention to the Government of India Act as adapted by the India Order of 1947. The relevant section concerning ordinance-making does not provide for the re-promulgation of an Ordinance before the date of its expiry. The Ordinance expired last Sunday; but the day before, that is, Saturday, a Press Note was issued to the effect that the Ordinance will be extended from Sunday itself and that too when the Assembly was in session. So far as the Constituent Assembly is concerned, the India Act makes no difference whether it functions as a Constitution-making body or as a legislature. Therefore it would have been in the fitness of things if that Ordinance had been brought before this Assembly sitting as the legislature for a day for the purpose of considering that Ordinance. If that had been done it would have been far better than this re-promulgation. This, Sir, is one of those instances which show how powers conferred can be misused, have been misused and will be misused. We must, as far as possible provide for safeguards against the abuse of power by Governments or organisations.

Then I come to the next amendment of mine, *viz.*, 154 of List II of Second Week. It relates to clause 3 of the proposed article 275, amendment No. 111 moved by Dr. Ambedkar. This amendment must be read with amendment 156 They go together. If these two are accepted, this clause (3) would read as follows :—

> "A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by internal disturbance may be made before the actual occurrence of such disturbance if the President is satisfied that there is imminent danger thereof."

The object of these two amendments 154 and 156 is to make a distinction between war and external aggression on one hand and internal disturbances on the other. If the article with clause (3) as moved by Dr. Ambedkar were to remain, will it not be competent for the President, even acting within the four walls of the Constitution, to proclaim an emergency when there is no war actually and there is only preparation for war and rumours of war? Modern wars in this century have been replete with such preparations for war. Even today you can say that war is imminent. Who dare say that war cannot break out any moment? If we look at the way things are developing in Europe and in America, the danger of war seems to increase *pari pasu* with the years. Supposing then, a President has been installed in office who has got a lust for power and he wants to exercise it without regard for the interests of the State or the people? We have not, as it is, provided any safeguard that he shall be bound to accept the advice of his Council of Ministers. Though there will be a Cabinet to aid him, nowhere have we laid down that he must accept the advice of the Council of Ministers. If that safeguard goes, the President may take it into his head "I have got this power. Who can stand in my way"? There will not be any check on him. Today even if a man in the street says that war will perhaps break out shortly, nobody can say 'No' to it. Therefore if this article is passed as it is today, the President can very well take advantage, unfair advantage, or abuse of the power vested in him and proclaim an emergency when there is no actual war, just because he wants to abrogate to set at naught, to nullify, to destroy the Constitution of the State. Are we, sitting in this House as representatives of a democratic country, prepared to face a situation like that where the President might be in a position to subvert the Constitution? We are all talking of subversive elements. Let us remember that a Constitution can be subverted not merely by agitators, rebels and revolu-

tionaries, but also by people in office, by people in power. That is why, Sir, these amendments of mine deserve support. They are Nos. 147, 151 and 156. The first seeks to make it obligatory on the President to act on the advice of his Cabinet, and the other two amendments do not vest the power of issuing a proclamation of emergency when there is no actual war or aggression. The President cannot say, "There is a prospect of war breaking out in the Far East or in Europe or America. Therefore I feel that a state of emergency exists. Somebody is making preparations for war not far from our borders". It is true we have no enemies but other States may regard us as their enemies. As we pass into the second half of the twentieth century, the world situation may worsen may aggravate so far as war is concerned. We are making a Constitution which will be promulgated in the last year of the first half of this century, and we will enter upon our life as a Republic in the second half of this century, a period to my mind pregnant with possibilities, pregnant with dangers, but pregnant also with great hope and good faith. Sir, let us beware of the dangers and pitfalls in our path. Let us see to it that the Constitution that we are framing to-day is honoured, is observed and not subverted, not merely by agitators, rebels and revolutionaries but also by those in office or in power.

One word, more Sir, with regard to the last two amendments, Nos. 154 and 156. It is, as I said, difficult for the President, a human President, who is guided by human intellect, to judge solo, for himself, as to whether there is imminence of internal disturbance that would warrant the issue of a proclamation. Have we not vested enough power in the States, so as to avert any danger to the States by internal disturbance? We have got adequate police forces. We have always proclaimed from the house-tops that the military will not ordinarily be used to quell any internal disorder. The army is there to fulfil its traditional function of fighting external aggression. We have got police forces specially meant to put down internal disorder. If that be so, why then, when there is imminence of any disturbance which is referred to in clause (3) of this article, should the President be empowered to issue a proclamation merely because he is satisfied that disturbance is imminent? After a disturbance breaks out, and the contagion spreads out, then I can appreciate that the security, peace and tranquility of India might be jeopardised. But a riot may break out somewhere in a small State. Why should the President take upon himself the responsibility of issuing a proclamation of emergency, when the Constitution does not lay down that he will be guided by the advice of his Cabinet? I think that in these matters the power vested in the Governors, in the Cabinets of the constituent units, is sufficient. I therefore feel that clause (3) as a whole is a very unwise provision and I shall be happy if this clause is deleted. If not, I would be grateful to the House if after mature consideration they agree with me that the President must be invested with this power only when there is imminent danger of internal disturbance, and not when there is an imminence or fear of an outbreak of war or external aggression, because that is a contingency which nobody can assess, which human ingenuity cannot foresee with any degree of finality. Preparation for war may be there but there may not be any imminent danger of war. There may be thunder and lightning, but rain does not necessarily follow every thunderclap that we may hear. There is a sloka in Sanskrit which brings out this idea beautifully.

अंबोधा बहवो वसन्ति गगने सर्वेऽपि नैतादृशा ।
केचिद वृष्टिभिरार्द्रयन्ति धरणीं गर्जन्ति केचिद् वृथा ।

Ambodha Bahavo Vasanti Gagane Sarve pi Naitadrishah.,
Kechid Vrishtibhir ardrayanti Dharaneem. Garjanti Kechid Vritha.

You may hear speeches made by statesmen or others, speeches of warmongering, sabre-rattling, but that is not out-break of war. In those circumstances, it is unwise, it is contrary to the spirit of our Constitution to invest the President with such wide, sweeping powers to which, in my judgment, there is no parallel in any other democratic constitution of the world. I commend my various amendments for the serious consideration of the House.

Mr. President: There are certain other amendments to this article. No. 2996 by Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru (United Provinces: General): In view of the revised Draft, I do not wish to move that amendment.

(Amendments Nos. 2997, 3000 and 3001 were not moved.)

Mr. President: All the amendments have been moved. Now the article and the amendments are open to discussion.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, I have very carefully listened to the speech of my honourable Friend, Mr. Kamath, on this important article about the emergency powers of the President. In fact this section seems to be frightful and it seems as if the President becomes an autocrat under this article; but after reading articles 276 and 277, I do not find there is any real apprehension for such a fear. Article 276 only provides that in this emergency the Union executive shall have power to give directives to the executives of the States and that the Union Parliament shall have powers of legislation over those subjects which are the close preserve of the provinces or the States. Article 277 only gives rights to the President and the executive to take powers in regard to financial matters provided for in articles 249 to 259. If this article had said, as article 276 has said that the operation of all the provisions of the Constitution shall be suspended and the powers of the executive of the State shall be vested in the President, of course, then there would have been some reason to oppose this article. I think our own experience in the last war has been that the war could not have been prosecuted unless the Centre had the power to make the provinces fall into line with it. There was a big famine in Bengal because the Centre had not enough powers to interfere in food arrangements in the province. I therefore think that, particularly today when our democracy is a nascent democracy, we should vest the Centre at least with these limited powers in an emergency. I personally feel that already the article is fairly moderate, the powers of the Union executive as well as Parliament are only concurrent with those of the State legislatures and if there is a war or any internal insurrection or something like that, then these powers will be the minimum that the Centre must have. We have been always fighting for a strong Centre. I think this article gives you what we have wanted so far. We will have a strong Centre and in an emergency we shall be able to make a declaration of emergency for the welfare and the defence of the State. I do not think any person who takes the present position of the country into account can oppose this article. I have my doubts about article 278 and the powers taken therein; but about articles 275, 276 and 277, I am sure nobody can have any objection, because they have been very carefully drafted and no change is necessary. My honourable Friend, Mr. Kamath quoted the Constitution of Germany, the Third Reich, but probably that he could have said about article 278 and not about this article. This does not give the Centre that power which the Weimar Constitution gave to the Centre in that Constitution. Here we have got only the essential power required to carry on the administration when there is a war on or where there is an internal insurrection. I do not think any Central Government can carry on and can defend the country if it is not armed at least with these powers. I therefore think it will not be proper to compare it with the Weimar Constitution. Even in America we know that during the Great War from

[Prof. Shibban Lal Saksena]

which we have just emerged they did not take away the powers of those States but we must remember that in America the President is the chief of the Executive and he himself has got powers which no other person in the world has and our President will not have those powers. I was surprised to hear Mr. Kamath telling us that in the issue of proclamations the President should be guided by his Council of Ministers. That, of course, will always be. It may not be laid down in words in the Constitution, but I think many things will have to be done by conventions. I do not think that any President will be able to do anything against the advice of his ministers and in no case, I am sure, he will be able to make a proclamation if his ministry is not with him. I feel that this article is very necessary. Now the period in the article has been reduced from six to two months and that is a great improvement, and that is the maximum in which any Act can be passed by the two Houses of Parliament.

Clause (3) says :—"A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof." I do not think that this clause is superfluous or goes too far. If we have to face a war which we foresee and if we do not prepare beforehand, I do not think we shall be wise. In fact America entered into the war fairly long afterwards but by its lendlease policies had become prepared for war. It was fully ready when Japan made that attack. So the question arises that if India becomes involved in a world war I think it is only proper that the President should have the power to declare an emergency and to give the Central Government power to send directives to the executive and also to enable Parliament to make laws on subjects which are at present within the jurisdiction of the States. I think this article is very necessary and there is not any portion which can be objected to. I do hope this article will meet with the acceptance of the House.

Shri Brajeshwar Prasad : Mr. President, Sir, I am in entire agreement with the principles involved in the provisions of this article. I consider this article to be very, very necessary in the interests of the people of this country, but I feel that the provisions are too inadequate, halting and insufficient to meet the needs of the hour. As far as clause (1) of the article is concerned, I feel that it requires amendment. The House should change this clause (1) in a way that may be in accord with the necessities of the hour. I feel, Sir, that after the words, "threatened whether by war or external aggression or internal disturbance" some other words ought to be inserted. I am in favour of inserting the words "economic crisis or subversive movement". If these words are incorporated, then, there can be some facility for the President to act, and a wider sphere will be available to him. I feel, Sir, that if these two words are not acceptable to the House, then one word at least should be added and that would meet the requirements of the situation. I feel the words "or otherwise" should be inserted after the words "or internal disturbance." That would be sufficient to meet the exigencies of the moment.

Mr. President : The honourable Member has not moved any amendment.

Shri Brajeshwar Prasad : I am only suggesting to the House.....

Mr. President : How can the House accept that unless there is an amendment ?

Shri Brajeshwar Prasad : It can be done in one way, *i.e.*, by asking for reconsideration of clause (1). That is a method left open to the House. There is

a third way of amending this clause (1). I feel, Sir, that these words "whether by war or external aggression or internal disturbance" are redundant and these words ought to be deleted altogether. Then, this clause will read thus: "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, he may by proclamation make a declaration to that effect." After all, the vital thing is security of India. We do not know how that security of India is going to be threatened. Is it our intention that the security of India should not be protected if it is threatened by means other than what has been prescribed here? I do not consider that these words "war or external aggression or internal disturbance" exhaust the entire universe of thought. There are other possibilities too by which the security of India can be threatened. The argument will be raised that if the security of India is threatened by any other method, the result must be internal disturbance, and therefore the words 'internal disturbance' are comprehensive. I do not accept this view of things. It only means that the President must remain a silent spectator of a rapidly deteriorating situation in the country and he has not to act unless it has resulted in internal disturbance on a large scale and magnitude. The power must be vested in the President without any restriction, the power to act if he feels that there is an emergency in this country. Internal disturbance is the climax of the drama. Is it our intention that the security of India should not be safeguarded unless the danger has reached its zenith? I want the President to act if he feels that the growth of subversive movements has reached the proportions of an emergency even though there be no danger of internal disturbances. The mischief should be nipped in the bud. It is bad politics to wait and act only when the evil has become widespread; then it may be too late to mend matters. Let us look at China. What is happening in China should be an eye-opener to all of us. I feel we are actually passing through a period of emergency. What is happening in Bengal? What is happening in Bengal is more or less true of the other provinces in India as well. Therefore, I am in favour of these words being deleted. I feel, Sir, that these words ought to have been added. These words were placed before the Drafting Committee in the form of an amendment in the printed list by some other Members. Probably, the reason is that those people who stand for State rights feel that if these words are incorporated, then the whole concept of provincial autonomy will become illusory and unreal, because, in the name of economic crisis or with a view to ward off subversive movements, the President can do anything he likes. But, I feel, Sir, that the security of India is a matter of far greater importance than provincial autonomy.

Coming to clause (2), the provision is: "A Proclamation issued under clause (1) of this article shall be laid before each House of Parliament." I want to know why. Why should it be laid before Parliament? Is it because of the fact that we have got a lurking fear in our mind that the President may become a dictator? Is it because of the fear of dictatorship that we have made this provision in the Constitution? If you say so, then I say that this safeguard is not real. It is not by making any constitutional provisions that we can ward off the danger of dictatorship in this country. On the other hand, I feel that by hedging in the powers of the President, by circumscribing his sphere of activity, we are weakening the hands of the executive and thereby paving the way for the establishment of dictatorship in this country.

Sir, I am also opposed to Parliament having any say on this question, because I fear that a House elected on the basis of adult suffrage will consist mostly of persons who are illiterate and raw. Is it desirable that the question of security of India should be determined by such a House? I want to know this from the Members of the House who are opposed to me on this question. Suppose Parliament says there is no danger to the security of India, then, should the

[Shri Brajeshwar Prasad]

security of India be jeopardised because the members of Parliament do not consider that there is an emergency? I think the President is much better position to judge. He is a better judge of the situation.

There is one other point which I would like to mention. I was hesitating in my mind whether to say this or not, but I feel that it is far better I express myself very clearly. I am opposed to Parliament because I feel that I cannot trust the members of Parliament. Look at France, look at history. Nazi penetrated into all organs of the State. Ministers, legislators, army officials, all categories of servants of the States were infected with the virus of Nazism and they brought about the collapse of the State. How can Parliament elected on adult franchise be a judge of the question of security of India? They may be some fifth columnist; they may become agents of a foreign power. The growth of subversive movements is a very real one. I have more faith in the Executive than in the legislators. Therefore, I support this article with this suggestion that the words that I have suggested should be incorporated and the question of placing the Proclamation before the Houses of Parliament should not find a place in the article.

Mr. President: I did not like to interfere with the honourable Member's speech. He was speaking on an amendment of which he had given notice but which he deliberately refused to move.

Shri Brajeshwar Prasad: I would like clarification of this point.

Mr. President: No clarification is required. We all understand it. You had given notice of an amendment which wanted inclusion expressly of those words which you mentioned should be included in the article; you deliberately refused to move that amendment. And then you came forward and delivered a speech asking that the Drafting Committee should incorporate these words. I do not think it is right.

Prof. K. T. Shah (Bihar: General): Mr. President, I have been viewing the tendency, noticeable throughout this Draft Constitution, of arming the Central Executive Government with excessive authority, with deep misgivings. In this particular clause there seems to be incorporated even stronger authority and worse features of centralised authority than was found in the original article to which this is an amendment.

There are several points on which I think this amendment not only breaks new ground, but seeks to invest the President with authority and power that cannot be consistent with democratic, responsible Government as we have been taught to believe.

In the first place, Sir, the substitution of the term 'internal disturbance' for the original expression 'violence' fills me with deep concern and misgiving. These are terms not only very difficult to define; but the contrast, whatever may be the implication, seems to me to suggest unjustifiable invasion of democratic freedom. The slightest disturbance, slightest fear of disturbance in the internal management of the State, so to say, or any part of it, may entitle the President to declare a State of Emergency, and issue a proclamation on that account.

This, I think, is more serious and is brought out more prominently when we see the third part of the amendment, where it is not even the actual occurrence that is sought to be guarded against, but even a possible danger of it. The mere apprehension of it in the minds of the executive is made good ground for a proclamation of this kind to be issued. Now I feel that this is utterly indistinguish-

able from the series of Ordinances which were issued in 1942, wherein not only the occurrence of commission of an act was made punishable but even the likelihood of such an act being committed was made liable to action under the Ordinance. If this Government that we are constituting now, if the State that we are setting up under this Constitution, is not to be distinguishable for liberalism, for tolerance, for freedom of thought and expression to the citizen, in any way from the preceding Government, except that the complexion of the rulers would be different,—then I am afraid we are not being true to the pledges that have been given to the people of this country, *viz.*, that *Swaraj* would be really *Ram Raj* on this earth.

I feel, Sir, that the same tendency is noticeable in another part of this amendment where a Proclamation of Emergency is said to be possible to extend or uphold if by Resolution the two Houses of Parliament approve of it. There is, however, no provision, so far as I can see, for the Houses being able to *disapprove* or reject the Proclamation, to declare that there was no occasion for such a Proclamation, and that as such it should be null and discontinued. It is quite possible that, at a given moment, the President, who by the way is not always obliged to accept the advice of his Ministers, acts on his own and declares a state of emergency. This may happen particularly, when a Parliament is on the eve of dissolution, and when party passions run high, and when, there is a possibility of other Ministers or Party coming into power expressly intending to discontinue the programme of the Party preceding in power, including the Proclamation of Emergency. If at that time advantage is taken of a provision like this, and acting on the apprehension that there may be "disturbance" internally in any part of India, the President should act upon his own, or even upon the advice of an aggressive Minister, to declare a state of emergency, what would happen. The new House may not like to continue such a state of emergency. The House may want to disregard or disapprove of the proclamation. Under those circumstances, this Constitution, with all its supposed loyalty to the Lower House, makes no provision that an Emergency declared by the President can be disapproved by the Legislature. Nor is the Lower House entitled to say that there is no ground for such apprehension, and, therefore, there should be no such proclamation.

I consider this a very serious omission, even accepting the *bona fides* –and I do not doubt it of the draftsmen in making this provision. I think the omission of the contrary provision that the Houses would be entitled to reject or disown a Presidential Proclamation leaves very serious ground to fear that all the power is to be Centralised in the Executive and the Parliament is to be reduced to be only a sort of Registration office which has to say ditto to whatever the Executive has done. I do not think this is consistent with the ideals and ambitions on which we would be inaugurating a government in the country on a democratic basis. It is indistinguishable from the series of Ordinances under which we had to live before; and under which we are liable perhaps still to continue if a provision of this kind goes unnoticed.

The danger of substituting such a thing as 'internal disturbance' for 'violence' is very serious, because *disturbance* can be defined according to the mood of the moment, especially if any General Election is impending, and feelings are running very high, and public sentiment is strained to very high pitch. At such a moment disturbance may occur anywhere. Such disturbances ought not to be regarded under any free constitution as a source of Emergency in which the Chief Executive would be entitled to issue a Proclamation and suspend the Constitution. Considering it also in the light of subsequent articles, and the effect of such a Proclamation, it would perhaps amount to denial of freedom to the individual or to whole units of their right to self-Government. This therefore, is a

[Prof. K. T. Shah]

provision to which I think too strong exception cannot be taken, and I hope the House will be inclined to reconsider this position, and see that some at least of the points I am putting forward—such, for instance, as the right of the House to disapprove of any Proclamation—are included, and the security of the State should not be made an excuse—as it appears to me to be the case here—for excessive authority being vested in the Chief Executive.

Dr. P. S. Deshmukh (C.P. & Berar: General) Mr. President, after listening to the debate on this article I am very much inclined to support the amendment moved by my Friend Mr. Kamath so far as consultation of the Council of Ministers has been urged by him. This is one of the most important articles in the whole Constitution. We are clothing one particular individual with enormous powers and the powers of emergency can be utilised in his own individual discretion. There is nothing in the Draft article which has been placed before the House to show that it would be necessary for him to consult anybody or to lay down any criteria of emergency before he acts. It is a matter of complete individual discretion, and as we know individual discretion and judgements can err very often. It is for that reason that I think it is very necessary to provide that before an emergency is declared, the advice of the Council of Ministers should be sought.

Pandit Thakur Das Bhargava: It is implicit.

Dr. P. S. Deshmukh: I had already thought of that. I know it would be argued that it is unthinkable that the President would act independently without consulting his Council of Ministers. But all the same, the actual provision as it stands is such that a not very punctilious President may exercise taking the word of the Constitution and declare an emergency even when the Council of Ministers may differ from him. If such a contingency arises, I do not know what exactly would happen. The reason why I urge that explicit provision for consulting the Council of Ministers is necessary is—as Professor Shah pointed out that we are providing for a responsible Government. Our appropriate parallel would be England and not America. And although it may be unthinkable that any President would be so irresponsible as to act without the advice of the Cabinet Ministers, it is not inconceivable that in a given set of circumstances, he may definitely come to the conclusion, irrespective of the concurrence of the Council of Ministers, that an emergency does exist. Even if he obtains the advice of the Council of Ministers, the situation can be bad enough. It is possible, as has been pointed out by Prof. Shah, that the Ministers themselves might utilise the powers vested in the President for electioneering purposes and declare an emergency just on the eve of the elections and thus choke off the other party, and utilise the powers which are in the hands of the President for party ends. But if the President acts, irrespective of the advice of the Council of Ministers, what will be the situation in the country? I have nothing to say if honourable Members are convinced that there is sufficient guarantee that the President will consult the Council of Ministers every time, and that every time the Council of Ministers will be with him; but I cannot and I am not able to follow that. If they merely rely upon the good-sense of the President, I do not agree with them, that in an important provision like this we should trust to luck, or to chance, in a thing that is likely to affect the future destiny of India. So I would very much urge that such a thing ought not to be left to the individual judgement of a person. After all mentalities differ. An individual President may be a nervous person, and just because one particular meeting does not disperse at the order of the Magistrate or some solitary incidents of violence take place he may think that there is sufficient reason to declare an emergency. There are, as we know,

such nervous temperaments. And there are people who are brave enough to face the worst of calamities. So it is not proper that we should take any risk and depend upon individual temperaments and not specifically lay down something here in the Constitution, specially because it is a responsible government that we are providing for, that the President shall act only on the advice of the Council of Ministers in this respect also. My Friend Shri Brajeshwar Prasad said that the President must have the power to act and that he must have also discretion. But suppose he differs from the Council of Ministers and declares an emergency. What are his powers and how is he to act? If the Council of Ministers differ from him, what will be the situation. There would probably be chaos, probably mutiny in the army and probably civil war in the country. God alone knows where such a thing will lead us. So I do not think it is in any way undesirable to provide in the Constitution that before he declares a state of emergency, the President shall, consult the Council of Ministers. There is nothing derogatory in this. After all, even after the declaration of emergency, if the President wants to control the emergency, he must seek the assistance and aid of the executive and the Council of Ministers. There is no fun in leaving it all to individual discretion or to rely on good luck. I very strongly urge that the amendment proposed should find a place in the article.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. President, Sir, I think the amendment moved by Dr. Ambedkar is of too sweeping a character, At least I do not find in any constitution in the world a provision parallel to the one now proposed to be enacted. In the American and English Constitutions there is absolutely no provision regarding any emergency law. However, I think, Dr. Ambedkar is probably nervous about the West Bengal situation. We are enacting the provision at a stage in the country when we feel that a situation might arise in a province which may not be acceptable to the Centre. Mr. Brajeshwar Prasad goes to the extent of saying that he could not trust the Members of Parliament and that the matter should not be laid before Parliament. It is a very unique idea which may not be accepted by many, and I think it is not in keeping with principles of democracy. The executive that would be formed after the elections to the first Parliament or any other Parliament would be formed in keeping with the opinion of the House and any executive that does not command the confidence of the House will be thrown out. Sir, clause (3) of the amendment moved by Dr Ambedkar lays it down that the President can suspend the Constitution of a province if there is danger of internal disturbance terrorism, subversive movements, and crimes of violence. I think these are very flimsy grounds which have been mentioned in clause (3). Internal disturbance may be between two parties There may be quarrels in a province at the time of the election. As Prof. Shah said, passions may be roused and people might fight and quarrel. This will be internal disturbance, but surely internal disturbance should not be a ground for suspending the Constitution. Then comes "crimes of violence." Even dacoities may be crimes of violence. We have to define as to which are the sufficient grounds for setting aside the Constitution. Merely saying that crimes of violence will be one of the grounds to suspend the Constitution is quite insufficient. In every constitution in the world in which such provisions are enacted, the words, "war or rebellion or threat of war or rebellion" are mentioned. So the grounds which are now mentioned, according to me, Sir, are not sufficient for suspending the Constitution of a province. It is really very unfortunate that there is no provision in this amendment for consulting the members of the Cabinet or the provincial executive. If this amendment is accepted, then provincial autonomy is only a sham institution. Suppose, for instance, in West Bengal, the party which is in opposition to the Centre is elected; then even though the Government of West Bengal may feel that the internal disturbance in West Bengal is not sufficient for suspending the Constitution, still the will of the Centre will be imposed and the

[Kazi Syed Karimuddin]

ideologies of the Centre will be imposed on that State. In other words, this will mean that no party which is in opposition to the Centre will be allowed to rule in a Province. That situation is bound to arise. For instance in West Bengal there is internal disturbance. There are subversive activities and crimes of violence. But the Constitution has not been superseded because there is a Congress Government which is in keeping with the views of the Central Government. But suppose for instance any other party were in power in West Bengal or in any other Province The result will be that immediately when there is any disagreement and there is internal disturbance, the President who will be a person elected by the majority party at the Centre will declare an emergency situation in that Province. Such a situation will mean the negation of democracy, and so the suspension of the Constitution on the grounds mentioned in cluase (3) will not be justifiable This would mean that by enacting clause (3), we are laying down no principle of democracy. There is a nervousness in our mind that if any province goes against the Centre, then this provision is so arbitrary, so unprecedented that no party can be allowed to rule in a province, but that on the slightest pretext of crimes of violence or subversive activities, the whole provincial constitution may be superseded. Therefore, my submission is that we should not enact any such provision in a state of nervousness and the amendment moved by Mr. Kamath is I think, justifiable and I support it.

Mr. Naziruddin Ahmad: Mr. President, Sir, I think clause (1) of article 275 as it is moved in the present amended form is a most important provision in the whole Constitution. Many honourable Members have expressed the fear that this might be used for suppressing the legitimate aspirations of the people and suppressing democratic institutions. But I submit that this gives merely the power to issue a Proclamation of Emergency. It does not compel or induce the President to act without much serious thought. The parallel of other countries has been cited. But I submit that democratic institutions in many other countries are well established and the people are highly law-abiding and there is very little danger of internal disorder as there is likelihood in India. I submit that we must take not a theoretical view of the affair, but rather a practical view. I submit that there are real dangers threatening the internal peace of the country, apart from the fear of external aggression. The fear of war is not a mere speculation today. War may break out in any part of the globe on the slightest pretext and a little explosion in any part of the world might lead to a world-wide conflagration in which India would necessarily be involved much against her will. I, therefore, submit that so far as war and external aggressions are concerned, a power like this is absolutely necessary. Then the question of internal disorder requires to be very carefully considered. There are many dangers lurking in the way of the establishment and maintenance of democracy in this country. In India the proposed Constitution is a new experiment in democracy. There are forces of disintegration and disorder already visible everywhere. There is corruption, nepotism, favouritism and inefficiency in many parts of India today. These may lead to small disorders and gradually to misgovernment and grave general disorder, and it is necessary to guard ourselves against general disorders of that kind. The instance of Calcutta has been cited by one honourable Member, but the fact that the emergency has not been declared so far as Calcutta is concerned is due simply to the fact that the disorders that are taking place there can be quelled by the Provincial Government. If the disorder grows wider, becomes too much to be controlled by the local authorities or even by the employment of the military, I think a Proclamation of Emergency may be necessary, although the Congress Government is in power. Forces of disorder are visible everywhere in the land. I am told by some honourable Members who have knowledge, that life is very insecure in many parts

of East Punjab. On open highways, there are dacoits and robbers who are plying their trade with impunity. It is only the other day that in Agra, a small boy of about 6, the son of a rich man, was kidnapped at night. Some time later it was discovered that the boy had vanished. A number of men, including the police, set out in search parties in different directions but the boy was not to be found. Information then came to the father that the boy was in the hands of a band of dacoits safely entrenched in a dense jungle and they would give up the boy on the payment of Rs. 60,000. There were negotiations in which the police also took part and they arrived at a compromise of Rs. 30,000. With the consent of the police the amount was paid through a confederate who had been asked to approach the dacoits alone and the boy was recovered. This is not certainly an instance upon which Proclamation of Emergency should be issued, but these are instances, pointers, to show that these may develop into a general breakdown and then a Proclamation of Emergency may be necessary. During the infancy of our democracy, such a power is theoretically necessary. I wish, as other honourable Members in the House wish, that the Proclamation of Emergency would never be declared and issued, but the necessity for such powers cannot be denied. I submit that the power should remain.

Then a question has been raised as to whether the action of the President should be preceded compulsorily by the advice of the Ministers. I submit this condition is more or less academic. So far as the issue of Ordinance is concerned, the matter is not urgent; perhaps the advice of Ministers would be necessary, but in this case, a Proclamation of Emergency may have to be issued at very short notice. It may be that the President is on tour and he is advised that a grave emergency arises and he has to act on the spur of the moment and he should have the power even without the advice of the Ministers to issue the proclamation. But I hardly fancy that such a situation would arise. I think that when the President gets a drastic power, he would in every case and in all conscience act on the advice of the Ministers to strengthen his own hands. There is no doubt that he would consult his Ministers, but I think it is not necessary to make it a condition precedent and I should leave the matter at that.

Then there are questions of revocation. It is provided specifically that an emergency proclamation may be revoked by the President. Mr. Kamath has pointed out that the power to vary the proclamation is not specifically given, but I think it is not absolutely necessary. In fact, there is nothing preventing the President from revoking the proclamation and issuing it in an altered form. That would provide for variation and I therefore submit that the article impliedly provides for variation of the proclamation.

Then there is the condition that it should be laid before the legislature for ratification. I submit that there is no occasion of questioning the prestige of the President by enacting this provision. This is very necessary because I think that if there is a Proclamation of Emergency and if it is placed before the House the House in all probability, if there is any seriousness about the situation would support the Proclamation of Emergency. It is to ensure the support of the members, who have the authority of the people that is behind this provision. Then, if the legislature does not support it, the Proclamation of Emergency dies a natural death within thirty days from the time when the House first sits. In these circumstances, I submit that the article is well conceived. There is no defect anywhere and as a theoretical power, this should be accepted in the form in which it is prosecuted.

Mr. Tajamul Husain: Sir, this matter to my mind is very important and serious. There cannot be the least doubt that the President must have wide powers

[Shri Mahavir Tyagi]

interfere, there will be a tendency towards disintegration. If there is a party wedded to violence and there is a revolt in a unit against the Centre, the emergency power will be of use. Even if there is peace and no war and the government of a unit revolts from the Centre, I think we must have provision to meet even such cases of revolts against the Centre. If a State government does not want to have any connection with the Centre and wants to go out of the union or acts in conjunction with a neighbouring province or a foreign country, the emergency has to be resorted to, and I am sorry that Dr. Ambedkar or Pant or either of my radical friends here or some of his colleagues in the Cabinet has not made the provision slightly halting from this point of view.

Even in these words there seems to be one legal point and I hope eminent lawyers like Pandit Pant will look into it and see if there is any chance thereof of accommodating my wishes also. The wording of the article is:

> "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation make a declaration to that effect."

Whether by war or external aggression or internal disturbance are only three instances given by way of explanation, but it does not limit these categories. There may be other variety of emergencies too when the article could be resorted to. The main condition of the clause is that the President should be satisfied that a grave emergency exists and at once this article shall be made use of. These three categories mentioned in the article are not exhaustive, and if it were so Dr. Ambedkar should say that only in these three emergencies the article would be made use of. There may be other emergencies, say for instance a revolt by a State. I hope in this very article there is a chance of other emergencies also being included. This should be made clear and I would like Dr. Ambedkar to make it clear. I want him to make it clear that these three emergencies are not the only ones and that there may be many others. Why cannot other emergencies also be accommodated. There should be no objection to this article, because the democratic rights of the people are guaranteed rather than usurped. The people are not disturbed at all. It is for the protection of the State that the President takes the action. A State is but a composition of the democratic rights of the people and it is for that purpose that States exist. When the very existence of a State is in danger it is for the Centre to see that the State, which is the symbol of the social guarantee of the democratic rights of each citizen under it, is protected and it is for the protection of these rights of the individual that the Central Government jumps in.

Then again, the President is elected by the whole of India. He is the sole custodian of the rights and freedom of the people. He is the person in whom the whole of India vests its confidence. So it is he who is the biggest symbol of democracy who will declare an emergency. How then will democracy be in danger? I do not understand. Wherever the President is mentioned it means the Government at the Centre. The word President includes consultation of the opinion of the Government at the Centre. So it is the Central Government which takes over and proclaims this emergency. Again, these administrative powers are not vested in a dictator of the old days, like the Governor-General, Governor or the Secretary of State for India or any other authority nominated by him. The President's office is an elected office. The highest democratic dignity and honour are vested in the President and it is the President along with the Cabinet who announces the emergency. So, if we do not agree to arm the Centre with this emergency power, I am afraid our country, whose prestige is not yet very high and whose power is not yet big and whose neighbours on either side are enemies,

will soon come to grief. We have to see that the whole of India faces her problems as one unit. This is the only article that unites all units and this is in fact a sanction behind the Union. After all there is no contractual agreement between the units and the Union. This clause is the only thing that binds the units together and prevents the people of one unit acting in a manner prejudicial to the interests of the country as a whole. Even the tendency to act in such a manner has to be curbed. Under democracy we have to act and live together. If one finger is cut off the whole body will get the pain. The Union is such a body. I conceive India as one unit and so if there is trouble in one part of the Union, the whole Union will suffer. Therefore it is for the Centre to see that there is absolute peace in all India, and to take prompt action when that peace is threatened. Sir, clause (3) which has been opposed by some friends is again very important. It is no use issuing orders after a disorder has actually started. The emergency powers must be resorted to before the emergency actually arises. So clause (3) is the most important clause as it enables action to be taken in advance. I therefore lend my whole hearted support to it. Although my friends think that this is a reactionary provision, I do not agree with them. We must all support it. I only want that one more safeguard must be added to the three categories mentioned in the article. There may be other emergencies besides the three provided for. I support the amendment.

Shri Jagat Narain Lal (Bihar: General): Sir, I have come to give my whole hearted support to the amendment moved by Dr. Ambedkar. I think there is general agreement that this emergency power is very necessary. Those who are watching the situation in the country, especially at the present time, after we have achieved independence, will agree that there is great need in our country for emergency powers now than at any other time.

There are friends who have compared this article to Section 93 of the Government of India Act. There can be no comparison between that section which was calculated by a foreign Government to snatch away the little power that was given to us and the present provision giving the power to the President to preserve our national independence. The preservation of the independence which we have achieved is very important. My friend, Mr. Tyagi, who supported the amendment, drew the attention of the Mover to the fact that the three categories mentioned in the clause were not exhaustive enough. May I say that they are exhaustive enough and point out that war is one actual contingency, external aggression is another which exhausts every contingency and internal disturbances also cover every contingency which can be imagined to arise within a State. I therefore see no reason for adding, further categories. The Drafting Committee

Shri Brajeshwar Prasad: Why not delete it?

Shri Jagat Narain Lal: Deletion will make the clause much wider in scope. I do not like to give more powers. The Drafting Committee have improved the original draft article. They have, instead of retaining emergency powers for six months reduced them to two months. They have also added a provision to the effect that when the legislature is dissolved, within one month after it meets it it does not approve of it, the Ordinance would automatically cease to operate. I think these provisions are enough. If, within these provisos, we are not prepared to grant emergency powers to the President, we need not grant any emergency powers at all. As a previous speaker already stated, the Ordinance is likely to have approval of the Central Cabinet. In a situation like this, I would even go further and say that, if the Central Cabinet also does not realise that an emergency has risen and fails to rise to the occasion, the President in whom the entire nation reposes its confidence should possess this power.

[Shri Jagat Narain Lal]

I do not want to add much more to what has already been said. I accord my wholehearted support to the amendment moved by Dr. Ambedkar. I hope the House will adopt it unanimously.

Shri T. T. Krishnamachari: Mr. President, my excuse in intervening in the debate at this late stage is that I do not like the public in this country to get the impression that we are putting into this Constitution something which is wholly unconstitutional or something which is going to be the means of subverting the Constitution or something which is going to nullify all the rights and privileges given to our citizens under this Constitution and concentrate in the hands of the executive of the Centre enormous powers which will ultimately make them virtual dictators in this country.

Sir, I am one of those who believe that it would be well if we could frame a Constitution without providing therein powers to the executive to abridge at any time the liberty of the citizens or do anything which is either unconstitutional or extra-constitutional. I heard with attention the speech of my Friend Mr. Kamath a very eloquent speech in which he took objection to the entire part 9 and asked whether there is any constitution in the world in which similar provisions had been embodied. He did very wisely make an exception in regard to the Weimar Constitution in which article 48 contained some provisions of this sort. Surely, the framers of any Constitution at the present day would be failing in their duty if they do not take note, in times like this, of the difficulties that abound around every country. Not merely are there threats of wars and undeclared wars and internecine disturbances, but there are also other calamities which are likely to arise partly because of economic conditions that exist within the countries and economic maladjustments which demand immediate settlement and partly because there are forces in the world that wish to make the economic maldistribution the basis for subversive political action and in the result making these worse than what they actually are. Therefore if the Constitution-framers do not provide safeguards for protecting the Constitution in times of emergencies that might arise, I feel that the framers of that Constitution would be guilty of a grave dereliction of duty. Sir, I feel that that is the excuse for our putting in this Constitution this Part IX entitled Emergency Provisions. It is not that the Drafting Committee has merely borrowed the wording of Section 102 and Section 126-A of the Government of India Act 1935. They have bestowed great thought and care to see that the Government has adequate powers to face an emergency, to face an emergency which may very well threaten this Constitution, which may practically make this country come under a rule which is entirely unconstitutional. They have at the same time provided enough safeguards to see that the popular voice would be heard, that the popular will will dominate, whatever might be the conditions under which we will have to function under these emergency provisions.

There is another aspect of this matter which those who are critics of this Constitution should note, *viz.* that this, as a written Constitution, has got therefore all the defects, incidental to it. If we do not envisage the possibility of there being some disturbance in the future which will upset the Constitution and provide against that contingency, it may be that the powers that be, whoever may happen to be in power at the time would find themselves unable to act because there are no powers given to them to deal with the emergency. I would ask my friends, both Mr. Kamath and Professor Shah, to read the history of the American Constitution and to spend some time and thought over that portion of the Constitution which gives the President the powers of the Commander-in-Chief and also go into the history of that country during the years 1861 and thereafter when the whole country and the Constitution which in very many respects served as a model Cons-

itution for us were made safe only because of a very wide interpretation of the duties, obligations and powers that the President had by virtue of the fact that he was also the Commander-in-Chief. The literature on that particular clause, the clause which gave powers to the President as the Commander-in-Chief to maintain law and order, to fight aggression and also to lead the country in times of war, is enormous. In fact, on a subsequent occasion when America came into the First World War, it was by virtue of these powers, though exercised in a different manner and though the methods followed were totally different, that President Wilson was able to get the entire economy of the country geared up to war effort. Yet, why should we, with all that experience before us, omit to put in explicit terms such safeguards in the Constitution that will protect the Constitution in times of grave danger? Is it wise for us to come here and indulge in heroics and say "Here is something which is being sought to be done which would result in unconstitutional action being made constitutional, which will put so much power in the hands of the President and in the Central executive that will make them completely autocratic." What is the pleasure, may I ask, for those who are drafting this Constitution, in empowering somebody who is to come later on, some years or perhaps some decades hence, with whom they might probably have no connection whatever, in clothing them with such extraordinary powers unless it be that their only consideration is that the Constitution that we are framing here today must be safeguarded in all circumstances? To use a phrase which has come into vogue, it may be that the President and the executive would be exercising a form of constitutional dictatorship, acting under the provisions of Part 9. But as I said before, such dictatorship would be very necessary in order to safeguard the Constitution and it is a grim fact from which we cannot escape so long as the world is what it is today, with the threat of war, aggression and internal strife, arising out of various causes, mainly economic, as I understand it, that are ever-present. I would ask my friends who criticise these provisions, who would like the people outside to know that they are the champions of the liberty of the people by telling them that those who have drafted this Constitution want to encircle this country by a Constitution which gives the executive so much power that a dictatorship would result, I would ask them to consider why in several Constitutions, particularly in the French Constitution between the years 1813 and 1853, provisions have been made for the declaration of what was called a state of seige, which perhaps was the counterpart of the constitutional dictatorship envisaged in article 48 of the Weimar Constitution. Not even a country like England is completely free from the possible exercise of such emergency powers. After the First World War England passed the Emergency Act of 1920 wherein they gave full powers to the Executive to deal with the situation as they liked and to issue proclamations of emergency subject only to Parliamentary approval and subject to a limited duration. In fact, that particular Emergency Act was not brought into being for the purpose of meeting a foreign enemy, it was not brought into being for the purpose of meeting any force which would threaten or upset the Constitution as such but in order to meet the grave economic consequences that would arise if the Government were not acting. That was the justification for a country like England framing an Act like the Emergency Act of 1920 which perhaps surpasses in its scope and comprehension any of the Acts that have been passed by the British Government in India when they were in power. I would ask my friends who criticise us for inserting this provision to look at history. Do they really want us not to provide the means by which this Constitution would be saved? This emergency provision is merely intended to meet one purpose, namely that all our efforts all these years spent in Constitution making may not go in vain and those people who will be in power in the future would be adequately empowered to save the Constitution. I would ask the House to consider this chapter as a sort of safety valve, which is intended to save the Constitution. Sir, with regard to the wording of the article that is before us it happens to be the central provision governing not merely provisions contained in articles 276, 277, 279 and 280 but of another set of provisions as well. Care has been taken in framing

[Shri T. T. Krishnamachari]

these articles that as soon as it would be physically possible the Parliament should be summoned and its ratification should be obtained and even the exercise of the powers under article 276, 277, 279 and 280 cannot be done without Parliament giving some kind of *imprimatur* to the action initiated by the executive. After all we are not suspending by means of these provisions sittings of Parliament We are not suspending Parliament's powers over the Constitution and Parliament has always the right to call the executive to order; and if they find that the executive had exceeded their powers in regard to the operation of any of the provisions enacted under the emergency laws, they can always pull them up: they can dismiss the Ministry and replace them, so that it would appear on examination that we have taken very great care to see that Parliament's powers shall be kept intact and Parliament shall be summoned with the least possible delay. In fact, it may be a question of argument amongst the members of the House whether the two months that is allowed before Parliament can be summoned and their approval can be obtained, which is the maximum that is allowed to the executive, is not erring on the liberal side. In a country of distances there is no point when we are enacting a statutory prohibition against the continuance of a proclamation beyond a specified period to put it under a very strait jacket, when it might be well nigh impossible for the Parliament to be summoned in time which is perhaps ordinarily less than a month and Parliament might need a month to discuss the various provisions that will arise as a consequence of the emergency being declared. So long as we have safeguards that the ultimate control of Parliament will remain intact, these provisions really fall into their proper perspective, and there is nothing very seriously objectionable in them.

One point was raised by Mr. Kamath which has been answered by other Members, and that is that we should put in a provision somewhere here that the President cannot act except on the advice of his ministers. The whole scheme of this Constitution has been envisaged on the basis that the President is a Constitutional head even though we have not put it in so many words within the Constitution about which you rightly asked some time back. The fact still remains that the President is only a Constitutional head and nothing more. The President can only exercise his powers on the advice of his ministers and if we here put in a provision which explicitly says so then by implication it would mean that in reference to other provisions in this Constitution the President can act on his own, merely because of the fact we have put in here a specific provision that the President should act on the advice of his ministers. Unless we do it right through, it would be wrong to put in a provision of that nature here, and the purpose that we want to be served is not going to be adequately met because there is an explicit mention in one particular place. Actually the President cannot do anything excepting by consulting the ministers; and if he does so, if he assumes to himself the dictatorial powers, then the provisions of article 50 and the subsequent articles could be brought into operation and the President might be impeached and thrown out of office.

The other section of this part will be discussed later on because the emergency provisions fall into two parts; one is, when a grave emergency threatens the whole country the President has to take action in order to protect the Constitution; and the second is, another part which ought to be perhaps part (b) of this particular part that relates to a contingency where a President will have to interfere in the matters confined to the limits of a State. An amendment in regard to this aspect of this matter will be moved by my honourable Friend, Dr. Ambedkar in due course and there might be an opportunity of speaking thereon, but so far

as this particular article 275 is concerned, we are not envisaging here what we would like to put in in the other part, namely, in regard to the powers of the Constitution to deal with an emergency or some situation that might arise in one part of the country only covered by a State. That is a totally different matter altogether and as I said, all along even in that part the Drafting Committee has taken care to see that the powers of the Parliament are not in any manner abridged. If some people criticise here that inroads have been made into the Fundamental Rights, that the citizen's privileges are curtailed, what will the representatives of the citizen in Parliament be doing at that time? Why should my honourable Friend, Mr. Tajamul Husain take serious objection to any temporary curtailment of the free exercise of civil liberty, as it is called—God knows what it really means,—so long as there are 750 people in the Centre who have to exercise a watchful control to see that that is not unnecessarily abridged? I have no doubt that Mr. Tajamul Husain himself will agree that there must be a necessity for civil liberty to be abridged in certain contingencies. Take, for instance, rationing. It is undoubtedly a curtailment of the civil liberty. I cannot go and get a maund of rice or wheat. We tolerate that and we should probably have to do something more than that in order to help the State through an emergency and to safeguard the Constitution; and if the civil liberties of the people are unduly restricted, I say the responsibility will be that of the ultimate rulers of the people, not that of the executive and if the executive does not obey the call of the representatives of the people who are watchful, that executive will have to go provided the peoples' representatives assert themselves. Therefore, I feel that this cry that these provisions will unduly abridge the civil liberties of the people is not right so long as we have not abridged the powers of Parliament to see that the Government of the day does allow people that amount of civil liberty consistent with the safety of the realm and safety of the Constitution. Therefore, I say that most of the points that have been raised against these provisions are pointless because the powers of the Parliament are preserved and all that I wanted to convey by intervening in the debate was to say that nobody will be happy that he has to put the provision in this Constitution, but at the same time we would be failing in our duty if we do not put provisions in the Constitution which will enable those people who have the control of the destinies of the country in future times to safeguard the Constitution, so that people here in this House and elsewhere will understand that these emergency provisions have got to be tolerated as a necessary evil, and without those provisions it is well nigh possible that all our efforts to frame a Constitution may ultimately be jeopardized and the Constitution might be in danger unless adequate powers are given to the executive to safeguard the Constitution. Sir, I support the amendment moved by the Honourable Dr. Ambedkar.

Shri H. V. Kamath: May I tell my honourable Friend, Mr. T. T. Krishnamachari that the point I made out with reference to article 48 of the Weimar Constitution is that Hitler used those very provisions to establish his dictatorship.

Mr. President: Dr. Ambedkar may like to speak.

The Honourable Dr. B. R. Ambedkar: I do not know; so much time has been taken up in the debate. If the Members who have taken part in the debate desire that I should say something, I should be glad to do so and even then it can only be done tomorrow.

Mr. President: I think that Mr. T. T. Krishnamachari has dealt with all points that have been raised and it may not be necessary for you to reply to the points which have been raised by the Members.

Pandit Thakur Das Bhargava: We do not require any other reply.

Mr. President: I do not think it shows any disrespect to the Members who have expressed their views if you do not reply, but if you want to reply, I cannot certainly prevent you from doing so. Would you take much time to reply?

The Honourable Dr. B. R. Ambedkar: I would take some time. I thought that no reply was necessary because Mr. T. T. Krishnamachari has replied to the points already.

Prof. Shibban Lal Saksena: Let us hear him now. If you want to reply, we want to hear him.

Mr. President: I am only thinking of the time. I do not think anything is particularly called for. I will put the amendments to vote now.

The question is:

"That in sub-clause (a) of clause (2) of article 275 after the words 'may be revoked' the words 'or varied' be inserted."

The amendment was negatived

Mr. President: The question is:

"That in amendment No. 111 of List I (Second Week) of Amendments to Amendment in clause (1) of the proposed article 275, after the word 'President' the words 'acting on the advice of his Council of Ministers' be inserted."

The amendment was negatived

Mr. President: The question is:

"That in amendment No. 111 of List I (Second Week) of Amendments to Amendment in clause (3) of the proposed article 275, the words 'by war or by external aggression' be deleted."

The amendment was negatived

Mr. President: The question is:

"That in amendment No. 111 of List I (Second Week) of Amendments to Amendment in clause (3) of the proposed article 275, for the words 'occurrence of war or of any such aggression or disturbance' the words 'occurrence of such disturbance' be substituted."

The amendment was negatived.

Mr. President: I shall put the article as moved by Dr. Ambedkar.

The question is:

"That for article 275, the following article be substituted:—

'275. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

Proclamation of Emergency

(2) A Proclamation issued under clause (1) of this article (in this Constitution referred to as "a Proclamation of Emergency")—

(a) may be revoked by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolution of both Houses of Parliament;

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c) of this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof'"

The amendment was adopted

Mr President: The question is,

"That article as amended, stand part of the Constitution"

The motion was adopted.

Article 275, as amended, was added to the Constitution.

The Assembly then adjourned till 9 of the Clock on Wednesday, the 3rd August 1949

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 3rd August 1949

The Constituent Assembly of India met in the Constitution Hall New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 276

Mr. President: We shall now take up article 276. There are certain amendments of which notice has been given which are in Part II of the Printed List.

(Amendment No. 3002 was not moved.)

Mr. Nazirudddin Ahmad (West Bengal: Muslim): May I point out that 3003 is a drafting amendment? It merely transposes a few words from one place to another.

The Honourable Dr. B. R. Ambedkar (Bombay: General): If that is so, I agree.

(Amendments Nos. 3004 and 3005 were not moved.)

Mr. President: No. 3006 is not exactly of a drafting nature. 3006 is consequential to 3003. So, better move both.

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

"That in article 276, the words 'notwithstanding anything contained in this Constitution' after the word 'then' be deleted and the words 'notwithstanding anything contained in this Constitution' be inserted at the beginning of clause (a) of the same article."

I also move:

"That in clause (b) of article 276, the words 'notwithstanding that it is one which is not enumerated in the Union List' be added at the end".

(Amendment No. 119 of Supplementary List was not moved.)

Mr. President: There is no other amendment. Does anyone wish to speak?

Mr. Nazirudddin Ahmad: Mr. President, Sir amendment 3006 for addition of some words at the end of clause (b), I submit, is already covered by the earlier part of the article. The words proposed to be added are:

"notwithstanding that it is one which is not enumerated in the Union List".

Some powers are being given to the President arising out of a Proclamation of Emergency notwithstanding the fact that the subject dealt with is one not enumerated in the Union List. It gives power to the President to act on subjects in the Provincial List. But this safeguard is already there at the beginning of the article 276. Dr. Ambedkar proposes to transpose these words to the beginning of clause (a). But the sense remains the same, because the article begins with the words "Notwithstanding anything contained in this Constitution", which includes the condition "notwithstanding that it is one which is not enumerated in the Union List." So there is no need to repeat them at the end. They are already implied by the general condition "notwithstanding anything contained in this Constitution" appearing at the beginning. If we are to mention special things like this in spite of the general words, then they will have to be exhaustive, but nobody

[Mr. Naziruddin Ahmad]

can be sure whether there will be other exceptions needing special mention. The amendment is unnecessary.

Shri T. T. Krishnamachari (Madras : General): Mr. President, Sir, I am afraid if my Friend Mr. Naziruddin Ahmad will look at section 126A of the Government of India Act, he will find why Dr. Ambedkar's amendment is necessary, because 276(b) gives executive power to the Union in times of emergency, when an emergency is declared, and these words are necessary in order to make the meaning perfectly clear. The thing has been clarified, in terms of the language used in the Government of India Act, section 126A. If he will read the section once again, he will find that there is no objection to the inclusion of these words in this article.

Mr. President: You do not wish to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: No Sir. It is not necessary for me to say anything.

Mr. President: Then I will put the amendments to vote now.

The question is :

"That in article 276, the words 'notwithstanding anything contained in this Constitution' after the word 'then' be deleted and the words 'notwithstanding anything contained in this Constitution' be inserted at the beginning of clause (a) of the same article."

The amendment was adopted.

Mr. President: The question is.

"That in clause (b) of article 276, the words notwithstanding that it is one which is not enumerated in the Union List' be added at the end".

The amendment was adopted.

Mr. President: Then I put the article as amended.

The question is :

"That article 276, as amended, stand part of the Constitution"

The motion was adopted.

Article 276, as amended, was added to the Constitution.

Articles 188, 277-A, 278 and 278-A

Mr. President: Then we come to article 277.

The Honourable Dr. B. R. Ambedkar: I would like to hold article 277 back, for the present.

Mr. President: Shall we then take up article 277-A? Article 277 is held back for the present and we take up article 277-A now.

The Honourable Dr. B. R. Ambedkar: Sir, I think it would be better if three amendments were taken together, namely, amendment to drop article 188, introduction of a new article 277-A and the substitution of the old article 278 by the two new articles 278 and 278-A because they are cognate matters. They might be put separately for voting purposes. But for discussion, I think, they might be taken together.

Mr. President: Articles 188, 278 and 278-A may be taken together because they deal with cognate matters and it would be better if the discussion of all the articles is taken up together, although we may put them to vote separately.

The Honourable Dr. B. R. Ambedkar: Sir, I move

"That article 188 be deleted."

Sir, I move :

"That after article 277 the following new article be inserted –

Duty of the Union to protect States against external aggression and internal disturbance

'277-A. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution'."

And then, Sir, I move amendment No. 160 of List II, which reads as follows :

"That for article 278 the following articles be substituted :—

Provisions in case of Failure of Constitutional machinery in States

278. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament,

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolution of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of this article :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

[The Honourable Dr. B. R. Ambedkar]

"278-A. (1) Where by a Proclamation issued under clause (1) of article [illegible] of the Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent

(a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf

(b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to confer [illegible] powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India,

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament;

(d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session

(2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State"

Shri H. V. Kamath (C.P. and Berar: General): Article 188 also?

The Honourable Dr. B. R. Ambedkar: I have said that 188 will be deleted. It is not really necessary to move the amendment, but to give the House an idea of the whole picture I have said that we propose to delete article 188.

Sir, I anticipate that there will be probably a full-dress debate on this article and I may at some stage be called upon to offer explanation of the points of criticism that might be raised so that I think it would be right if I did not enter upon a very exhaustive treatment of the various points that arise out of the new scheme. I propose at the outset merely to give an outline of the pattern of things which we provide by the dropping of article 188, by the addition of article 277-A and by the substitution of two new articles 278 and 278-A for the old article 278.

I think I can well begin by reminding the House that it has been agreed by the House, when we were considering the general principles of the Constitution, that the Constitution should provide some machinery for the breakdown of the Constitution. In other words, some provision should be introduced in the Constitution which would be somewhat analogous to the provisions contained in section 93 of the Government of India Act, 1935. At the stage when this principle was accepted by the House, it was proposed that if the Governor of the Province feels that the machinery set up by this Constitution for the administration of the affairs of the Province breaks down, the Governor should have the power by Proclamation to take over the administration of the Province himself for a fortnight and thereafter communicate the matter to the President of the Union that the machinery has failed, that he has issued a Proclamation and taken over the administration to himself, and on the report made by the Governor under the original article 188 the President could act under article 278. That was the original scheme.

It is now felt that no useful purpose could be served, if there is a real emergency by which the President is required to act, by allowing the Governor, in the first instance, the power to suspend the Constitution merely for a fortnight. If the

President is ultimately to take the responsibility of entering into the provincial field in order to sustain the constitution embodied in this Constitution, then it is much better that the President should come into the field right at the very beginning. On the basis that that is the correct approach to the situation, namely that if the responsibility is of the President then the President from the very beginning should come into the field, it is obvious that article 188 is a futility and is not required at all. That is the reason why I have proposed that article 188 be deleted.

Now I come to article 277-A. Some people might think that article 277-A is merely a pious declaration, that it ought not to be there. The Drafting Committee has taken a different view and I would therefore like to explain why it is that the Drafting Committee feels that article 277-A ought to be there. I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, none-the-less is a Federal Constitution and when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it. In other words, barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province. Now, when once the Constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of articles 278 and 278-A, it must be by and under some obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorised by Law. Therefore, in order to make it quite clear that articles 278 and 278-A are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we propose to introduce article 277-A. As Members will see, article 277-A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution. So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution, where the constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it shall also be the duty of the Union to maintain the Constitution in the provinces as enacted by this law. There is nothing new in this and as I said, in view of the fact that we are endowing the provinces with plenary powers and making them sovereign within their own field, it is necessary to provide that if any invasion of the provincial field is done by the Centre it is in virtue of this obligation. It will be an act in fulfilment of the duty and the obligation and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act That is the reason why we have introduced article 277-A.

With regard to articles 278 and 278-A although they appear as two separate clauses, they are merely divisions of the original article 278. 278 has something like seven clauses. The first four clauses are embodied in the new article 278 Clauses (4) onwards are put in article 278-A. The reason for making this partition, so to say, is because otherwise the whole article 278 would have been

[The Honourable Dr. B. R. Ambedkar]

such a mouthful that probably it would have been difficult for Members to follow the various provisions contained therein. It is to break the ice, so to say, that this division has been made.

With regard to article 278, the first change that is to be noted is that the President is to act on a report from the Governor or otherwise. The original article 188 merely provided that the President should act on the report made by the Governor. The word "otherwise" was not there. Now it is felt that in view of the fact that article 277-A, which precedes article 278, imposes a duty and an obligation upon the Centre, it would not be proper to restrict and confine the action of the President, which undoubtedly will be taken in fulfilment of the duty to the report made by the Governor of the province. It may be that the Governor does not make a report. None-the-less, the facts are such that the President feels that his intervention is necessary and imminent. I think as a necessary consequence to the introduction of article 277-A, we must also give liberty to the President to act even when there is no report by the Governor and when the President has got certain facts within his knowledge on which he thinks he ought to act in the fulfilment of his duty.

The second change which article 278 makes is this, that originally the authority and powers of the legislature were exercisable only by Parliament. It is now provided that this authority may be exercisable by anybody to whom Parliament may delegate its authority. It may be too much of a burden on Parliament to take factual and *de facto* possession of legislative powers of the provincial legislatures which may be suspended because Parliament may have already so much work that it may not be possible for it to deal with the legislation necessary for the provinces whose legislature has been suspended under the Proclamation. In order, therefore, to facilitate legislation, it is now provided that Parliament may do it itself or Parliament may authorise, under certain conditions and terms and restraints, some other authority to carry on the legislation.

Another very important change that is made is that the Proclamation will cease to be in operation at the expiration of two months, unless before the expiration of that period Parliament by resolution approves its further continuance. Originally, the provision was that it will continue in operation for six months, unless extended by Parliament. In the present draft, the period is restricted to only two months. After that, if the Proclamation is to be continued, it has to be ratified by Parliament by a Resolution.

The second change that is made is this, that in the original article, if Parliament had once ratified the Proclamation, that Proclamation could run automatically without further ratification for twelve months. That position again has been altered. The twelve months is now divided into two periods of six months each and after the first ratification, the Proclamation could run for six months and then it shall have to be ratified by Parliament again. After Parliament has ratified, it will again run for six months only. There will be further ratification by Parliament so that six months is the period which is permitted for a Proclamation after it has been ratified by Parliament. Further continuance would require further ratification and we have put an outside limit of three years. At the end of three years, neither Parliament nor the President can continue the state of affairs in existence in the province under which this Proclamation has taken effect.

Then I come to article 278-A. Sub-clause (a) which provides for Parliament to delegate power to make laws for the State to the President or any other authority specified by him in that behalf is a new one.

Sub-clause (b) of the article is merely a consequential change, consequential upon sub-clause (a) of clause (1) of article 278-A. It says that authority may be conferred upon anybody, either upon the officers of the Government of India or officers of even Provincial Governments to carry into effect any law that may be made by Parliament or by any agency appointed by Parliament in this behalf.

Sub-clause (c) of clause (1) of article 278-A is a new clause. It provides for the sanctioning of the budget. In the original draft article 278 no provision was made as to how to sanction and prepare the Budget of a province whose legislature has been suspended. That matter is now made clear by the introduction of sub-clause (c) of clause (1) to article 278-A which expressly provides that the President may authorise, when the House of the People is not in session, expenditure from the Consolidated Fund of the State, pending the sanction of such expenditure by Parliament.

Sub-clause (d) makes it quite clear—which probably was already implicit in the article that the President also can exercise his powers conferred upon him by article 102 to issue Ordinances with regard to the running of the administration of any particular province which has been taken over when both the Houses are not in session. The original article 102 was confined to Ordinances to be issued with regard to the Central Government. We now make it clear by sub-clause (d) that this power will also be exercised by the President with regard to any Ordinance that may be necessary to be passed for the conduct of the administration of a province which has been taken up.

Shri Brajeshwar Prasad (Bihar : General): Sir, I am not moving amendments Nos. 158 and 159 (List II : Second Week).

Pandit Thakur Das Bhargava (East Punjab : General): I am not moving amendment No. 202.

Shri H. V. Kamath (C.P. & Berar : General): Mr. President, may I, at the outset request you to tell the House what method or system you would like us to adopt whether we should move the amendments to each article separately, or whether we shall move the amendments to all the four articles at once?

Mr. President : I would like to have the amendments to all the articles moved together.

Shri H. V. Kamath : I do not, Sir, propose to move amendments No. 161 and 162 to article 278 (List II, Second Week). I shall first take up article 277-A and move the amendments that are relevant thereto. I invite the attention of the House to List IV, Second Week, amendments Nos. 220, 221 and 222.

Sir, I move :

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments, in the proposed new article 277-A, for the word 'Union' the words 'Union Government' be substituted."

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments, in the proposed new article 277-A, for the word 'and' where it occurs for the first time, the word 'or' be substituted"

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments, in the proposed new article 277-A, for the words 'internal disturbance' the words 'internal insurrection or chaos' be substituted"

[Shri H. V. Kamath]

Turning, Sir, to article 278 in the same list, I move, by your leave, the following amendments :—

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, the words 'or otherwise' be deleted"

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, after the words 'is satisfied that' the words 'a grave emergency has arisen which threatens the peace and tranquility of the State and that' be added."

Will you permit, me, Sir, to clarify the importance of these amendments by reading out to the House how the article would read in case the amendments are accepted by the House? Article 277-A would read, in case my amendments are accepted by the House, as follows :

"277-A. It shall be the duty of the Union Government to protect every State against external aggression or internal insurrection or chaos and to ensure that the Government of every State is carried on in accordance with the provision of this Constitution"

Article 278 (1) would read, in case my amendments are accepted by the House, as follows :—

"278. (1) If the President, on receipt of a report from the Governor or Ruler of a State, is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the State and that Government of the State cannot be carried on in accordance with the provisions of this Constitution, he may, etc., etc."

So much for the formal reading of the amendments.

There are before the House today, four articles.

Mr. Naziruddin Ahmed: May I suggest that all the amendments to this article may first be moved and then general discussion held later on.?

Mr. President: Very well. Prof. Shibban Lal Saksena may move his amendments at this stage. Mr. Kamath may speak afterwards.

Prof. Shibban Lall Saksena (United Provinces: General): Sir, I move :

"That in amendment No. 160 of List II (Second Week) of Amendment to Amendments, in clause (1) of the proposed article 278, for the word 'Ruler' the words 'the Rajpramukh' be substituted."

I move :

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, for the first proviso to clause (4) of the proposed article 278, the following be substituted :—

Provided that the President may if he so thinks fit order at any time during this period a dissolution of the State legislature followed by a fresh general election, and the Proclamation shall cease to have effect from the day on which the newly elected legislature meets in session."

Shri Brajeshwar Prasad: Mr. President, I am not moving my amendments Nos. 122, 123, 124 and 125 to this article.

Shri H. V. Kamath: I am not moving my amendments Nos. 161 and 162.

Mr. President: These are all the amendments of which there is notice. Mr. Kamath may speak now.

Shri H. V. Kamath: I am deeply grateful to you, Sir, for giving me this opportunity of speaking on the matter brought before the House today by Dr. Ambedkar. These articles have a three-fold object, though the various objects are inter-connected. Article 188 is firstly sought to be deleted and two new articles are sought to be inserted *viz.*, 277-A and 278-A, and the old draft of article 278 is proposed to be modified in certain respects.

Taking up the motion for the deletion of article 188, may I invite the attention of Dr. Ambedkar and the House to certain observations made in the course of the debate on article 143 relating to the deletion of the provision concerning the Governor's discretionary powers? Replying to the debate on that occasion on behalf of the Drafting Committee, Dr. Ambedkar said that the amendment in principle was welcome to him, but that there were certain difficulties with regard to the incorporation of the amendment in the Constitution. He said then that so long as articles 188 and 175 were not finalised, it would be difficult for him or the House to make up their minds finally about the amendments moved by me seeking to divest the Governor of discretionary powers conferred upon him by the Draft Constitution. May I remind him of what he said on that occasion? I am quoting from the official records of the Assembly. He said that article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. Proceeding, he said :

"It seems to me there are three ways by which this matter of discretionary powers could be settled One way is to omit the words suggested by Pandit Kunzru and others from article 143 and add such articles as 188 or 175 or such other provisions which the House may hereafter introduce vesting the Governor with discretionary powers, saying, notwithstanding article 143 the Governor shall have this or that power....."

"The other way," Dr. Ambedkar said, "would be to say in article 143 that, except as provided in articles so and so, specifically mention articles 175 and 188. I would be quite willing to amend the last portion of article 143 if I knew at this stage what other provisions the Constituent Assembly proposes to make with regard to vesting the Governor with discretionary powers. My difficulty is that we have not yet come to articles 278 and 188 nor have we exhausted all possibilities of other provisions vesting the Governor with discretionary powers". "If I knew that", he said, "I would agree to amend article 143, but that cannot be done now."

The point of reference on an earlier occasion was this : That point was raised by me in an amendment which was hotly debated in this House and Dr. Ambedkar promised to reconsider the matter after articles 175 and 188 had been disposed of by this House. The time has come now for him to reconsider the matter. We have disposed of article 175(2) which divest the Governor of discretionary powers in regard to legislation and we are seeking to delete article 188 which seeks to specifically confer discretionary powers on the Governor. It is high time now for the House to revert to what both Dr. Ambedkar and Shri T. T. Krishnamachari said on that occasion. They said that after we disposed of this article we could come back and amend article 143 suitably.

Therefore, Sir, this consequential amendment is necessary to article 143 and I hope Dr. Ambedkar will bear in mind this fact and amend the article suitably when the time comes for him to do so. That disposes of the amendment moved by Dr. Ambedkar for the deletion of article 188. I support it with the proviso that article 143 be amended suitably.

Now coming to article 277-A, we have laid according to this article certain duties upon the Union Government. Firstly, it should defend every constituent unit against any external aggression. Secondly, it should protect the State against internal disturbance, or I suppose Dr. Ambedkar and the Drafting Committee mean that the Union Government should prevent any internal disturbance from occuring in the State. Lastly, the duty is laid upon the Union Government to see that the Government of every State is carried on in accordance with the provisions of this Constitution. As regards the last, I am wholeheartedly in agreement with that provision that the Union Government should make it a point to see that every State honours and observes the Constitution in letter as well as in spirit. Also I have no quarrel with the provision regarding the defence of every constituent unit against external aggression. In

[Shri H. V. Kamath]

my humble judgment., however, there is likely to be a difference of opinion as regards the middle provision of protecting the State against internal disturbance.

(At this stage Mr. President vacated the Chair which was then occupied by Mr. Vice-President, Shri V. T. Krishnamachari)

The crucial point to my mind in this connection is, what is internal disturbance and what is not. Will any petty riot or a general *melee* or imbroglio in any State necessitate the President's or the Union Government's intervention in the internal affairs of that State If honourable Members turn to List II of the Seventh Schedule, they will find that item 1 lays the responsibility for public order (but not including the use of naval, military or air forces in aid of the civil power) squarely on the shoulders of the State That will be within the jurisdiction of the State. It is not in the Concurrent List either Public order has been made expressly a responsibility of the State Government Now the crux of the matter is this : You say that the State must maintain public order But through a new article 277-A you say that the Union Government shall protect every State against internal disturbance. Let us be honest about what we are going to do. It is no use having mental reservations on this important point If we are going to whittle down provincial autonomy, let us say so in the Constitution. Let us make no bones about it. It is dishonest on our part to say in one article that public order shall be the responsibility of the State and then in another article to confer powers upon the Union Government to intervene in the internal affairs of the State on the slightest pretext of any internal disturbance. Therefore, with a view to removing this difficulty, I have moved my amendment, No. 222 of List IV (Second Week). It seeks to substitute "internal insurrection or chaos" for "internal disturbance". "Disturbance" is a very wide and elastic term. A disturbance of the human organism may range from a little pain in the finger up to hyperpyrexia or coma. So also a disturbance within a State may range from two people coming to blows to a full-fledged insurrection leading perhaps to chaotic conditions. What are we aiming at? Do we want to confer powers upon the Union Government to see that peace, order and tranquility in the State are not jeopardised, or are we going to confer powers upon the Union Government to intervene in the internal affairs of the State? I do not think that the latter is our objective. The Preamble says that we are going to constitute India into a sovereign democratic Republic. Dr. Ambedkar just now stated that the federal scheme envisages the sovereignty of every State within the field which is allotted to it. List II of the Seventh Schedule allots public order to the State. Now, this article seeks to divest, in howsoever small or large a measure, the State Government of powers conferred upon it by the Seventh Schedule. If this article 277-A is adopted without much consideration by this House, I foresee the destruction of provincial autonomy, the subversion of provincial autonomy by the Union Government, on the pretext of averting or quelling internal disturbance. If that is our objective, let us say so, and then let us pass this article. If we are not going to do it, if it is our aim to promote provincial autonomy—no doubt the inevitability of gradualness comes in here—let us be straight about it and let us provide as an interim measure, as a provision during the *interregnum*, during the transition we are passing through, during the dangerous and critical times that we are living in, let us amend this article by saying that only in the event of an insurrection or chaos shall the Union Government be empowered to intervene in the internal affairs of the State, and not for any disturbance that might arise in the State. For that the State has ample powers at its disposal, the police force, the Raksha Dal and all sorts of other subsidiary forces. Can we not trust the State Government to

look after its own public peace and order, to maintain tranquility within the borders of its own domains? Certainly I think that is the spirit of the Constitution which we are considering in the House and with that spirit in mind, let us not confer more powers upon the President and the Union Government than are warranted by the facts or the contingencies or the possibilities of any situation that might arise in future.

I have with regard to this matter moved three amendments; namely, 220, 221 and 222. The first is merely verbal. I thought that instead of the word "Union" the words "Union Government" would be more appropriate, because article 1 has defined the Union. Article 1 says that India shall be a Union of States. If we just say "Union" it may vague and it may mean also the various authorities in the Union. Are they required to intervene and to meddle in the affairs of the State in case of internal disturbance or external aggression or to see that the Government of the State is carried on in accordance with the provisions of the Constitution? If Dr. Ambedkar's wisdom can appreciate this amendment of mine, I would request him to change this word "Union" to "Union Government". It is almost a verbal amendment and I leave it to their cumulative wisdom, which I am sure, is superior to mine.

The next amendment is 221 and this also though verbal has got some substance in it. The article as it has been brought forward by Dr. Ambedkar before the House today provides that the Union Government shall protect every State against external aggression and internal disturbance. According to legal terminology or constitutional parlance, I think this is rather inaccurate. This might mean that when both these things happen then only the Union can intervene. My lawyer friends will appreciate the distinction between the words "and" and "or" and it will mean that article 277-A as it stands today will mean that unless there is both external aggression and internal disturbance the Union cannot intervene in the affairs of the State. But if you say "or it will mean that in any of the these contingencies, either external aggression or internal insurrection or chaos, the Union Government is competent to intervene.

With regard to amendment No. 222 I have already made a few observations as to why it is necessary, and with a view to be honest about what you mean about the scheme envisaged in the Constitution, the scheme of a sovereign democratic republic, seeking to promote not merely provincial autonomy, but seeking to develop *Gram Panchayats* as well right from the village *panchayats* up to the apex of Provincial autonomy. Thus the provision to confer upon the President, or the Union Government powers to intervene in any internal disturbance will be contrary to the spirit of the whole Constitution. Only in the event of an insurrection or chaos should the President of the Union be empowered to intervene in the affairs of the State.

Now coming to article 278, I would appeal to the House to listen closely and carefully if they are so minded. This article 278 is a lineal descendent of the articles that have gone before in Part XI and of the articles that have been moved by Dr. Ambedkar today. They have got to be considered together, as Dr. Ambedkar remarked in the course of moving the amendments before the House just a little while ago. There have been certain changes embodied in the new draft brought before the House today, changes in relation to article 278 as it stood in the Draft Constitution. This artile 278 now before the House seeks to confer more powers upon the President than were envisaged in article 278 of the Draft Constitution. Firstly, the President is empowered to act under article 278 not merely if he gets a report from the Governor or the Ruler of the State but also otherwise. What that "otherwise" is, God only knows. Reading all these articles since yesterday and the amendments moved today, it seems to me that we are not going about the business in an honest fashion. We here.

[Shri H. V. Kamath]

representatives of a democracy, just liberated from foreign [illegible] ruling [illegible] solemnity and dignity to frame the Constitution of our motherland [illegible] are adopting subterfuges to nullify and set at naught, certain articles of a [illegible] provision which we have already adopted. To my mind, this is not the way to go about business. It may be all right if we said that if the President receives a report from the Governor or the Ruler of a State, well and good. After all we have already decided that the Governor shall be the nominee [illegible] President. If this be so, cannot the President have confidence in his own nominees? If he cannot have this trust and confidence in his own nominees, let us wind up our Government and go home; let us wind up this Assembly and go home. This is not the place for us; let us go to the market-place and let us go into the street, let us go wherever we like, but not here in this Assembly. In that case Government should be wound up and it will have no right to function. I am using strong words, hard words, but I believe no occasions such as this, hard words are very necessary. Sometimes it is very necessary to be cruel to be kind and if I am hard today the House will pardon me. I have therefore, Sir moved amendment number 224 seeking to delete the words "or otherwise". I want that the President should be empowered to act only in case the Governor or the Ruler of a State informs him that a situation has arisen or that an emergency has arisen etc. etc. but not otherwise. What is this 'otherwise'? Do you mean to say that the President, even granting that he is to act upon the advice of the Council of his Ministers, can intervence solely on the strength of his own judgement perhaps butteressed or reinforced by the advice of his Council of Ministers at the Centre but without a report from the State Governor or Ruler? No I shall not be a party to this transaction. This is a foul transaction, setting at naught the scheme of even the limited provincial autonomy which we have provided for in this Constitution, and I shall pray to God that He may grant sufficient wisdom to this House to see the folly, the stupidity, the criminal nature of this transaction.

Shri L. Krishnaswami Bharathi (Madras General): Criminal? What is its crime?

Shri H. V. Kamath: It is a constitutional crime to empower the President to interfere not merely on the report of the Governor or Ruler of a State, but otherwise. 'Otherwise' is a mischievous word. It is a diabolical word in this context and I pray to God that this will be deleted from this article. If God does not intervene today, I am sure at no distant date He will intervene when things will take a more serious turn and the eyes of every one of us will be more awake than they are today.

I was saying that the President should be empowered to act only on the receipt of a report from the Governor or Ruler of a State. I would say here that we have deliberately altered the language as it stood in relation to article 188 and made it far more elastic. The original draft article 278 stated that on receipt of a Proclamation, issued by the Governor of a State under article 188, if the President is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution etc., etc.... Let us turn to article 188 and see what it stated. It is now sought to be deleted and I hope it will be deleted; there is no quarrel about that. If the House will have the patience to turn to article 188, that article stated that the Governor of a State must be satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the State, and that it is not possible to carry on the government of the State in accordance with the provisions of this Constitution. That was the scheme visualised in article 188 and article 278

was a sequel to article 188. Today, article 278 does not, to my mind, to my untrained legal or constitutional mind, bear the full impress of article 188. In the proposed new article, it is sought to be laid down, "if the President is satisfied on receipt of a report from the Governor or Ruler of a State or otherwise that the government of the State cannot be carried on in accordance with the provisions of this Constitution." There is no reference to the peace and tranquillity of the State being jeopardised. Therefore, in this connection, I have got my amendment No. 225 of List IV (Second Week), which seeks to includes those words that the President must be satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the State, and that—not 'or that'—the government of the State cannot be carried on in accordance with the provisions of this Constitution. There are grave dangers lurking in the article brought before us today. The dangers are that on the pretext of resolving a ministerial crisis or on the pretext of purifying or reforming maladministration obtaining in a particular State, the President may have recourse to this article 278. I am sure this article is not intended for resolving any ministerial crisis that might arise in a particular State. For that the remedy lies elsewhere; the remedy lies in the dissolution of the legislature by the Governor and a reference to the electorate. The Governor is empowered by article 153 to dissolve the legislature and order fresh elections. A mere crisis or a vote of no-confidence in the Ministry by the legislature, even a repeated vote does not, cannot empower the President of the Union Government to intervene and proclaim an emergency. Nowhere in this world has this been done. If you are going to set up a new precedent, you are welcome to do it; but let us beware of the catastrophes that have followed in the wake of arming the executive with unnecessary, uncalled for, tyrannical, dictatorial powers. What has been the experience of the countries where the Executive have been armed with such powers? Yesterday, my honourable friend Mr. T. T. Krishnamachari observed that these emergency provisions bear some resemblance to the Weimar Constitution, article 48; but he missed the point that I made. I had sought to show that the very article 48 of the Weimar Constitution of the Third Reich of Germany, was used by Herr Hitler to destroy democracy in Germany and to establish his dictatorship. All right; if we are aiming at that objective, if we in this country want dictatorship, I have no quarrel with them. Have it by all means; but say so; be honest; be straight; do not adopt subterfuges; do not be crooked about your business. It does not behove us, it does not conform to our dignity to say one thing in one article and say quite a different thing and seek to annul it by another article. I therefore think that this clause (1) of article 278 should not stand as it is. I hope the House will bestow earnest consideration, very serious thought, bring to bear its mature judgement upon the provinsions of this clause (1) of article 278 and amend it suitably Otherwise, we are in for serious trouble in the future. We are laying ourselves open to snares and traps in our path wherein we shall be caught beyond any rescue. This whole Constitution will be in danger not so much from those who are agitating in the streets as from those who are in power, in case these articles are adopted as they are. If the House wants such a thing to happen, let it say so. Let us not say in the Preamble that we shall have a democratic republic. We are here seeking to destroy the foundations of democracy. About 278-A I have no amendment as such but I would only say that Proclamation under article 278 is issued only on rare occasions, *i.e.*, when the President is satisfied on receipt of report from Governor or ruler of a State. "Or otherwise" should go. Otherwise the Ruler or Governor will be a mere sham and a mockery Secondly, the report must satisfy the President not merely that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, but also it should satisfy him that there is grave danger to the peace and tranquility of the State. Only in that eventuality should the President be clothed with this power to intervene in the affairs of a constituent State and not otherwise

[Shri H. V. Kamath]

Article 278-A is an enabling article in respect of various matters that follow in the event of Proclamation by the President under article 278, and therefore if the conditions I have laid down are satisfied, I have not much to quarrel with 278-A which merely seeks to clarify and further expand the provisions of article 278.

Summing up, regarding article 143 the discretionary power of the Governor must go, now that we have disposed of articles 175 and 188. Perhaps the House has forgotten that Dr. Ambedkar gave an assurance that after articles 175 and 188 this matter will be taken up. We have already passed 159 for deletion of discretionary power to summon, or dissolve the Assembly. The only other articles that remained were 175 and 188. 188 we have deleted and as for 175 we have there divested the Governor of discretionary power. So 143 must be amended. I moved at that time an amendment which has now full force, which now comes into play, and I hope that that amendment will be suitably incorporated by the Drafting Committee finally.

Regarding 277-A and 278 the House is faced with a grave situation. I appeal to the House to deliberate coolly, earnestly, seriously, deeply and dispassionately upon the provisions of articles 277-A and 278 and amend them in such a manner that the Constitution that we are framing will do us credit and will not detract from the high principles enunciated in our Charter of Freedom which Pandit Nehru moved in December 1946, and will not deviate from the nobility of those ideals, from the integrity of the high canons which were laid down in the Charter of Freedom; and above all that this Constitution which we are ushering in in the last year of the first half of this century, next year, will be the crown and glory of the labours and sufferings of millions of our compatriots, and will be the foundation of a real democracy that will set an example to other countries of the World.

Prof. Shibban Lal Saksena: Mr. President, we are considering three articles together, 188, 277-A and 278 and I think these articles are of the utmost importance in this Constitution. I personally feel happy that article 188 is being deleted. In fact, I had given an amendment which is No. 160 in the printed list suggesting that the Governor should not be given the power to issue Proclamation and that it should be only the President who should have the authority. So I agree with the deletion, but with this deletion article 278 has been made more sweeping. In fact, article 188 had said that if at any time the Governor of a State is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of a State, then alone he was empowered to issue a Proclamation and article 278 was only to conform to that declaration. But the new draft does not take this fact into consideration. It says that if "the President on receipt of a report from the Governor or otherwise is satisfied", he can take action under this article. This gives very sweeping powers to the President. There need not be any grave emergency. If only the President is satisfied that the Government cannot be carried on in accordance with this Constitution, then he can issue a Proclamation under article 278. Article 277-A puts upon Parliament the responsibility of protecting every unit of the Union against external aggression and internal disturbance so that here also it is only external aggression and internal disturbance, and internal disturbance is too wide a term. The article does not say chaos or even grave emergency. Personally I feel that the powers given in article 278 are far too sweeping. I am glad that the ultimate authority lies with the Parliament, and therefore, we cannot say that these articles nullify the entire autonomy of the State. That of course, is a very important safeguard, because, after all has been done, ultimately the Indian Parliament remains a sovereign body and the final authority responsible for the administration of the province. The President also cannot do anything without putting the matter before Parliament, although

he has two months time in which he can have his own way. I therefore, think that I cannot condemn the article as strongly as my Friend Mr. Kamath has done. But I feel that by these articles we are reducing the autonomy of the States to a farce. These articles will reduce the State Governments to great subservience to the Central Government. They cannot have any independence whatsoever. I do not want the State to pull in one direction and the Centre in another; still there must be some autonomy for the States and I say articles 277-A and 278 take away this autonomy. I feel that even if these articles are omitted, there are articles 275 and 276 and these two articles give the executive all the powers necessary to deal with an emergency. If there is an emergency, you can issue a Proclamation under article 275, and by 276 you can legislate on matters relating to the Provinces. So articles 275 and 276 are quite sufficient. The introduction of articles 277-A and 278 is not desirable and these articles, in fact, lay us open to the charge that we are reducing provincial autonomy to a farce. In fact, what does article 278 say? If you see the Government of India Act, 1935, you will find that this article is almost a word for word reproduction of section 93 of that Act; only for the Parliament of England, you have substituted the Houses of Parliament in India and for the period of six months, you have put down two months in this article. The rest is all identical. And what is more interesting is that in the Government of India Act, 1935 as amended, and which is now in force in this country, this particular article is omitted. So in a way the present Government of India Act under which we are now being governed, is more progressive than the article which we are now going to pass, because in this present Government of India Act, there is no section 93, and we are re-introducing it in our new Constitution. I surely think that this is a retrograde step. I should have been much happier if these particular articles were not there. Even if you must put in these two articles I would strongly plead that at least the word "otherwise" be taken away. There is no justification for the President to interfere with a State until at least the Governor who is his own nominee has reported to him. But here he has power to interfere of his own volition even though the Governor may not be of that opinion, and the Provincial Ministers may disagree with him.

Shri Brajeshwar Prasad: Sir, I would like to have elucidation on one point. If the Governor of a Province is forcibly arrested by some people, then how can he ever inform the Centre?

An Honourable Member: A Governor cannot be arrested.

Shri Brajeshwar Prasad: Sir, I am sorry for the word "arrested". He may be kidnapped, and what happens then?

Prof. Shibban Lal Saksena: If such a situation arises, then article 275 is there under which the Proclamation can be issued. But here, there is not even consultation with the Governor. You do not proceed on his report, but the President proceeds on his own whims. I feel also that even if you put these two articles on the Statute Book, no President will dare to act upon them, beacuse it will create chaos. The people will rise and ask him, "Why should you interfere, even when the Governor himself does not think that it is necessary?" So he cannot take action under this article. So I appeal to the Drafting Committee that the word "otherwise" should be removed. The President should proceed on the report of the Governor, who is his own nominee. The Governor is not put there by the Legislature. He is the President's own nominee. If the President wants, he may remove the Governor and post another. At least, let there be some semblance of autonomy and democracy. If a Governor becomes hostile, remove him and put another in his place; but let him make a report before you proceed to proclaim an emergency. The President must be able to say that he had

[Prof. Shibban Lal Saksena]

proceeded on the report of the Governor. So the word 'otherwise' should go, and that will at least give the Governor some excuse for interference.

Then, Sir, I find that this article scraps the State Legislature and the Council of Ministers as well as the Governor, and the President and Parliament become the rulers of the Province. I would not have minded, if you had frankly said, "We are framing a unitary constitution." That would have been better. You could have had 250 counties in the country and one single Central Parliament.

Shri Brajeshwar Prasad: Hear, hear.

Prof. Shibban Lal Saksena: But now we have rejected such a formula and we have adopted this federal constitution with autonomous States. Therefor you must at least treat the States with some respect. I would, therefore, suggest that you must modify this article 278. Under this, you have given the power that Parliament can confirm the Proclamation after every six months and thus for three years the Proclamation could be continued. What happens during these three years? Take for instance my own province of the United Provinces. Suppose the President decided—I do not know on what grounds, may be on information from the C.I.D.—suppose the President decided to proclaim a state of emergency, divested the Ministry and the Governor and the Legislature of all power and took all powers to himself and to the Parliament, then he might put some nominee of his own to rule that province. Now, for three years he can go on in this manner and after every six months he can get the Proclamation passed. But what happens after three years? After three years, when his powers are exhausted, will that same legislature and the same ministry come in? Suppose you commenced this process after six months of the commencement of the legislature, and you carry on for three years. So three and a half years are over. Then one and a half years remain and afterwards the same Governor will come in and the same Ministry will come in. After having been divested of power for three years, do they become abler and wiser then? I think there is a very grave lacuna in this Constitution. We are just seeing the trouble in West Bengal; we are hoping that new elections will be held there and a new Ministry formed. Therefore I want that the President should be authorised to dissolve the legislature, to have new elections held and to have a new Ministry formed there, so that after eight months at least that Province might have a better and new Ministry. The same legislature, the same Ministry, which was supposed to be incompetent for three years, whose powers have been taken over by the President, will it be able to govern the Province for a single day? If it is not, where is the power to dissolve the legislature or put in another Ministry? There is no such power. There is a grave omission in this article and it should be rectified. I therefore suggest an amendment by adding a proviso to clause (4) which says :—

"Provided that the President may if he so thinks fit order at any time during this period a dissolution of the State legislature followed by a fresh general election, and the Proclamation shall cease to have effect from the day on which the newly elected legislature meets in session."

What happens is this. The President has taken over authority to himself because either he has found a grave emergency in the State or some disturbance which the Ministry is not able to quell and therefore his intervention is necessary. If that Ministry was competent, he then restores it after the emergency; but if he feels that it is not competent then what he does is that he orders dissolution of the legislature and holds a new election. That is probably what we are doing in West Bengal. I think we should take a lesson from that.

I therefore think that even if we take these powers, we must give the provinces some democracy. So, for God's sake remove this proviso to clause (4) which gives powers to the President to deprive that province of autonomy for three years continuously without making any provision as to what will happen afterwards. The Drafting Committee should carefully consider this question. I am not the only person, nor my Friend Mr. Kamath is, but even many of our leaders in this House are of this opinion. I find that no less a person than Pandit Govind Ballabh Pant had tabled an amendment to this article. So had Dr. H. N. Kunzru. Such men too were for deletion of this article. I hope they have not changed their minds since and will support me in this matter.

Col. B. H. Zaidi (Rampur-Banaras States): Mr. President, Sir, I am not here to enter into any detailed controversy regarding the provisions of these articles. There is only one thing which I should like to say briefly and it is this. On the occasion of a very tragic event in the history of the world, George Bernard Shaw was reported to have said that it is a dangerous thing to be too good. Now to be good is not a bad thing but in Shaw's opinion it is a dangerous thing to be too good. I feel that similarly it may be a very dangerous thing for our country to be too democratic. Let us have a little realism about our discussions and about our Constitution-making. We go on dissecting, analysing things purely from the point of view of a lawyer or an advocate. There is much too much of this hair-splitting, as it is in our temperament, but this hair-splitting and this tendency to be too legalistic may be divorced from the realities of administration and the handling of political crisis. What has been the trouble in our country in the past? Have we or have we not suffered from fissiparous tendencies? Have the various units not tried to break away from the Centre again and again? The greatest danger, as I dimly look into the future, may be, not that the Centre will interfere too much, but that the units may resent the guidance of the Centre. Of the two things, I do not believe that the President will be inclined to depose Governors, but that Provinces may have mal-administration over a long period and may come to grief over it unchecked by the Centre. The last speaker said, "suppose the President, on the basis of a report he receives from the C.I.D., decides that law and order has broken down and there is a grave emergency in a certain Province, he can then proceed to take the Government of that Province into his own hands and be the absolute ruler of that Province." Well, Sir, if that can happen in my country, then we are not fit for democracy. Let there be a perfect human body with all the limbs intact, with everything looking perfectly all right, but if the spirit has departed, that body is no good, the hands cannot work, the feet cannot walk, the tongue cannot speak because the spirit has departed. If we have the finest constitution in the world but if the democratic spirit is not in the country, then that Constitution is bound to break down. What do we mean by saying that the President may take the powers into his own hands and may become an absolute dictator? And will the thirty-two crores of Indians sit quietly and knuckle under? If they would, then they would do that anyhow, no matter what Constitution you frame. We seem to think that our political salvation lies purely in laws, not in a public opinion, which is wide awake, well-informed and vigilant. I feel that if we are going to pin our faith only on the written Constitution without bringing about the education of our new masters—the masses and the people of India—then we are going the wrong way about it. No Constitution which exists only on paper can mean the salvation of a country. What we must work for is the proper democratic spirit, the realization that everyone of us is responsible to see that the country is governed properly along enlightened, progressive, democratic lines. If that spirit and that vigilant watching of the Government of our country is not there, then no Constitution on God's earth, even if framed by Archangel Gabriel, is going to succeed. So I feel that instead of being too critical and putting the most unwarranted suspicions at the door of our would-be Presidents of the future, we should take the historical tendencies of our country into consideration and

[Col. B. H. Zaidi]

see what is likely to happen in the future and then in a realistic way, in a way which means political sagacity and wisdom and balance, we should proceed to the task of framing the Constitution. Take England, Sir. Does England put its trust wholly and solely in the written Constitution? Much more than the written Constitution, they make use of conventions. But we seem to forget that there is anything like conventions or public opinion and we go the legalistic extreme of conjuring up most weird and fantastic visions of the future and trying to provide for everything that we can possibly think of. I think, Sir, that the provision is sound, healthy and necessary in the light of our historic past and in the light of the tendencies that are staring us in the face and the fears expressed this morning are unwarranted and unjustified.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. President, Sir, I am glad the Honourable Dr. Ambedkar expected the House to have a full-dress debate on this important provision. As the House has already seen, there has been a very important change from the first draft to the present proposals and the main and fundamental change is that we have left no powers with the Governor of a province to act in an emergency. We have concentrated all emergency powers in the hands of the President and the Parliament of India and have made the Governor merely a reporting authority so far as emergency and its Proclamation are concerned. Now this, I have no hesitation in saying, is a very radical change and a change which is neither in conformity with federation nor is likely to be administratively beneficial or even practicable. There are at least two arguments which have been suggested by the Honourable Dr. Ambedkar himself in his speech which support my contention. The one is that the spirit of this change is against the idea of federation, and secondly we would be over-burdened in the Parliament with responsibilities which naturally should be delegated to another authority. Some of my friends will probably say that when I am in favour of a unitary government, why do I not like the President or the Parliament having larger and larger powers. My answer to that is that this is neither fish nor fowl, it is neither a unitary government nor a federal government. If you wish to retain the least possible vestige of a Federation, you must not deprive the head of the unit or the State of all authority in such matters. As has been already pointed out by two previous speakers, you are going not only to override the discretion or the power of the Governor who is your own nominee, but you are going to set at naught the Ministers, the Cabinet in the State as well as the State legislatures.

Shri Mahavir Tyagi (United Provinces: General): But, does my honourable Friend realise that the Governor is not an elected officer? He will be a nominated one.

Dr. P. S. Deshmukh: That is all the more reason why there should be more confidence in the Governor by the President as well as the Parliament, because he is not elected on the vagaries of the electorate of the province but is a person considered to be fit and competent and qualified by the President in his discretion, and that being so, it is all the more reason why before his tact and ability are exhausted, the President should not act. Even if the powers that were originally supposed to be exercised by the Governor were to last only for a fortnight, even that was necessary because that would mean giving chance to the man on the spot for doing his best to improve the situation, of which he has a far more intimate knowledge than the President or the Parliament is likely to have.

Then, Sir, coming to the practical nature of the suggestion, we find there are likely to be insurmountable difficulties in the way of the proper administration of the province. If the Governor is not clothed with this emergency power all that he will do is that he will report to the President that an emergency has arisen and a proclamation should be issued. After that, the responsibility falls not merely

on the President but the Parliament also and as soon as a body like the Parliament, consisting of hundreds of members, comes into play, one can imagine the state of affairs that is likely to result. So I think it is hopelessly unwise. My Friend Mr. Kamath, has used vehement language, but his speech, although it was very slow in delivery, did contain cogent reasons and I hope that neither the vehemence of his language nor the exuberance of his gestures would detract from the weight of his speech. I have much sympathy with what he has said and I agree with a substantial portion of his speech. I think it is not fair either to the Governor or to the provincial governments or to the Ministers, for the President to jump in all at once without exhausting the talent and the ability that is possessed in the province either by the Governor or his advisers.

Then I would like to come to article 277-A. Article 277-A proposes that 'it shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution'. It is a very intriguing provision. We are dealing with emergency powers. I cannot see what place this article can have logically in the discussion that we are having. But it is necessary simply because we have an amended draft which is article 278 where in part (b) of clause (1) it has been stated "declare that the powers of the legislature or the State shall be exercisable by or under the authority of Parliament" and then further in sub-clause (c)—"make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the proclamation *including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in that State*". This pious provision of 277-A has no connection whatsoever with any emergency. It is merely a pious expression on the part of the Union Government that they are going to try their best to uphold the Constitution and not interfere unduly in the Constitution which has been laid down in this Act. I do not think this sort of assurance was necessary at all, if we had not provided that the President will have the power even of setting at naught the Constitution by which the existence and the continuance of the unit or the State have been guaranteed.

So, Sir, this article 278 comes in only because we are clothing the President with powers for overriding at his own sweet will the provisions of the Constitution itself. If it was not necessary to give these powers to the President, and if we were content with retaining the powers which the Governor has been enjoying in virtue of section 93 of the Act of 1935—and on which really the original article 188 was based—there would have been no necessity to make this change and to bring in article 278. I, therefore, suggest that it is far better that we retain the powers of the Governor and give him such powers as we consider necessary and as were given by section 93 of Government of India Act, 1935, although this section has now been deleted from the adaptation which governs us. I think that it is absolutely essential that we should not impose this burden on the President and the Parliament and make it difficult for them to manage the affairs. Supposing more than one State is in this condition, supposing more than half a dozen States in India are in this condition, what will the President and the Parliament do? Will they be doing their normal duties, or dealing with these States? I do not think that it is practical politics; nor does it show any appreciation of the realities of the situation. As my Friend Mr. Zaidi said, let us be more realistic and not imagine situations which may not arise at all. After all, Sir, section 93 has worked well for the last so many years and it has not been found necessary for either the Central Government or the Governor-General to intervene, in spite of the fact that we have gone through a war of colossal dimensions. If we have survived on the strength of section 93 and passed through such critical times as we have done during the last decade, I do not think an emergency is likely to arise where it

[Dr. P. S. Deshmukh]

would be necessary for the Parliament to interfere. On the whole, therefore, I think it would be far better to reconsider the whole matter and to leave the whole power of acting in an emergency in the first instance to the Governor. In case the situation deteriorates still further and there is no alternative left for the Parliament and the President but to interfere, then alone should the Centre intervene. Nobody could have any objection to that.

My learned Friend, Dr. Ambedkar, has quoted the American and Australian Constitutions in support of artilce 278. Fortunately or unfortunately, there is no mention of any emergency either in the Australian or American Constitution. He quoted them probably to show that there will be no encroachment from the Centre so far as the units are concerned. That assurance exists in the Constitution itself. Every section of the Constitution is framed in such a way as to respect the autonomy of the units. If we mean this Constitution to work, the Centre will have to respect the autonomy of the provinces whether we specifically say so or not. If we at the Centre do not respect the provisions of the Constitution how could any one else be expected to do so? There was therefore hardly any point in the Honourable Doctor trying to derive support from foreign constitution. It would have been some consolation if he could have cited an appropriate parallel to the whole scheme now unfolded for the first time. That he could not do. Here we are taking away all the powers of the Provincial Governors and the Provincial Administrations; I do not think, Sir, this is wise or likely either to work well or be in the interest of sound and beneficial administration.

Shri Raj Bahadur (United State of Matsya): Mr. President, Sir, my only justification for encroaching upon a little of the valuable time of this august House is the provocation given by certain remarks that have dropped from the lips of my honourable Friend Mr. Kamath. He has waxed eloquent in certain pet phrases of his—I think the stock-in-trade—that he carries about. I shall begin by analysing the amendments that he has proposed to article 277-A. He wants us, in the first instance, to add the word "Governor" after the word "Union". As a matter of fact, even a cursory reading of article 277-A would reveal that it simply incorporates a principle, whereas article 278-A provides for the machinery to implement that principle. I suppose, Sir, that it is the function of the entire Union, and the entire nation and not only the Government to protect every State against external aggression or against internal disturbance. So the word "Government" would be superfluous.

Secondly, he says that for the word "and" in the second line of the proposed article 277-A the word "or" should be substituted. I may assure him that it is not a question paper in which a choice may be given to an examinee to attempt one question or the other. As a matter of fact in both emergencies, whether it is external aggression or internal disturbance, it is the duty and function of the Union and the nation to protect every State.

Lastly he wants us to replace the word 'disturbance' by the words 'insurrection and chaos'. I do not think it is easily possible to draw a line—a fine line of discrimination—between 'disturbance' and 'insurrection and chaos'. Insurrection and chaos are only the culmination of a disturbance. As a matter of fact, whenever there is a danger we should take adequate and early steps then and there.....

Shri H. V. Kamath: Will my friend prescribe a surgical operation for a mere cold or catarrh?

Shri Raj Bahadur: I would have been glad if Mr. Kamath had made some constructive suggestion. I think there is none in the House who will deny the wisdom of incorporating in the Constitution certain safeguards to be used

in case of an emergency. We can easily contemplate the possibility of a break-down not only on account of a disturbance or chaos, but also on account of other reasons. Consider for a moment the state of affairs obtaining in France, where there is a change of Government almost every other day. In such situations it will be profitable to ask the President to come in and take powers in his hands until the elections are held. Similarly we can also contemplate the possibility of a financial break-down in a Province or State. The example of the then dominion of New Foundland is before us. New Foundland found it difficult to carry on on account of a financial break-down with the result that she had to petition to the British Parliament to come to her aid and enable her to stand on her feet. The Parliament intervened and the ultimate result has been that on her own choice Newfoundland has now become a province of Canada. Such contingencies may arise in our country as well. Again I see no reason why we should distrust our President, who has not yet even come into being. After all who shall be the President? The President shall be our own countryman. He shall be elected by us; he will be the keeper of our democratic conscience. He shall be the guardian angel of our liberty and freedom. He shall be the first citizen of the country. I fail to understand why Mr. Kamath should be so much suspicious about him. The time has come when we should break through the cyst of our suspicions and superstitions. Obviously enough we are living in the pre-1947 era. We talk of revolutionary spirit and revolutionary ideas. But it appears that we have not yet reconciled ourselves to the change that has taken place in the country. Why should we forget that we are the masters of our own house now? The President is to be elected by us and we should not distrust him. Cannot we put our trust in him for a brief two months in the case of an emergency? Without giving any reasons for the view held by him, my friend went on saying that this article is merely a "subterfuge to nullify the democratic freedom." I say it is just the opposite and the antithesis of what he has said. It is to protect and safeguard democracy and freedom that such a provision has been made to meet certain emergencies. He has taken exception to the use of the word "otherwise" in the proposed article 278. The proposed article runs:

> "If the President, on receipt of a report from the Governor or ruler of a State or otherwise, is satisfied he may by proclamation ..."

I would like to know from Mr. Kamath whether he wants to restrict the power of the President under this article only to the case where he receives a report from the Governor and to no other contingency. There may be other contingencies also. The President should be empowered to act under this article in those cases also where he receives information from other sources. Surely he must be allowed to act on the advice of his Cabinet or Government. I do not think that by seeking to eliminate the words "or otherwise" he would be making an apt amendment in this provision.

Mr. Kamath, in the course of his speech invoked God's mercy to give this House the wisdom to see, what he has been pleased to call, "the stupidity the folly, the crime" in vesting the President with the powers under this article. On my part I would say, let God grant us wisdom to see all this in the proper light. Let Him also grant us commonsense and balance enough not to criticise merely for the sake of criticism. We should see that we make certain provisions in the Constitution which may stand us in good stead when unseemly or awkward situations arise in our land. My honourable Friend seems to think that we can run the administration of our country and defend our freedom and democracy merely by indulging in pious platitudes and flimsy fulminations. The House knows that one cannot do that and therefore I would request honourable Members to see that the amendments proposed by my friend are rejected. Sir, I conclude.

Shri Alladi Krishnaswami Ayyar (Madras : General): Mr. President, I would like to say a few words in support of the motion moved by Dr Ambedkar in regard to both the articles.

In the first place, I would explain the reason why the article has been put in making it the duty of the Union "to maintain the Constitution" The primary thing concerning the nation and the Union Government is 'to maintain the Constitution'. If the import of that expression is fully realised, it will be noticed that there cannot be any intention to interfere with the provincial constitution, because the provincial constitution is a part of the Constitution of the Union Therefore, it is the duty of the Union Government to protect against external aggression, internal disturbance and domestic chaos and to see that the Constitution is worked in a proper mannner both in the States and in the Union. If the Constitution is worked in a proper manner in the provinces or in the States, that is, if responsible government as contemplated by the Constitution functions properly, the Union will not and cannot interfere. The protagonists of provincial or State autonomy will realise that, apart from being an impediment to the growth of healthy provincial or State autonomy, this provision is a bulkwark in favour of provincial or State autonomy, because the primary obligation is cast upon the Union to see that the Constitution is maintained. Such a provision is by no means a novel provision. Even in the typical federal constitution of the United States where State sovereignty is recognised more than in any other federation, you will find a provision therein to the effect that it is the duty of Union or the Central Government to see that the State is protected both as against domestic violence and external aggression. In putting in that article, we are merely following the example of the classical or model federation of America. Then again, there is a similar provision in section 60 of the Australian Commonwealth Constitution to the effect that it is the duty of the executive government to maintain the Constitution. These observations are with reference to the first article which has been introduced by my Friend Dr. Ambedkar.

Then I come to the consequential provision casting upon the Union Government the primary duty to see that the Constitution in the different parts of India is made to work and properly observed. If there is in any unit any difficulty with regard to the proper working of the Constitution, it would be the obvious duty of the Union Government to intervene and set matters right It is only when there is a failure or breakdown of the constitutional machinery that the Union Government will interfere.

The salient features of the provision are that immediately the proclamation is made, the executive functions are assumed by the President. What exactly does this mean ? As Members need not be repeatedly remind on this point 'the President' means the Central Cabinet responsible to the whole Parliament in which are represented representatives from the various Units which form the component parts of the Federal Government. Therefore, the provincial machinery having failed, the Central Cabinet assumes the responsibility instead of the provincial cabinet. That is the first point.

Then, so far as the executive government is concerned, it will be responsible to the Union Parliament for the proper working of the Government in the province. That will be the effect of the first part of the article.

The next point is, how is legislation to be carried on. The primary authority in regard to legislative matters is vested in Parliament. But, at the same time, having regard to the multifarious work in which Parliament is engaged, and the exigencies of Indian conditions, it will be impossible for Parliament to carry on the daily work of legislation, though the ultimate responsibility will be that of Parliament. Therefore the provision enables Parliament to discharge its primary duty of legislation by delegation of any or all of its powers.

This power to delegate is incidental to the plenary power of sovereignty vested in Parliament. But, in view of some doubt that has been cast in a recent decision of the Federal Court, it has been found necessary to make it quite clear that the Parliament can delegate its function to other body or bodies having regard to the exigencies of the situation. Immediately the Proclamation is made, the duty is cast on the President to place it on the table of the House. It is to last only for a temporary period. Thereafter the Parliament is in a position to judge the situation in the particular part of the country. Parliament can exercise its control and supervision over the Cabinet which has undertaken the responsibility of the executive functions of the State. In the Parliament itself all the various Units are represented. There is no correspondence whatever between the old section 93 and this except in regard to the language in some parts. Under 93, the ultimate responsibility for the working of section 93 was the Parliament of Great Britain which was not certainly representative of the people of India, whereas under the present article the responsibility is that of the Parliament of India which is elected on the basis of universal franchise, and I have no doubt that not merely the conscience of the representatives of the State concerned but also the conscience of the representatives of the other Units will be quickened and they will see to it that the provision is properly worked. Under those circumstances, except on the sentimental objection that it is just a repetition of the old section 93, there is no necessity for taking exception to the main principle underlying this article. We are in grave and difficult times. The units are of different dimensions and responsible government has not been at work, in some of the Units at any rate, for a very long time. Even suffrage is unknown in certain States, and we have introduced responsible government into the States not all of which are like the advanced Units of what might be called the old British Indian provinces. Under those circumstances, in the interest of the sound and healthy functioning of the Constitution itself, it is necessary that there should be some check from the Centre so that people might realise their responsibility and work responsible government properly. Under those circumstances there is absolutely no reason why any exception should be taken to the principle underlying the present article. It is well thought out and my friend has taken all aspects of the matter into consideration. He has even differentiated between executive and legislative functions. On the legislative side, plenary power is vested in Parliament. At the same time it makes room for administrative convenience. There is nothing to prevent Parliament from taking the Ministry to task if they misbehave in the matter of taking over the administration of any particular Unit or State. I have great pleasure in supporting the amendment moved by my Friend, Dr. Ambedkar.

Shri B. M. Gupte (Bombay: General): Mr. President, Sir, I support the deletion of article 188. With regard to article 278, I sympathise with the amendment of Mr. Kamath, No. 225. Also I would have supported the amendment of Professor Shibban Lal Saksena if it were necessary. But in my opinion, Professor Shibban Lal Saksena's amendment is not necessary at all, for if the President is so minded, there is no bar to order a general election and in that event the President himself would cancel the Proclamation. In fact I expect that opportunity would be given to the electorate to set matters right before drastic action under this article is taken, and therefore in my opinion Professor Saksena's amendment is not necessary.

As far as Mr. Kamath's amendment is concerned, though I sympathise with it, I will explain later on why under the present circumstances it cannot be pressed.

Now, with regard to my support to the deletion of article 188: it might appear strange to those who remember that I was the author of the amendment which

[Shri B. M. Gupte]

constitutes article 188, but I am sure it will not surprise those who also remember my speech made at the time when I moved the amendment. My argument at that time was that there was a grave emergency in the State which threatened the peace and tranquillity of the State, and at such a time there was on the spot a man who was elected on the widest possible franchise and who therefore enjoyed the fullest confidence of the people. I therefore asked why such a man should not be entrusted with the emergency powers till the Centre was seized of the situation. That was my plea and that was accepted by the House at the time. Now, elected Governor has been substituted by a nominated Governor, and therefore the foundation of my argument is taken away. I have therefore no hesitation in supporting the deletion of article 188.

Though I support the deletion of article 188, I am not very happy about the new article 278. I am not happy because the scope of the new article is far wider. Article 188 came into operation only when the peace and tranquillity of the State was threatened, while this article 278 comes into operation even though there is no law and order emergency but there is mere failure of the constitutional machinery. I can understand drastic power being given when the very existence of the State is threatened. But I do not like extraordinary power being given for a mere constitutional failure or a constitutional evil. This is a very much less serious and non-urgent matter and in such matters I do not like that extraordinary power should be given. Of course, critics might say and it has been said that we are merely reproducing the hated section 93, but I do not agree with that criticism, because there is a very great difference between the two. Yesterday one of the honourable Members said that article 275 was a reproduction of section 93. I see no connection between the two because article 275 and 188 refer to peace and tranquillity. While section 93 referred to constitutional failure. Article 278 comes closer to old section 93, even though there is still great difference. The obvious difference is that in the place of the irresponsible Governor and the Governor-General, the elected responsible government is substituted. But in my opinion, the more important point is that the sovereign popular legislature will be ineffective control of the situation. Parliament must be consulted in two months and thereafter it will be the Parliament that will govern the situation. This is the great difference between section 93 and the present article 278. But in spite of this defence, I cannot help observe that if it were possible, we should not disfigure our Constitution with such a provision. That was our desire, but we cannot have it our own way. Unfortunately the circumstances in the country are such; we are living in times which may perhaps prove critical to our infant democracy. In France sometimes three Governments fall in two days; in a mature and old democracy they can go in for that luxury, but ours is an infant democracy; and though we do not like it, we shall have to tolerate things, which in normal times we may have rejected. Though, of course I have given support to this article, I only hope that it may remain a dead-letter and no occassions will arise for the exercise of these extraordinary powers.

The Honourable Shri K. Santhanam (Madras: General): Mr. President, Sir, article 278 and 278-A are in some respects the most important articles of this Constitution. There is no doubt that at first sight they look rather unpleasant as they appear to be a re-entry of the old and hated section 93. My honourable Friends, Messrs. Alladi Krishnaswami Ayyar and Gupte have explained that whatever the appearance may be, in substance they are vitally different from section 93(a). Sir, I shall not repeat their arguments, but I would like to point out that the essence of section 93 was three-fold. Firstly, the powers are to be exercised by the Governor in his discretion. Secondly, when the Governor is acting in his discretion, he was not responsible to any authority, any party or any representative from the province in question. Thirdly, he was not responsible or

accountable to any authority in India at all. Therefore, if we are to confuse this with section 93, we must examine it in the light of these three tests. Is there any authority which has the right to supersede a provincial Constitution in its discretion? In the old draft of article 188 for two weeks the Governor was given the power to supersede it in his discretion. I think it was a very wrong provision and it is very fortunate that the old article 188 is being deleted. Otherwise, an erratic Governor who is reckless of consequences may upset the Constitution before either the people of the province or the Parliament of India can come to their rescue. There are bad people in the country and it is not impossible that one such might get into the gubernatorial *gaddi* and make havoc. Mr. Alladi Krishnaswami Ayyar has already pointed out that the word "President" is used in the constitutional sense. The President cannot act under this article at his discretion. He has to be guided by the Central Cabinet. Therefore neither in article 278 nor in article 278-A is there any supersession of democracy as such. Whether the power is exercised by a local legislature or by Parliament is a matter of convenience and the actual essence or principles of democracy are not involved. In this case, while ordinarily certain powers and functions are exercised by the provincial legislature, when the State Constitution breaks down these powers and functions come back to the Central executive and Central Legislature, which are as popular and as democratic as the State Governments and legislatures. It must also not be forgotten that in the Central Parliament the representatives of the State whose government is to be superseded, will be here. After two months every Proclamation will become null and void, unless it has been approved by resolution of both Houses of Parliament. The Upper House consists of delegates elected by the local legislatures and the Lower House includes representatives from the constituencies of the States concerned, elected on adult franchise Therefore, the government of the State is not taken away even from the representatives of the State concerned. Only the representatives of the State concerned have to govern the State in co-operation with the representatives of other parts of India. That is the only limitation which is being placed and this limitation is necessary because the Constitution has broken down in a particular State. Therefore, it is not as an infringement of the principles of democracy that these articles can be objected to. It is rather from the scope of the article that they have to be properly scrutinised because articles 278 and 278-A come into operation when the government of the State cannot be carried on in accordance with the provisions of the Constitution.

Now, let us broadly analyse the circumstances in which these articles can come into operation. There may be a physical breakdown of the Government in the State, as for instance, when there is widespread internal disturbance or external aggression or for some reason or other, law and order cannot be maintained. In that case, it is obvious that there is no provincial authority which can function and the only authority which can function is the Central Government, and in that contingency these articles are not only unobjectionable but absolutely essential and without it the whole thing will be in chaos. Then there may be political breakdown. This is a point which requires careful analysis. A political breakdown can happen when no ministry can be formed or the ministries that can be formed are so unstable that the Government actually breaks down. Normally according to the Constitution when there is great instability of a Ministry, the proper procedure will be to dissolve the Lower House and reconstitute it. If after a dissolution also the same factions are reproduced in the local legislatures and they make a ministry impossible, it will then be inevitable for the Centre to step in according to the provisions of 278 and 278-A. In this it is necessary to evolve proper conventions. For instance, it is necessary to evolve the convention that before these article are resorted to on account of political breakdown, there should intervene a dissolution of the Lower House of the State Legislature. Without a dissolution the Centre should not step in and

[The Honourable Shri K. Santhanam]

that should be one of the conventions which we shall have to evolve; but it is not wise to put it in the article itself, because there may be extraordinary circumstances in which even the local elections may have to be conducted by the Centre and temporarily the Centre may have to take charge.

Then there is the third contingency of economic breakdown. Suppose for instance in a State the Ministry is all right, but it wants to make itself popular by reducing or cancelling all taxes and running its administration on a bankrupt basis. Suppose the Government servants are not paid and the obligations are not met and the State goes on accumulating its deficits. Of course this also is a difficult case. The Centre will have to be very careful and indulgent; it will have to give the longest possible rope but at some time or other in the case of economic breakdown also the Centre will have to step in because ultimately it is responsible for the financial solvency of the whole country and if a big province like the United Provinces goes into bankruptcy it will mean the bankruptcy of the whole country. Therefore this contingency also will have to be dealt with under articles 278 and 278-A and in this matter also we shall have to evolve proper conventions as to what will be the proper amount of deficit which each State may be allowed to incur without invoking these articles, 278 and 278-A. Therefore, the objection to articles 278 and 278-A relates really to the possibility of proper conventions not being evolved. In themselves, they are unobjectionable and they are essential. But, of course, if the Centre acts upon the strict letter of the law, anything may be deemed to constitute a breakdown of the Constitution, and it is possible that interference of the Centre may be frequent and objectionable. After all, when we are constituting the Parliament on the basis on which it is being constituted, we may trust to the Popular House elected on adult franchise and the Second Chamber based on delegation from the legislatures to see that the State autonomy is not interfered with. Of course, a difficult case may happen when some States are governed by political parties which are different from the political party which is governing at the Centre and the majority of the other States. Then, it is possible through political prejudice some unnecessary or intolerant action may be taken under articles 278 and 278-A. The only remedy is through the growth of healthy conventions. If there is peace and democracy is allowed to grow in this country, I have no doubt whatsoever that these conventions will grow and all these articles will be utilised for the legitimate purposes for which they are intended.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, I am really very glad that the framers of the Constitution have at last accepted the view that article 188 should not find a place in our Constitution. That article was inconsistent with the establishment of responsible Government in the provinces and the new position of the Governor. It is satisfactory that this has at last been recognised and that the Governor is not going to be invested with the power that article 188 proposed to confer on him. It is, however, now proposed to achieve the purpose of article 188 and the old article 278 by a revision of article 278. We have today to direct our attention not merely to articles 278 and 278-A, but also to article 277-A. This article lays down that it will be the duty of the Union to ensure that the government of every State is carried on in accordance with the provisions of this Constitution. It does not merely authorise the Central Government to protect the State against external aggression or internal commotion; it goes much further and casts on it the duty of seeing that the government of a province is carried on in accordance with the provision of this Constitution. What exactly do these words mean? This should be clearly explained since the power to ensure that the provincial constitutions are being worked in a proper way makes a considerable addition to the powers that the

Central Government will enjoy to protect a State against external aggression or internal disturbance. I think, Sir, that it will be desirable in this connection to consider articles 275 and 276, for their provisions have a vital bearing on the articles that have been placed before us. Article 275 says that, when the President is satisfied that a grave emergency exists threatening the security of India or of any part of India, then he may make a declaration to that effect. Such a declaration will cease to operate at the end of two months, unless before the expiry of this period, it has been approved by resolutions passed by both Houses of Parliament. If it is so approved, then, the declaration of emergency may remain in force indefinitely, that is, so long as the Executive desires it to remain in force, or so long as Parliament allows it to remain in force. So long as the Proclamation operates, under article 276, the Central Government will be empowered to issue directions to the government of any province as regards the manner in which its executive authority should be exercised and the Central Parliament will be empowered to make laws with regard to any matter even though it may not be included in the Union List. It will thus have the power of passing laws on subjects included in the State List. Further, the Central Legislature will be able to confer powers and impose duties on the officers and authorities of the Government of India in regard to any matter in respect of which it is competent to pass legislation. Now the effect of these two articles is to enable the Central Government to intervene when owing to external or internal causes the peace and tranquillity of India or any part of it is threatened. Further, if misgovernment in a province creates so much dissatisfaction as to endanger the public peace, the Government of India will have sufficient power, under these articles to deal with the situation. What more is needed then in order to enable the Central Government to see that the government of a province is carried on in a proper manner It is obvious that the framers of the Constitution are thinking not of the peace and tranquillity of the country, of the maintenance of law and order but of good government in provinces. They will intervene not merely to protect provinces against external aggression and internal disturbances but also to ensure good government within their limits. In other words, the Central Government will have the power to intervene to protect the electors against themselves. If there is mismanagement or inefficiency or corruption in a province, I take it that under articles 277, 278 and 278-A taken together the Central Government will have the power—I do not use the word 'President' because he will be guided by the advice of his Ministers—to take the government of that province into its own hands. My honourable Friend, Mr. Santhanam gave some instances in order to show how a breakdown might occur in a province even when there was no external aggression, no war and no internal disturbance. He gave one very unfortunate illustration to explain his point. He asked us to suppose that a number of factions existed in a province which prevented the government of that province from being carried on in accordance with the provisions of this Act *i.e.*, I suppose efficiently. He placed before us his view that in such a case a dissolution of the provincial legislature should take place so that it might be found out whether the electors were capable of applying a proper remedy to the situation. If, however, in the new legislature the old factions—I suppose by factions he meant parties—re-appeared, then the Central Government in his opinion would be justiefid in taking over the administration of the province. Sir, if there is a multiplicity of parties in any province we may not welcome it, but is that fact by itself sufficient to warrant the Central Government's interference in provincial administration? There are many parties in some countries making ministries unstable. Yet the Governments of those countries are carried on without any danger to their security or existence. It may be a matter of regret if too many parties exist in a province and they are not able to work together or arrive at an agreement on important matters in the interests of their province: but however regrettable this may be, it will not justfy in my opinion, the Central Government in intervening and making itself jointly with Parliament res-

[Pandit Hirday Nath Kunzru]

ponsible for the government of the province concerned. As I have already said, if mismanagement in a province takes place to such an extent as to create a grave situation in India or in any part of it, then the Central Government will have the right to intervene under articles 275 and 276. Is it right to go further than this? We hear serious complaints against the governments of many provinces at present, but it has not been suggested so far that it will be in the ultimate interests of the country and the provinces concerned that the Central Government should set aside the provincial governments and practically administer the provinces concerned, as if they were Centrally administered areas. It may be said, Sir, that the provincial governments at present have the right to intervene when a municipality or District Board is guilty of gross and persistent maladministration, but a municipality or a District Board is too small to be compared for a moment in any respect with a province. The very size of a province and the number of electors in it place it on a footing of its own. If responsible government is to be maintained, then the electors must be made to feel that the power to apply the proper remedy when misgovernment occurs rests with them. They should know that it depends upon them to choose new representatives who will be more capable of acting in accordance with their best interests. If the Central Government and Parliament are given the power that articles 277, 278 and 278-A read together propose to confer on them, there is a serious danger that whenever there is dissatisfaction in a province with its government, appeals will be made to the Central Government to come to its rescue. The provincial electors will be able to throw their responsibility on the shoulders of the Central Government. Is it right that such a tendency should be encouraged? Responsible Government is the most difficult form of government. It requires patience, and it requires the courage to take risks. If we have neither the patience nor the courage that is needed, our Constitution will virtually be still-born. I think, therefore, Sir, that the articles that we are discussing are not needed. Articles 275 and 276 give the Central Executive and Parliament all the power that can reasonably be conferred on them in order to enable them to see that law and order do not break down in the country, or that misgovernment in any part of India is not carried to such lengths as to jeopardise the maintenance of law and order. It is not necessary to go any further. The excessive caution that the framers of the Constitution seem to be desirous of exercising will, in my opinion, be inconsistent with the spirit of the Constitution, and be detrimental, gravely detrimental, to the growth of a sense of responsibility among the provincial electors.

Before concluding, Sir, I should like to draw the attention of the House to the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947. Section 93 which formed an important part of this Act as originally passed, has been omitted from the Act as adapted in 1947, and I suppose it was omitted because it was thought to be inconsistent with the new order of things. My honourable Friend Mr. Santhanam said that in the Government of India Act, 1935, the Governor who was allowed to act in his discretion would not have been responsible to any authority. That, I think, is a mistake. I may point out that the Governor, in respect of all powers that he could exercise in his discretion, was subject to the authority of the Governor-General and through him and the Secretary of State for India, to the British Parliament. The only difference now is that our executive, instead of being responsible to an electorate 5,000 miles away, will be responsible to the Indian electors. This is an important fact that must be clearly recognise, but I do not think that the lapse of two years since the adapted Government of India Act, 1935, came into force, warrants the acceptance of the articles now before us. The purpose of section 93 was political. Its object was to see that the Constitution was not used in such a

way as to compel the British Government to part with more power than it was prepared to give to the people of India. No such antagonism between the people and the Government of India can exist in future. Whatever differences there may be, will arise in regard to administrative or financial or economic questions. Suppose a province in respect of economic problems, takes a more radical line than the Government of India would approve. I think this will be no reason for the interference of the Government of India.

Shri T. T. Krishnamachari (Madras : General): What happens if the provincial government deliberately refuses to obey the provisions of the Constitution and impedes the Central Government taking action under articles 275 and 276 ?

Pandit Hirday Nath Kunzru : No province can do it. It cannot because it would be totally illegal. But if such a situation arises the Central Government will have sufficient power under article 275 and 276 to intervene at once. It will have adequate power to take any action that it likes. It can ask its own officers to take certain duties on themselves and if those officers are impeded in the discharge of their duties, or, if force is used against them—to take an extreme case—the Central Government will be able to meet such a challenge effectively, without our accepting the articles now before us. I should like the House to consider the point raised by my honourable Friend Mr. Krishnamachari, very carefully. I have thought over such a situation in my own mind, over and over again, and every time I have come to the conclusion that articles 275 and 276 will enable the Government of India to meet effectively such a manifestation of recalcitrance, such a rebellious attitude as that supposed by Mr. Krishnamachari. In such a grave situation, the Government of India will have the power to take effective action under articles 275 and 276. What need is there then for the articles that have been placed before us ?

Sir, one of the speakers said that we should not be legalistic. Nobody has discussed the articles moved by Dr. Ambedkar in a legalistic spirit. I certainly have not discussed it in a narrow, legal way. I am considering the question from a broad political point of view from the point of view of the best interests of the country and the realization by provincial electors of the important fact that they and they alone are responsible for the government of their province. They must understand that it rests with them to decide how it should be carried on.

Sir, even if the framers of the Constitution are not satisfied with the arguments that I have put forward and want that the Central Government should have more power than that given to it by articles 275 and 276, I should ask them to pause and consider whether there was not a better way of approaching this question for the time being. In view of the discussions that have taken place in this House and outside, it seems to me that there is a respectable body of opinion in favour of not making the Constitution rigid, that is, there are many people who desire that for some time to come amendments to the Constitution should be allowed to be made in the same way as those of ordinary laws are. I think that the Prime Minister in a speech that he made here some months ago expressed the same view. If this idea is accepted by the House, if say for five years the Constitution can be amended in the same way as an ordinary law, then we shall have sufficient time to see how the Provinces develop and how their government is carried on. If experience shows that the position is so unfortunate as to require that the Central Government should make itself responsible not merely for the safety of every Province but also for its good government, then you can come forward with every justification for an amendment of the Constitution.

[Pandit Hirday Nath Kunzru]

But I do not see that there is any reason why the House should [illegible] placed before us today by Dr. Ambedkar.

Sir, I oppose these articles.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, I feel impelled by a sense of duty to place a certain point of view before the House [illegible] not have come before the mike. I feel the need for a brief speech. I accord my wholehearted support to the new articles moved by Dr. Ambedkar, but I am not at all convinced of the wisdom of the Drafting Committee in deleting article 188. It is this point of view which I want to emphasise.

Sir, that article has a history behind it. There was a full-dress debate on it for two days when eminent Premiers participated in it. We must understand what article 188 is for. It is not for normal conditions. It is in a state of grave emergency that a Governor was, under this article, invested with some powers. I may remind the House of the debate where it was Mr.Munshi's amendment which ultimately formed part of article 188. In moving the amendment Dr. Ambedkar said that no useful purpose would be served by allowing the Governor to suspend the Constitution and that the President must come into the picture even earlier. Article 188 provides for such a possibility. It merely says that when the Governor is satisfied that there is such a grave menace to peace and tranquillity, he can suspend the Constitution. It is totally wrong to imagine that he was given the power to suspend the Constitution for a duration of two weeks. Clause (3) provides that it is his duty to forthwith communicate his Proclamtaion to the President and the President will become seized of the matter under article 188. That is an important point which seems lost sight of. The Governor has to immediately communicate his Proclamation. The article was necessitated because it was convincingly put forward by certain Premiers. There may be a possibility that it is not at all possible to contact the President. Do you rule out the possibility of a state of inability to contact the Central Government? Time is of the essence of the matter. By the time you contact and get the permission, many things would have happened and the delay would have defeated the very purpose before us. The honourable Mr. Kher said that it is not necessary to keep this article because we have all sorts of communications available. In Bombay I know of instances where we have not been able to contact the Governor for not less than twenty-four hours! What is the provision under article 278? The Governor of Madras says there is a danger to peace and tranquillity. Assuming for a moment that the communications are all right, the President cannot act. He has to convene the Cabinet; the members of the Cabinet may not be readily available; and by the time he convenes the Cabinet and gets their consent the purpose of the article would be defeated. Therefore, it was only with a view to see in such a contingency where the Governor finds that delay will defeat the very objective, that article 188 was provided for. I see no reason why the Drafting Committee in their wisdom ruled out such a possibility. It is no doubt true that the article was framed two years ago, but since those two years many things have happened that show that there is urgent need for the man on the spot to decide and act quickly so that a catastrophe may be prevented. Today there is an open defiance of authority everywhere and that defiance is well-organised. Before the act, they cut off the telephone wires, as they did in the Calcutta Exchange. That is what is happening in many parts of the country. Therefore, when there is a *coup d'etat* it is just possible they will cut off communications and difficulties may arise. It is only to provide for this possibility that the Governor is given these powers. I do not think there will be any fool of a Governor who will, if there is time, fail to inform the President. I would like to have an explanation as to why this fool-proof arrangement has.

been changed and why we have become suspicious that the Governor will act in a wrong manner. According to the provision, he has to forthwith communicate to the President and the President may say, "Well, I am not convinced; cancel it." You must take into consideration that the Governor will be responsible, acting wisely and in order to save the country from disaster. The President comes into the picture directly, because the Gofernor has to communicate the matter forthwith according to clause (3) of article 188. As Mr. President said, it is sheer commonsense that the man on the spot should be given the powers to deal with the situation, so that it may not deteriorate. I am not at all convinced of the wisdom of the change. The provision as now proposed is not as fool-proof as it ought to be.

Besides, I would like to have an explanation as to why the Drafting Committee goes out of the way to delete the provision which was considered and accepted by the House previously. In my view it is improper, because the House had decided it. If we appoint a Drafting Committee, we direct them to draft on the basis of the decisons taken by us. Is this the way in which they should draft? Their duty was to scrutinise the decisions already arrived at and then draft on that basis. Therefore, I would like to have an explanation--a convincing explanation-- as to what happened within these two years which has made the members of the Drafting Committee delete this wholesome, healthy and useful provision.

Mr. Naziruddin Ahmad: Mr. President, Sir, I think that the amendments moved by Dr. Ambedkar constitute startling and revolutionary changes in the Constitution. I submit a radical departure has been made from our own decisions. We took important decisions in this House as to the principles of the Constitution and we adopted certain definite principles and Resolutions and the Draft Constitution was prepared in accordance with them. Now, everything has to be given up. Not only the Draft Constitution has been given up, but the official amendments which were submitted by Members of the House within the prescribed period which are printed in the official blue book have also been given up. During the last recess some additional amendments to those amendments were printed and circulated. Those have also been given up. I beg to point out that all the amendments and amendments to amendments which have been moved today are to be found for the first time only on the amendment lists for this week which have been circulated only within a day or two from today. So serious and radical changes should not have been introduced at the last minute when there is not sufficient time for slow people like us to see what is happening and whether these changes really fit in with our original decisions and with other parts of the Constitution as a whole. I submit that the Drafting Committee has been drifting from our original decisions, from the Draft Constitution and from our original amendments. It would perhaps be more fitting to call the Drafting Committee "the Drifting Committee". I submit that the deletion of article 188 is a very important and serious departure from principles which the House solemnly accepted before. Some honourable Members who usually take the business of the House seriously have attempted to support these changes on the ground that some emergency powers are highly necessary. I agree with them that emergency powers are necessary and I also agree that serious forces of disorder are working in a systematic manner in the country and drastic powers are necessary. But what I fail to appreciate is the attempt to take away the normal power of the Governor or the Ruler of a State to intervene and pass emergency orders. It is that which is the most serious change. In fact, originally the Governor was to be

[Mr. Naziruddin Ahmad]

elected on adult suffrage of the province, but now we have made a serious departure that the Governor is now to be appointed by the President. This is the first blow to Provincial Autonomy. Again, we have deprived the Upper Houses in the States of real powers; not merely have we taken away all effective powers from Upper Houses in the Provinces, but also made it impossible for them to function properly and effectively. We are now going to take away the right of the Ministers of a State and the Members of the Legislatures and especially the people at large from solving their own problems. As soon as we deprive the Governor or a Ruler of his right to interfere in grave emergencies, at once we deprive the elected representatives and the Ministers from having any say in the matter. As soon as the right to initiate emergency measores is vested exclusively in the President, from that moment you absolve the Ministers and Members of the local legislatures entirely from any responsibility. The effect fo this would we that their moral strength and moral responsibility will be seriously undermined. It is this aspect of the probem to which I wish to draw the attention of the House.

This aspect or the matter, I submit, has not received sufficient or adequate consideration in this House. If there is trouble in a State, the initial responsibility for quelling it must rest with the Ministers. If they fail, then the right to initiate emergency measures must lie initially with the Governor or the Ruler. If you do not allow this, the result would be that the local legislature and the Ministers would have responsibility of maintaining law and order without any powers. That would easily and inevitably develop a kind of irresponsibility. Any outside interference with the right of a State to give and ensure their own good Government will not only receive no sympathy from the Ministers and the members, but the action of the President will be jeered at, tabooed and boycotted by the people of the State, the Members of the Legislature and the Ministers themselves.

This was exactly what happened in India some time back. During period of dyarchy in 1921—1937, responsibility was given to the Ministers in the Provinces without any power. The power was kept by the British Government and responsibility was given to popularly elected Ministers on transferred subjects. The result was that they became irresponsible. This is the verdict of competent British thinkers. The happenings of Calcutta have been brought forward as an argument for tightening the hands of the Centre. I suppose I can claim to know a little more about Calcutta than any outsider can possibly do. In Calcutta the situation is not exactly what it is supposed to be. There is no desire on the part of the citizens at large to support illegalities or law-breaking on an organised scale. The defeat of the Congress candidate, to speak very frankly, was due to the unpopularity of the Government. Besides that a variety of other minor reasons and circumstances contributed to the result, which it is not here necessary for me to go into. The majority of the people of West Bengal desire that the Government must be strong and efficient. I find that the decision of the Congress High Command to hold fresh elections has been extremely popular and is the only possible and sensible decision that could be taken. This has thrown the entire responsibility for bringing about conditions to ensure the maintenance of law and order in the Province at once upon the shoulders of the electors themselves. If the Ministers were wrong the people will get an opportunity of having an effective say in the matter. I have every reason to believe that, provided the Congress sets up competent candidates, their success is assured. In fact, there is nothing against the Congress Government, but people want men of ability and experience, and at the same time men who can exercise authority. So, the happenings of Calcutta or East Punjab, or those in

Southern India should offer no justification for departing from the normal and salutary principle that the responsibility for law and order must normally and initially be that of the Provincial and States Ministries and that Ministries in order to function effectively should have sufficient power and responsibility in their hands. The conferment of full responsibility for law and order without giving full powers to the States will work havoc and will create considerable amount of dissatisfaction in the States and I submit this House will play into the hands of the Communists and other law-breakers if they adopt this course. I do not deny that the President should have overriding powers, but he should not have the exclusive power to initiate and incur much unnecessary unpopularity and blame in the process. While the Centre should necessarily have the power to intervene in times of emergency, it should not take the initiative in the matter. The Governor acting in consultation with the Ministers will be in a better position to make the declaration. This declaration may be ratified or changed in any way the President thinks fit. It does not derogate from the overriding power of the President. On the other hand, by placing the responsibility on the local administration, the matter will be brought to a head. The evil will produce its own remedy. If they fail to discharge their functions properly it will be a good reason for dissolving the Assembly and ordering fresh elections.

Pandit Thakur Das Bhargava: I think the constitutional machinery cannot be regarded ordinarily to have failed unless the dissolution powers are exercised by the Governor under section 153.

Mr. Naziruddin Ahmad: I can quite appreciate my honourable Friend's apprehension. I am not happy about the drafting. It is impossible in three or four days to go through all these anomalies. I am not satisfied that the President should proceed exclusively on a Proclamation of Emergency by the Governor. That is due to faulty and hasty drafting. I submit, therefore, that article 188 should not be deleted altogether. The power of the Governor to initiate any emergency measures should remain and that will make the Ministers and the Legislature responsible and at the same time the responsibility being there, will produce its own remedy. If we interfere with the ultimate right of States to deal with emergencies it will reduce Provincial Autonomy to a farce. I think there has been enough enroachment on Provincial rights. In fact in the provincial list a great deal of enrouchement has already been made. I think we are drifting, perhaps unconsciously, towards a dictatorship. Democracy will flourish only in a democratic atmosphere and under democratic conditions. Let people commit mistakes and learn by experience. Experience is a great tutor. The arguments to the contrary which we have heard today were the old discarded arguments of the British bureaucracy. The British said that they must have overriding powers, that we cannot manage our affairs and that they only knew how to manage our affairs. They said also that if we mismanaged things they will supersede the constitution and do what they thought fit. What has been our reply to this? It was that "Unless you make us responsible for our acts, we can never learn the business of government. If we mismanage the great constitutional machinery, we must be made responsible for our acts. We must be given the opportunity to remedy the defects". This argument of ours is being forgotten. The old British argument that they must intervene in petty Provincial matters is again being revived and adopted by the very opponents of that argument. In fact, very respected Members of this House are adopting almost unconsciously the old argument of the British Government. I submit that even the hated British did not go so far as we do. I submit our reply to that will be the same as our respected leaders gave to the British Government. I submit, therefore, that too much interference by the Centre will create unpleasant reactions in the States If you abolish

[Mr. Naziruddin Ahmad]

provincial autonomy altogether that would be logical. But to make them responsible while making them powerless would be not a proper thing to do.

Then, Sir, article 277-A has been described by the honourable Dr. Ambedkar as a thing which is not a pious wish. I think Dr. Ambedkar was suggesting a suggestion which naturally arose in his own mind. I believe that article 277-A is a record of pious wishes. At least it lacks clarity. It says practically nothing. It says almost everything. It enables the Centre to interfere on the slightest grounds and it may enable the Centre to refuse to interfere on the gravest occasions. So carefully guarded is its vagueness, so elusive is its draftsmanship that we cannot but admire the Drafting Committee for its vagueness and evasion. The article says :

"It shall be the duty of the Union to protect every State against external aggression and internal disturbance."

Of course it is so. But it is expressed in a pious form. It says, "It shall be the duty....." Instead of that we should have expected some machinery provided and the occasions clearly stated on which that machinery should come into operation. Then again, they say in the article, "and to ensure that the Government of the State is carried on in accordance with the provisions of this Constitution". This is also equally vague. I think if an article is inserted to the effect that the Union Government will have the power to interfere with the day-to-day administration of the Provinces to see that they are carried on properly" it would have been better. I think if an article was enacted to the effect that the Union Government should have the power to see that domestic economy of each family is carried on in accordance with certain principles it would have been equally good. This article 277-A is of the vaguest description and I submit there is want of clarity or probably deliberate avoidance of clarity in order to get an excuse for interference in Provincial and States matters. This again will create bitterness and dissatisfaction and the popularity of the Union Government which has been built up with long sacrifices and suffering, will considerably suffer. I therefore, submit that excuses should not be deliberately provided through vagueness of language to interfere with the domestic management of the Provinces. In fact, if it is the desire to interfere on certain grounds, the grounds should be stated precisely and the occasion for the exercise of those powers should be clearly defined and laid down and not kept vague. As I understand it, this will be used by the enemies of the Central Government as propaganda against the Central Government. This article should have been introduced to the detriment of the Central Government at the instance of their enemies, the Communists. That would have been more appropriate. For the Central Government to resort to this vagueness of language where precision is possible is highly dangerous. Then I come to article 278. Here the word 'otherwise' has been objected to. My Friend Pandit Thakur Das Bhargava rightly pointed out the difficulty of acting on anything like the provision in 278(1) where it is said that the President may act on a report or otherwise. I submit the whole thing is wrong. He should act not only on information but also on Proclamation of Emergency. I think this wording in the article should not be taken advantage of just to corner a speaker who objects to it. I object to the wording and the conception of the article. I submit that the word 'otherwise' in the context would make it extremely vague. The least excuse will be taken to make the act of the Union Government unpopular. If that is the intention, it may be justified. But the article will be rightly objected to on account of the phraseology in which the idea is embedded.

Then I come to the proviso to clause (1) of article 278. It safeguards against the rights of the High Court in dealing with matters within their special jurisdic-

tion. A Proclamation of emergency will not deprive the High Court of its jurisdiction. That is the effect of this proviso But it conveniently forgets the existence of the Supreme Court. While it takes care to guarantee the rights of the High Courts against the Proclamation, the rights of the Supreme Court are not guaranteed I only express the hope that the absence of any mention of the Supreme Court in the proviso will not affect the powers of that Court.

Shri T. T. Krishnamachari: It is not necessary because the Central Government is subject to the jurisdiction of the Supreme Court under all conditions

Mr. Naziruddin Ahmad: As the honourable Member himself has on a previous occasion said, this Constitution would be the lawyers' heaven. Speaking from experience, I think that this proviso will lead to much legal battle and lawyers alone will be benefited by this I wish that the interpretation put forward by Mr. T. T. Krishnamachari is right, but it is not apparent to me. When we come to clause (2) of article 278, in this clause it is stated that any such proclamation may be revoked or varied by a subsequent proclamation.

An Honourable Member: It is already one o'clock.

Mr. President: How many minutes more are you likely to take?

Mr. Naziruddin Ahmad: About ten minutes more.

Mr. President: The honourable Member may continue his speech tomorrow. The House stands adjourned till nine o'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday, the 4th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 4th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION *contd.*

Articles 188, 277-A and 278—*contd.*

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, Sir, I was dealing with clause (2) of the proposed article 278. There the wording is "Any such Proclamation may be revoked *or varied* by a subsequent Proclamation." The words "or varied" were proposed to be inserted in a similar context by an amendment by Mr. Kamath. But that was rejected. In the new article 275, clause 2(a), the wording is "may be revoked by a subsequent Proclamation." Mr. Kamath by his amendment No. 111 of List No. I of this week, wanted to amend it by inserting the words "may be revoked *or varied* by subsequent Proclamation". The same words have been officially accepted in the present article namely, "may be revoked *or varied* by a subsequent Proclamation." I think this want of uniformity is due to the haste and rapidity with which the Drafting Committee has to keep pace with varying directions.

Then coming to proposed article 278-A sub-clause (a) and (b) of clause (1) are new. Clause (a) is new and (b) is consequential. The new point which has been introduced is also revolutionary. Instead of allowing the Provincial Legislatures to have their say on the emergency legislation and thereby giving the Provincial Assemblies an opportunity to assess the guilt or innocence of the Ministers or other person or to give a verdict, the responsibility is thrown on the Parliament. That would again, as I submitted yesterday, go to make the Central Government and the Parliament unpopular in the State concerned. It may happen that Provincial Ministers and others are guilty of mismanagement and misgovernment; but if we do not allow the Provincial Assemblies to sit in judgment over them, the result would be that guilty or innocent persons, law-breakers and law-abiding persons, good or bad people in the State should all be combined. The result would be that those for whose misdeeds the Emergency Powers would be necessary, would be made so many heroes; they would be lionised, and the object of teaching them a lesson would be frustrated. The Centre would be unpopular on the ground that it is poking its nose unnecessarily and mischievously into their domestic affairs.

Then, Sir, in sub-clause (c) of clause (1) of this article 278-A, the President is expected to authorize and sanction the Budget as the head of the Parliament. This would be an encroachment on the domestic budget of the Provinces and the States. That would be regarded with a great deal of disfavour. It would have been better to allow the Governor or the Ruler to function and allow their own budget to be managed in their own way. Subventions may be granted but that expenditure should not be directly managed by the President.

Coming to clause (d) there is an exception in favour of Ordinances under article 102 to the effect that 'the President may issue Ordinances except when the Houses of Parliament are in session". The sub-clause is misplaced in the

[Mr. Nazimuddin Ahmad]

present article. There is an appropriate place [illegible]
Sub-clause (d) should find a place among the group of [illegible]
Ordinances and not here. This is again the result of [illegible]

These are some of the difficulties that have been [illegible] necessary to deal with them in detail. The most important [illegible] this encroachment on the States sphere would be that we would be [illegible] communist technique. Their technique is that by creating trouble in [illegible] vince or a State, they would partially paralyse the administration and [illegible] force the Emergency Powers. Then, they will try to make these [illegible] powers unpopular. What is more, they will make the guilty Ministers [illegible] guilty officers heroes. The legislature of the State would, as I have [illegible] be deprived of the right of discussion. If the President takes upon [illegible] the responsibility of emergency powers, then his action, I suppose, [illegible] discussed in the States legislatures. The only way of ventilating Provincial and States grievances is to allow the Provinces and the States to find out the guilty persons and hold them up to ridicule and contempt and that will be entirely lost. This would have the effect of bringing all sorts of people, good and bad, law-breaking and law-abiding persons into one congregation. The Centre will be unpopular and the guilty States would be regarded as so many martyrs and the Centre would be flouted and would be forced to use more and more Emergency Powers and would be caught in a vicious circle. Then, the States will gradually get dissatisfied and they will show centrifugal tendencies and this will be reflected in the general elections to the House of the People at the Centre. The result would be that very soon these very drastic powers calculated to strengthen the hands of the Centre will be rather a source of weakness in no distant time. I have a fear which is not based without sufficient consideration and thought that we are gradually, but perhaps unconsciously, drifting towards dictatorship. It is a strange thing that though dictators have always been unpopular and destroyed in the long run, yet, it is a strange phenomenon of modern times that dictatorships do grow up. They arise honestly out of good working democracy; they arise out of the desire to deal with lawlessness honestly by constitutional short cuts. The fear of the Communists is at the back of these emergency powers being centralised. This was the very reason which led Hitler to establish his dictatorship. In fact, his object was to get rid of the Communists in Germany. Having successfully suppressed the legislature and successfully suppressed expression of public opinion, Hitler produced a big fighting machine and then he felt the desire to have territorial expansion which led to the last war which led to his downfall. Mussolini also built a dictatorship by similar process, and both of them had to share the same fate. I only hope that we are not drifting towards that end. I have, however, a suspicion that the very steps which the various modern dictators have taken, perhaps unconsciously taken, with the *bona fide* belief of doing good to the country, we are unconsciously following the same road to lead to a dictatorship. There is a feeling in the House, especially among the younger sections that dictatorship of some kind is a great necessity in India. I submit that though that is a very natural feeling, dictatorships have only one end and that is failure. In fact, they get into a vicious circle; they create opposition by dictatorship; that opposition is checked by further acts of dictatorship; the opposition secretly grows and ultimately is enough to set aside the very power which created it. On the other hand, the best thing is to allow the natural democratic forces to work. As everyone knows, even here, newspapers are not free and there is a feeling amongst the newspapers that they cannot freely publish facts if they go against the Government or in any way put the Government in an unfavourable light. I think these are bad signs. This series of articles will accentuate an unhealthy opposition without any doubt. I hope that every law-

Indian citizen, every man who has faith in the Constitution and in democratic method should rise and oppose this tendency. In fact, this is a Symptom of a certain disease, namely, to acquire power and to concentrate power in the hands of the Centre. As I have submitted, this will react on the very persons who want dictatorship. The best thing is to allow free scope for public opinion. The result has unfortunately been hastened by the fact that throughout the country, in the States and in the Provinces and in the Centre, there is no regular, organised opposition. There is irregular, disorganised, unorganised opposition in the country which in the absence of legitimate vent, expresses itself in general dissatisfaction and law-breaking tendency on a large scale. In fact, the habitual law-breakers and honest citizens are brought together on the same platform on account of repressive measures. I hope that my warnings would prove false; nobody would be more glad than myself to find in the long run that I am wrong. But, I have a fear that we are marching towards a dictatorship and we might go the same way as the two latest dictatorships went.

Mr. President: Pandit Thakur Das Bhargava.

I hope Members will have an eye on the clock. We have been on this article for four hours and twenty minutes now.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, the provisions of the Constitution relating to emergency powers are really very important and my apology for coming before this House and taking its time is that I feel that the Drafting Committee has to be congratulated in tackling the question in a very able and a very adroit manner. Sir, it is very easy to criticise any proposal which comes from the Drafting Committee. If the Drafting Committee had kept article 188 intact, I have no doubt that the very Members who have now criticised would have come forward in no less strong language to criticise the keeping intact of 188 also. What we have to see is whether on a balance of advantages and disadvantages the present position is better or not. From this point of view my humble submission is that the retention of 188 would have been a great mistake. After all this taking away of 188 and substitution thereof by articles 278 and 277-A predicate that the Governor will have no emergency powers, and, instead of the Governor acting in his own discretion, a single individual deciding the fate of the entire State, we have substituted the whole Cabinet and now there is no danger that emergency powers will be resorted to by way of panic or personal animosity with any Cabinet, etc. On the contrary we are quite sure that the President aided and advised by the whole Cabinet, will decide the most difficult of questions.

Secondly, I am very glad that article 277-A is being enacted. This was a great lacuna in the whole Constitution. I cannot understand how the provincial autonomy unrelated to the powers of the Centre can be regarded as an abstract thing by itself. Now we have already provided fundamental rights and we have provided the powers of the Supreme Court. We know that the army and navy are all under the Centre. How can provincial autonomy remain totally unrelated and the State can have absolute rights? Supposing the Constitution fails, how can a State guarantee to the people the exercise and the use of fundamental rights? It would be impossible. It is a contradiction in terms. How can a province by itself be able to meet the situation when the use of army and other forces are required by the State? It is, therefore, but proper that in regard to provincial autonomy also we must realise that the Centre has got a duty to discharge and a very great duty to discharge. My only complaint is that when we enact 277-A we only enacted a pious wish. I wanted and I put in an amendment that to be more logical we should have also enacted a further provision that for discharge of the duties imposed by 277-A, it was the duty of the Central Government to take such measures as they

[Pandit Thakur Das Bhargava]

require to ensure the discharge of the proper functions. In a given situation when there was no breakdown of the Constitution but there was a danger of its breaking down, even then the Centre has a duty to discharge and the Centre should have been given powers to discharge it. It is not enough to say that it is the duty of the Centre to see that the Constitution is worked. Therefore, when there is a duty for the Centre there should be means enough to see that the Centre comes forward and does its duty under a given set of circumstances. Therefore, I wanted to see that the Centre was given powers even when there was no breakdown of the Constitution.

Now I must admit that in regard to 278 and 277-A some criticism has been made. The first criticism that I wish to dispose is about the word otherwise. There was a complaint to start with when the Governors' post was declared to be non-elected and he must be appointed by the Centre. Then there was a complaint that this was a retrograde measure. Now those who oppose this article say that the report of the Governor is the sole thing which ought to be considered. If the Governor is not independent and is only an agent of the Central Government, what is the use of his report. When you contend that the Governor is an individual person and he does not represent the people of the province, how can you rely on his report? The words 'on report or otherwise' do denote a state of things in which the Governor may not be doing his duties, or may give a wrong report. Suppose there is a conflict between the Governor and the Ministers, and the Ministers and the Houses pass a resolution to the effect that the Centre should intervene, and there is conspiracy and the whole State is seething with strife and this state is not reported by the Governor, what would happen? Under these circumstances it is fair that the words 'or otherwise' should be there. They provide for such contingencies. After all, the Centre or the President has to save the situation and see that, in case of failure of Constitution, conditions do not deteriorate into chaos. If that premise is correct, in whatever manner the President may come to know or the Centre may come to know, it is the duty of the Centre to interfere. Therefore these words 'or otherwise' do not mean, as one of my friends suggested, that report of the C.I.D. would be enough. It is a more serious thing. How could the President or the whole Cabinet act in such an irresponsible and rash manner? I understand the fear of those who think that these words now given in article 278 are too wide. They are too wide. There is no doubt that an irresponsible Cabinet or a President can certainly act rashly. Now what is the failure of machinery is the question of questions. Supposing the constitutional machinery does not work well—it works 2 per cent. well and 98 per cent. wrong or it works 98 per cent. well and 2 per cent. wrong the question of questions is if there is a deadlock in a very small particular, can it be said that the Constitution is not carried on as it ought to be? But I do not think that any person will contend that on an occasion like this the Centre will take up the responsibility which is a responsibility very hard to discharge. After all, no Central Government would like that there should be conflict between the Centre and the State. Why should we assume that the Cabinet will act rashly or wrongly? I do not know of any provision in which some defect cannot be found. Only when this Constitution is not honestly worked in the right spirit, it is capable of creating mischief. Otherwise there is no provision in any constitution which cannot be abused. Why should we assume that this will be abused? After all, what is the difference? Even if action is taken by the Centre how would the Centre proceed. Does it mean that the whole thing will become topsy turvy? It is not likely to work that way. Even if the Centre takes into its hands the administration of the province, the State provincial machinery will not go to dogs. The Centre will not send thousands of persons to administer the State and function differently from before. We can imagine what will take place in such a situation.

In India there are many provinces which have been working democracy for a very long time. There are many States in which these democratic institutions are being planted to day. For centuries they have been under a feudal system. Therefore, my submission is that unless you make provision like this, the Centre will not be doing its duty. It is the duty of the Centre to see that the Constitution is worked rightly and well.

I know the criticism has been expressed that articles 277-A and 278 take away the powers of the State and they will therefore reduce them to subservience. Some critics have in fact, said that provincial autonomy will be a mere farce, and that the proper action which under those circumstances ought to have been undertaken by the Provincial Governor would not be taken by the Central Government. But this is not the case. These critics seem to have failed to see that no Constitution can be said to have failed to work unless and until all the provisions of the Constitution relating to the State are exhausted. In my humble opinion as soon as such a situation arises, the first duty that the Governor will perform will be to dissolve the House. Unless and until every attempt has been made, and unless he finds that even the ordinary liberties cannot be enjoyed by the people, he will not come to the conclusion that the Constitution has failed. I cannot conceive of a situation in which the Governor, first of all, shall not exercise the powers given to him by law, to arrange in such a way that the Constitution is worked. When the entire thing has failed, then there is nothing but confusion and chaos. At that time what is the choice? Mr. Nizamuddin Ahmad said that in that case, the Centre takes up the whole administration in its own hands, and so there will be confusion. But I say that it is just to avoid such confusion and chaos that the Centre takes on the administration. Are we to continue that confusion and chaos which have resulted from the failure of the constitutional machinery? Of the two, I am sure every one will admit the better thing is for the Centre to interfere and take over the administration.

Dr. P. S. Deshmukh (C.P. & Berar : General) : On a point of information, Sir, may I ask the honourable Member to tell us where is the provision in the sections that we have agreed to for the dissolution of the House by the Governor, in an emergency

Pandit Thakur Das Bhargava : May I put a counter question to my honourable Friend and ask him where is the provision to say that the Governor shall not act, under article 153? I also understand that the Constitution requires that the Governor shall act in this respect, in his discretion, and so as soon as he finds that the situation is such that the dissolution of the House is necessary, then it is his duty to act in such a manner. The Central Government also will look into the matter, and will not take up the administration of the State lightly, because it is a very hard task. Why do you think that the Governor will not act? That is the question which my Friend has to answer before he puts the question to me.

Now, let us anticipate the situation. If there is failure of the constitutional machinery of the State, only for two months the Cabinet is entitled to take the entire administration in its own hands. And for those two months, how will the Centre be benefited? Parliament will decide whether the action of the Cabinet was correct or not, and if Parliament agrees, then it means that the representatives of the particular State are there, the representatives of all the other States also are there, and if they approve of the action of the Cabinet, I do not see what possible objection can be taken. Moreover, there are all these safeguards. There is the question of two months, then there is question of the Cabinet deciding the question, and then the provision of six months period. All these are, no doubt, very good safeguards, and I do not see how the critics are justified in calling this article "dishonest, criminal" and use all the other epithets in their vocabulary. My humble submission is that, in the growing

[Pandit Thakur Das Bhargava]

conditions of India when we see so many [illegible] country it was very right for the Drafting Committee to have a provision like this. It is only a cementing measure [illegible] the Centre to see that the provinces proceed with [illegible] business-like and constitutional manner.

It has been argued that article 278 is there and [illegible] that there is no need for enacting a measure like article [illegible] said that in article 278, no question of peace and tranquillity [illegible] motion arises. May I point out that the situation is one in which the entire machinery has failed, and ordinary people do not enjoy the [illegible] Internal disturbance to peace and tranquility are all covered by this. There may not be internal disturbance, but there may be imminent danger to peace and tranquillity being broken by the people at large. In those circumstances I do not think the State is justified in saying that there is no insurrection, and no internal disturbance. It is much better to have a preventive measure than a cure after the insurrection takes place. From all these points, I think the enactment of article 277-A and article 278 are perfectly justified. I only wish that the logical conclusion of 277-A should have been enacted and the Centre should have been given more power to see that before the constitutional machinery fails the Centre discharges its duty in seeing that it does not fail.

Shri Brajeshwar Prasad (Bihar : General): Mr. President, Sir, I rise to support the article 278 as moved by Dr. Ambedkar. But there are certain provisions in this article to which I would like to raise some objections. I am not in favour of the provision that the President can exercise legislative powers on behalf of the State only if Parliament so agrees. I am not in favour of this because of two reasons. Firstly, it will mean delay. If the President wants a particular legislation to be passed at once, under this provision, he will be handicapped, because it will take time for the measure to go through Parliament. But time is of the very essence of the situation. In an emergency the President must be in a position to act swiftly and rapidly. If his legislative power is handicapped in this fashion then there will be difficulty. Secondly, I am opposed to this because of another reason. Suppose Parliament refuses to give its sanction. Suppose Parliament refuses to pass a law which the President considers to be necessary to meet the exigencies of the hour. In that situation, what will happen? There will be difficulty. Therefore, I am in favour of the President having all legislative powers. If there is a grave emergency, and if the machinery of law and order has broken down in any province, then the President should be vested with all legislative powers. He has already been vested with executive powers. I see no harm, no irreparable damage will be done, no wrong done to the people of the country or to the Constitution, if for a short time, for a limited period, the legislative powers as well are vested in the hands of the President.

Sir, I am opposed to another provision in this article, that the powers and functions of the High Court will not be abrogated during a period of emergency. I would like to know why. Do you distrust your President? Do you think he will go out of his way to indulge in acts of personal tyranny in order to feed fat his grudge against some political opponents? In a period of emergency all the energies of the President, all the attention of Government and of the Council of Ministers would be diverted towards one goal, i.e., how to maintain law and order and bring about peace in an afflicted part of the country. Sir, a few months ago there was a hot debate in the house on the question as to whether the words "due process of law" should be incorporated in this Constitution. We felt that, if these words were there, the hands of the executive would be fettered and so we dropped those words. The danger of a grave emergency arising in this country is not merely theoretical, it is very real. And

I should like to know whether it is possible for the President to function and meet a crisis without abrogating, if he feels necessary to do so, some of the fundamental rights of the citizen. After all, it is for a temporary period for which we are asking these powers for the President; it is not a permanent provision which would remain in operation for all time. Therefore I feel that the powers of the High Court should be abrogated, if the President so thinks. I am not saying that as soon as article 278 comes into operation all powers of the High Court should be abrogated at once. I only want that if the President feels that he cannot meet the emergency without abrogating some of the fundamental rights of the citizen he must be empowered to do so. And there are reasons behind it. I feel that if there is a conflict between the security of the State and the personal liberty of the individual I will choose the former and lay stress on the security of the State. For the first time in the chequered history of India we have got an independent State of our own; are we going to barter it away in the name of some new-fangled notions which have been discredited in their own homelands? The best thing of course is to have both security of the State and personal liberty of the individual. But the ideal thing is not always possible, and when there is a conflict between these two, my friends will have to make a choice; I would choose the security of the State.

There is an implication in article 278 which is something like saying that you must overcome evil by good and meet lawlessness with law. The President has no powers to meet undemocratic forces in the country except in a democratic manner. It is like saying that the forces of evil must be overcome by the forces of non violence and good. Practical statesmen and law-makers will not accept this proposition easily.

I am also not in favour of the provision that the period of emergency shall not last beyond a period of three years. This is like King Canute telling the tides not to touch his royal feet. How can you lay down in advance that the period of emergency shall not extend beyond three years? The forces of disorder and lawlessness are increasing and spreading fast in this country; and we do not want this article to be used as a cloak for other activities. I ask my honourable friends to calmly consider the dangers and the threat to which our attention has been drawn by Mr. Kamath, the danger of dictatorship arising in this country. I will say that the question of success of democracy in this country does not depend on the sort of Constitution that we make here; it is vitally related to our economic set-up and our social institutions. A mere democratic Constitution will not save us unless we reform our social and economic institutions.

Sir, we have been told that the Weimar Constitution came to an end because of some provision in the constitution. I do not accept this. It is a matter of surprise that a person of the intellectual eminence of Mr. Kamath should have advanced such a shallow argument. It was not because of any article that Hitlerism came into power. It would have come in any case, whether that article was there or not. Hitlerism came because of the defeat of Germany in the first war. I am doubtful whether democracy can succeed in Germany. The Prussian traditions of war and conquest are so much imbedded in the German soil that it is not possible for a democratic constitution to succeed in Germany.

Sir, a charge has been brought against me that I lack a sense of constitutional propriety. As a humble student of political science I had the privilege of reading almost all the constitutions of the world under some of the ablest professors of this land; but I have come to the conclusion that there are no fundamental laws in politics, no eternal truths which are applicable to all people for all time. A provision that is found suitable for Canada may be thoroughly disastrous for us because the course of evolution is not similar in any two countries. What is happening in Canada or has happened there may not

[Shri Brajeshwar Prasad]

happen in our country. Therefore I see no sense in saying that merely for the sake of constitutional propriety we must create a number of institutions, one opposed to the other.

I will say one more thing. It is not a pleasure for me to say things which do not find favour with the gods. But I have a duty to perform. I love this country and am not prepared to sacrifice its interests at the altar of any ideology. I am prepared to accept communism or socialism, or any other kind of ism, provided I am convinced that it would strengthen the foundations of our State. If I do not feel like that I will not support it merely because it is fashionable to applaud democracy. I am a democrat to the core of my being, but I feel that unrestricted and unregulated democracy at this moment will bring about disaster. I have nothing to say against any one; Members are free to express their opinions; I run a personal risk in talking in the way I have done.

Shri Algu Rai Sastri (United Provinces : General) : *[Mr. President, I beg to submit that the articles under discussion at present, I mean article 188 embodied in the fourth part of the Draft Constitutions and article 275 embodied in the 11th part, should be retained as they are in the Draft Constitution. No change whatever need be made in them. Article 188 provides for grave emergency when the Governor of a State will have the power to declare the existence of emergency and to take the administration of the State in his own hand. For illustration I may make mention of the difficult situation existing in Bengal and Madras today. If the situation deteriorates and the difficulties assume very serious proportions, the Governors of these Provinces may, under this article, by Proclamation, take the constitutional machinery of the province in their own hands.

Article 275 relates to the emergency power vested in the President of the Indian Union. The situations in which a Governor and the President may exercise the emergency powers vested in them may be quite different. There may arise a situation like the one that arose during the last Great War when, as a result of the German invasion of Poland, the whole world was plunged into war. When the last world war broke out, the then Government of India found it necessary to proclaim an emergency. Such situation or emergency is caused by a problem that concerns the whole world. On account of such a situation the whole country may be threatened with disaster. In the circumstances the President of the Indian Union has to exercise his own discretion and declare an emergency. But the State Governors may be faced with a situation that concerns only their State; and under such circumstances, they will have to exercise their own discretion and issue a Proclamation of Emergency. We, therefore, must vest them with emergency powers. The powers that were vested in the Central Government under the provisions of Section 93 of the Government of India Act, 1935 are now being tried to be retained under different articles of the Draft Constitution. The British have, no doubt, left the country, but their mentality of distrust is still lingering here. Whatever they gave us with one hand, they tried to snatch away with the other. The British rulers used to run the Government from Delhi. Forced by the growing agitation and compelled by circumstances, they gave some power to the people with the sole object of appeasing them. Even after granting provincial autonomy, they were not sure that the provinces would co-operate with them sincerely if a situation arose which required their co-operation, and it was only out of this distrust that they wanted to make some provisions to enable them to take up the Government of the province in their own hands in times of emergency. They did not want sincerely to hand over the provincial Governments to us. In 1939 after the

* [ ] Translation of Hindustani speech.

world war broke out, we protested against the emergency powers of the Governors and the Provincial Governments passed resolutions in their Legislatures against these powers being exercised by Govenors. The fact is that we were not one with the Government that was then ruling over us against our wishes. It wanted our country and our people to participate in the war but people were against this; Mahatma Gandhi also advised the nation that it was immoral on our part to participate in the war. There were two trends then working in the country. The Central Government was forcing us to join the war while the different organisations that were fighting for freedom and had the independence of the country at heart were opposed to this, and they wanted to defeat the Government on that issue. They asked the Government to state the cause that warranted their participation in the war and for this purpose a meeting of the All India Congress Committee was also held. There ensued a grave struggle on account of this and the movement of 1942 was started. All this was the result of the second great war. It is, therefore, not proper for us to follow the Government of India Act, 1935, or take it as a Bible. But we find today that it is now actually being followed as a Bible. There is a saying in Sanskrit :

श्रुत्या एक वाक्यत्वात् अनर्थक्यम तदर्थानाम् ।

"Shrutya Eka Vakyatwat Anarthakyam Thatharthanam"

It means, what is consistent with Shruti should be taken as right. Our Drafting Committee is also practically working on this assumption that whatever is consistent with the Act of 1935 is right and thus they are going on retaining in the Draft Constitution the various provisions embodied in the Act of 1935. The alien Government that was functioning here under the Government of India Act, 1935, embodied, in the said Act Section 299 which lays down that no property shall be acquired without making due compensation for it. This provision was made only for safeguarding the English companies operating in India. They had apprehensions that in Free India they would be dispossed of their properties. Today we are actually following in their footstep in providing article 24 in the Draft Constitution. Section 93 has now been put before us in this form. We are happy with article 93 as contained in the Draft Constitution. Articles 188, 275, 276 and 278 of the Draft Constitution are exactly on the lines of Section 93 of the Government of India Act 1935. They are essential and imperative. Keeping in view the fact that the Provincial Governments may have to face internal disturbances Governors of the States are vested with emergency powers under article 188 and no doubt it is a proper provision.

Freedom brings in its wake various problems and difficulties which have to be faced by a nation. Anti-social elements are very active in Bengal today. They want to uproot the Government of the Province. The same thing is happening in Madras. Hyderabad too has been the scene of these activities. All these disturbances that we are witnessing today are no doubt local in character but they may create a grave situation necessitating immediate intervention. Now the question arises as to who should intervene immediately. Naturally the man on the spot must be trusted as was observed by the late Lala Lajpat Rai. Distrust begets distrust and trust begets trust. We must trust the authority on the spot. We have provided for a Governor for each province. We are going to pay him a very high salary and provide him with all material comforts; we are going to give him a supreme status in the Constitutional structure of the States, but despite all this, if we do not vest in him the emergency powers we are in reality making him only a nominal figure-head. In that case we should not call him a Governor; rather make a little change in his designation and put it as GOBAR NAR—a dummy. Bharat had installed the wooden sandal of Ram on the throne and ruled the kingdom on behalf of the sandal. He used to offer worship to it daily. But our Governors whom we are going to instal in an exalted office will not be Governors in the real sense of the term; they are going to be only show-boys. What is the sense, after all, in having a nominal figure

[Shri Algu Rai Shastri]

head? Why then pay him such a huge salary? Well, it would be better not to appoint them at all. It is better if the huge amount to be incurred on account of their salary and other allowances is saved and utilised for the benefit of the poor people. You are going to appoint him as Governor and ruler of a province, but you are not prepared to vest in him the power of exercising his own discretion at a time when a grave situation has arisen. Under article 188 as contained in the Draft Constitution a Governor can, if he is satisfied that grave emergency has arisen, make a declaration to that effect. When he has made such a declaration, he has, as is laid down in the article, to forthwith communicate the Proclamation to the President of the Union. Now, it is for the President to study and consider over the situation. He may consult the Parliament and revoke the Proclamation if he so deems necessary or may extend it for a further period. Article 278 empowers him to take any of these courses which he deems proper.

Dr. Ambedkar thinks that the Drafting Committee is being charged with not being firm in its ideas. We have great respect for Dr. Ambedkar. We all praise the wisdom of the Drafting Committee. These articles have been drafted by the Drafting Committee. We have had no hand in preparing these articles. We beg to request him to retain articles 188 and 275 as contained in the Draft Constitution and submit that they are complete and would amply serve the purpose. Article 277-A is intended to point out to the Union Government their responsibility in respect of maintaining the governmental machinery in the States. Their responsibility in this respect is self-evident; it is implicit. Under article 188 the Governor of a State may declare that a grave emergency has arisen. After issuing such a declaration he is bound, under the article, to communicate the declaration to the Union Government. This information is given so that the necessary action consequential to the information may be taken. Steps may be taken to maintain regional tranquillity and order. After this, the duty of the Centre regarding regional order under article 278 read with article 188 is over. Articles 277-A and 278-A are redundant, are unnecessary. I would submit that if fresh amendments received daily are tabled after considerable consideration, the amendments tabled by Shri Kamath and Prof. Shibban Lal Saksena would become unnecessary, and we can pass this Draft easily and devote ourselves to other important business.

I would also like to mention another matter. The previous British regime had issued various Ordinances after 1939. An ordinary constable was authorised to detain anybody in prison for fifteen days. Later on the period could be extended to six months. So a constable was authorised to detain for fifteen days. We are not prepared to give this right to even the Governor. In this manner the mania of centralisation, i.e., the notion, that everything should be done by the Centre itself and that the regional administration should not continue to be free, is creating distrust. In this way the creation of distrust will beget more distrust and this will grow in the posterity and in the future generation. Besides this, local initiative will be suppressed. The capacity to work on one's own initiative will be destroyed.

I would congratulate Dr. Ambedkar for his imagining a contingency when the whole of the Cabinet and the Governor of our border province of East Punjab may form a clique and possibly line up with Pakistan or possibly some other country. Assam may join Burma and in this way strange things may happen. A ruler must be suspicious, for it is written that a ruler should be suspicious even of his wife and son. On the basis of that principle, this idea of strengthening the Centre can arise, and from this point of view the new amendments being moved now may have their significance. But we should also see the other side of the case. These Governors are also the strong pillars of the Centre. It is improper to distrust them. I would therefore say that though

I have not come forward to oppose strongly these amendments, for I do not think that I am wiser than Dr. Ambedkar and the Drafting Committee, yet I would humbly submit that Dr. Ambedkar and the Drafting Committee should seriously consider whether our original Draft cannot serve the purpose, so that you may withdraw your fresh amendments and the other Members may also do likewise. With these words I make the above submission.

Mr. President: I find that there are many other speakers and the House has already taken five hours over this debate. I think we should now close the discussion and I do not think that any fresh arguments will be advanced. If honourable Members have not made up their minds after hearing the arguments so far advanced, they are not likely to do so after hearing a few more speeches. I would like to know whether the House would like to close the discussion.

Several Honourable Members: The question be put, the question be put.

Mr. President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, although these articles have given rise to a debate which has lasted for nearly five hours, I do not think that there is anything which has emerged from this debate which requires me to modify my attitude towards the principles that are embodied in these articles. I will therefore not detain the House much longer with a detailed reply of any kind.

I would first of all like to touch for a minute on the amendment suggested by my Friend Mr. Kamath in article 277-A. His amendment was that the word "and" should be substituted by the word "or". I do not think that that is necessary, because the word "and" in the context in which it is placed is both conjunctive as well as disjunctive, which can be read in both ways, "and" or "or", as the occasion may require. I, therefore, do not think that it is necessary for me to accept that amendment, although I appreciate his intention in making the amendment.

The second amendment to which I should like to refer is that moved by my Friend Prof. Saksena, in which he has proposed that one of the things which the President may do under the Proclamation is to dissolve the legislature. I think that is his amendment in substance. I entirely agree that that is one of the things which should be provided for, because the people of the province ought to be given an opportunity to set matters right by reference to the legislature. But I find that that is already covered by sub-clause (a) of clause (1) of article 278, because sub-clause (a) proposes that the President may assume to himself the powers exercisable by the Governor or the ruler. One of the powers which is vested and which is exercisable by the Governor is to dissolve the House. Consequently, when the President issues a Proclamation and assumes these powers under sub-clause (a), that power of dissolving the legislature and holding a new election will be automatically transferred to the President—which powers no doubt the President will exercise on the advice of his Ministers. Consequently my submission is that the proposition enunciated by my Friend Prof. Saksena is already covered by sub-clause (a), it is implicit in it and there is therefore no necessity for making any express provision of that character.

Now I come to the remarks made by my Friend Pandit Kunzru. The first point, if I remember correctly, which was raised by him was that the power to take over the administration when the constitutional machinery fails is a new thing, which is not to be found in any constitution. I beg to differ from him and I would like to draw his attention to the article contained in the American Constitution, where the duty of the United States is definitely expressed to be to maintain the Republican form of the Constitution. When we say that the Constitution must be maintained in accordance with the provisions contained in

[The Honourable Dr. B. R. Ambedkar]

this Constitution we practically mean what the American Constitution means, namely that the form of the constitution prescribed in this Constitution must be maintained. Therefore, so far as that point is concerned we do not think that the Drafting Committee has made any departure from an established principle.

The other point of criticism was that articles 278 and 278-A were unnecessary in view of the fact that there are already in the Constitution articles 275 and 276. With all respect I must submit that he (Pandit Kunzru) has altogether misunderstood the purposes and intentions which underlie article 275 and the present article 278. His argument was that after all what you want is the right to legislate on provincial subjects. That right you get by the terms of article 276, because under that article the Centre gets the power, once the Proclamation is issued, to legislate on all subjects mentioned in List II. I think that is a very limited understanding of the provisions contained either in articles 275 and 276 or in articles 278 and 278-A.

I should like first of all to draw the attention of the House to the fact that the occasions on which the two sets of articles will come into operation are quite different. Article 275 limits the intervention of the Centre to a state of affairs when there is war or aggression, internal or external. Article 278 refers to the failure of the machinery by reasons other than war or aggression. Consequently the operative clauses, as I said, are quite different. For instance, when a proclamation of war has been issued under article 275, you get no authority to suspend the provincial constitution. The provincial constitution would continue in operation. The legislature will continue to function and possess the powers which the constitution gives it; the executive will retain its executive power and continue to administer the province in accordance with the law of the province All that happens under article 276 is that the Centre also gets concurrent power of legislation and concurrent power of administration. That is what happens under article 276. But when article 278 comes into operation, the situation would be totally different. There will be no legislature in the province, because the legislature would have been suspended. There will be practically no executive authority in the province unless any is left by the proclamation by the President or by Parliament or by the Governor. The two situations are quite different. I think it is essential that we ought to keep the demarcation which we have made by component words of article 275 and article 278. I think mixing the two things up would cause a great deal of confusion.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I ask my honourable Friend to make one point clear ? Is it the purpose of articles 278 and 278-A to enable the Central Government to intervene in provincial affairs for the sake of good government of the provinces ?

The Honourable Dr. B. R. Ambedkar : No, no. The Centre is not given that authority.

Pandit Hirday Nath Kunzru : Or only when there is such mis-government in the province as to endanger the public peace ?

The Honourable Dr. B. R. Ambedkar : Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces. Whether there is good government or not in the province is for the Centre to determine. I am quite clear on the point.

Pandit Hirday Nath Kunzru : What is the meaning exactly of "the provisions of the Constitution" taken as a whole ? The House is entitled to know from the honourable Member what is his idea of the meaning of the phrase 'in accordance with the provisions of the Constitution'.

The Honourable Dr. B. R. Ambedkar : It would take me very long now to go into a detailed examination of the whole thing and, referring to each article, say, this is the principle which is established in it and say, if any Government or any legislature of a province does not act in accordance with it, that would act as a failure of machinery. The expression "failure of machinery" I find has been used in the Government of India Act, 1935. Everybody must be quite familiar therefore with its *de facto* and *de jure* meaning. I do not think any further explanation is necessary

Shri H. V. Kamath (C.P. & Berar : General) : What about the other amendments moved by Professor Saksena and myself ? Is not Dr. Ambedkar replying to them ?

The Honourable Dr. B. R. Ambedkar : I do not accept them. I was only replying or referring to those amendments which I thought had any substance in them. I cannot go on discussing every amendment moved.

Shri H. V. Kamath : Dr. Ambedkar is answering only verbal amendments moved. Should he not reply to all the amendments moved ?

Mr. President : I cannot force Dr. Ambedkar to reply in any particular way He is entitled to give his reply in his own way.

The Honourable Dr. B. R. Ambedkar : In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact I share the sentiments expressed by my honourable Friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think we could then say that these articles were imported in vain or that the President had acted wantonly.

Shri H. V. Kamath : Is Dr. Ambedkar in a position to assure the House that article 143 will now be suitably amended ?

The Honourable Dr. B. R. Ambedkar : I have said so and I say now that when the Drafting Committee meets after the Second Reading, it will look into the provisions as a whole and article 143 will be suitably amended if necessary.

Mr. President : I will now put the amendment to vote one after another

The question is :

"That article 188 be deleted"

The motion was adopted.

Article 188 was deleted from the Constitution

Mr. President: Then I will take up article 277-A.

The question is :

"That in amendment No 121 of List I (Second Week) of Amendments to Amendments, in the proposed new article 277-A, for the word 'Union' the words 'Union Government' be substituted "

The amendment was negatived.

Mr. President: Now I will put amendment No. 221.

The question is

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments, in the proposed new article 277-A, for the word 'and' where it occurs for the first time the word or' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in Amendment No 121 of List I (Second Week) of Amendments to Amendments for the words 'internal disturbance' the words 'internal insurrection or chaos' be substituted "

The amendment was negatived.

Mr. President: The question is :

"That after article 277 the following new article be inserted :—

Duty of the Union to protect States against external aggression and internal disturbance:

'277-A. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.' "

The motion was adopted.

Mr. President: The question is :

"That article 277-A stand part of the Constitution."

The motion was adopted.

Article 277-A was added to the Constitution.

Mr. President: The question is :

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, for the word 'Ruler' the words 'the Rajpramukh' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, the words 'or otherwise' be deleted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, after the words 'is satisfied that' the words 'a grave emergency has arisen which threatens the peace and tranquillity of the State and that' be added."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, for the first proviso to clause (4) of the proposed article 278, the following be substituted: —

'Provided that the President may if he so thinks fit order at any time, during this period a dissolution of the State legislature followed by a fresh general election, and the Proclamation shall cease to have effect from the day on which the newly elected legislature meets in session'."

The amendment was negatived.

Mr. President : The question is .

"That for article 278, the following articles be substituted —

Provisions in case of failure of constitutional machinery in States

278. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may by Proclamation

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of this article :

Provided that if and so often as a resolution approving the continuance in force of such a proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament

Exercise of legislative powers under proclamation issued under article 278.

278-A. (1) Where by a Proclamation issued under clause (1) of article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf;

(b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament;

[Mr. President]

(d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session

(2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State"

The amendment was adopted

Mr. President: The question is:

"That the proposed article 278 stand part of the Constitution"

The motion was adopted.

Article 278 was added to the Constitution.

Mr. President: The question is:

"That proposed article 278-A stand part of the Constitution."

The motion was adopted.

Article 278-A was added to the Constitution.

Article 279

(Amendments Nos. 3026 and 3027 were not moved)

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, this article takes away the Fundamental Rights contained in article 13 in an emergency. If it is the desire that these rights should be abrogated, it should be done by Parliament by law during that period and it should not be left merely to the executive authority to do so. It is quite conceivable that a war may break out and may last for a fairly long time. The last war lasted for six years and I cannot conceive that for six years the Fundamental Rights granted under article 13 should remain suspended all over the country. It is a most extraordinary state of affairs and I do not know of any Constitution in the world where the fundamental rights would remain suspended for six years. I therefore move the following amendments:—

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the words 'the State as defined in that Part' the word 'Parliament' be substituted."

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the word 'State' where it occurs for the second time, the word 'Parliament' be substituted."

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, the words 'or to take any executive action' and the words 'or to take' occurring at the end be deleted."

The article will read as follows after that:—

"While a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the Parliament to make any law which the Parliament would otherwise be competent to make."

My amendments come to this, that during an emergency the Parliament alone will have the power to suspend the Fundamental Rights given under article 13. Otherwise, if the rights become automatically suspended and the executive authority can do what it likes in this regard, it would be an extraordinary state of affairs. This is a matter of fundamental importance and I would like honourable Members to ponder over this question. The rights that we propose to give

under article 13—are they such rights the results of which will threaten the security of the State in an emergency? I do not agree. Article 13 itself has taken care to see that in an emergency these rights should be exercised only in such a manner as will not endanger the security of the State. I would like honourable Members to read article 13. There are seven fundamental rights guaranteed under this article. The first is that all citizens shall have the right to freedom of speech and expression. Now, this fundamental right is not absolute. We have clause (2) where it is stated—

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of or tends to overthrow the State."

So, that freedom of speech and expression can be exercised only subject to this last clause. This means that the State can make any law to restrict freedom of speech and expression to prevent the undermining and overthrow of the State. The Fundamental Right itself prescribes the limitation to that right in an emergency. I do not see the necessity for article 279 to suspend the provisions of article 13. In an emergency, of course, the State has the right to restrict freedom of speech and expression because the right says that nothing shall prevent the State from making a law in case the situation is such that the security of the State is liable to be undermined. I therefore do not see any reason why this fundamental right of freedom of speech and expression should remain suspended for an indefinite period, during a war, when the right itself says that it shall give the State authority to restrict that freedom if it is so necessary for the security of the State. The second right is that the citizens shall have the right to assemble peaceably and without arms. Then this right is not absolute. It is said in clause (3) "Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause." So in the interest of public order nothing can restrain the State from making any law. When, therefore, Sir, there is an emergency, nothing will stop the State from making a law because it is necessary to maintain the safety of the State. I, therefore, think that this right to assemble peaceably and without arms should not be denied for an indefinite period or during the war merely because there is an emergency. I think the right itself is limited and the State can make any law if it is necessary in the interests of public order. Therefore, Sir, I think the right should be guaranteed and should not be abrogated and suspended during the war.

Then the third freedom is the freedom to form associations or unions. That is limited by proviso (4) which says: "Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of the general public, restrictions on the exercise of the right conferred by the said sub-clause." Here also in the interest of public order reasonable restrictions can be imposed on the right to form associations or Unions. Why then for long years, six or seven or eight years during which a war lasts, should this right remain suspended? Again, Sir, there are the rights (d), (e) and (f) to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to acquire, hold and dispose of property and all these three rights are again qualified by clause (5) which says "nothing in sub-clause (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any aboriginal tribe." Here also in the public interest, the State can make any law which goes against these rights. I therefore think, Sir, that the Fundamental Rights are sufficient in themselves and it is not necessary to abrogate them during an emergency. If this article is passed, what will

[Prof. Shibban Lal Saksena]

happen is this: The fundamental rights of the people will be suspended. There is no limit to the period of war and it may last five or six or ten years and throughout that period people all over the country shall be deprived of the fundamental rights. I apprehend there is danger and I would invite the attention of Dr. Ambedkar to consider this clause properly and calmly. If you cannot delete this clause, then at least accept my amendment. I only want that this power should be given to the Parliament for exercise if it is found necessary. If the limitations imposed upon fundamental rights are not sufficient, then let the Parliament declare by law that in the interests of emergency they shall increase these restrictions. There should be no objection whatsoever to my amendment which provides for the emergency and at the same time retains to the people the liberties which have been guaranteed by the Constitution. Otherwise, people will laugh at our Constitution and they will say "on the one hand you give them liberty in the fundamental rights and on the other you take them away". Do we not trust our own Parliament? If Parliament is not trusted in an emergency, whom else shall we trust? I therefore think that we must amend this article if we cannot delete it altogether. The power to interfere with fundamental rights should be vested in the Parliament and not in any other authority.

Shri H. V. Kamath: Mr. President, while according general support and wholehearted support to the amendment just now moved by my honourable Friend, Prof. Shibban Lal Saksena to the effect that the power in the event of a Proclamation of Emergency to suspend the fundamental rights guaranteed by article 13 of the Constitution should be vested in Parliament and not in the President, I would go a step further and would like to plead with the House that in view of the new draft of article 280 which will shortly come before the House, there is no need whatsoever to retain article 279 as well. If the House will with patience compare the original draft of article 280, and the present draft of article 280, they will find that the new draft refers to the suspension of all the rights conferred by part III of the Constitution. Article 13 is only one of the articles comprised in Part III of the Draft Constitution. Therefore, I see no reason whatever, no *raison d'etre* for the retention of article 279, and in my humble judgment there is no need now for this article 279 in this Constitution in view of article 280 which follows.

As regards the point made out by my honourable Friend, Mr. Saksena, that the Proclamation of Emergency once issued, the President under articles 275 or 278 as assumes to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Ruler so far as the constituent State is concerned; and also he is empowered to declare in so far as that State is concerned, that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament. Therefore, it is very necessary to make a distinction here and to be clear in our minds, in case article 279 is going to be adopted by the House as it is; as to what the "State" as specified in that article actually means. Article 279 as moved by Dr. Ambedkar provides that while a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the State as defined in that Part to make any law or to take etc., etc..... We shall now turn to Part III and find out how 'State' has been defined in that Part. The opening article of Part III defines the State as follows: "State includes the Government and Parliament of India and the Government and legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." I need not labour the obvious. We have already adopted articles which provide that once an Emergency Proclamation is issued, the State legislatures and the Governor or Ruler of the State become, more or less *functus officio*. The President may assume to himself all powers. To my mind the Ruler or Governor of the State

or the State legislature will not be competent to take such action as may be required to further restrict or annual the rights conferred by article 13. Parliament alone, or the President alone can do it. I would prefer if action in this regard is taken by Parliament; that would be a much wiser provision. If we are wise, we will do so; if we are otherwise, we may not do it. In any case, I think, considering that 'State' is defined in article 7 in Part III so as to include all local or other authorities within the territory of India or under the control of the Government of India, I think it is much wiser to define here exactly what is meant by 'State' to obviate all doubts and difficulties and I think it would be much wiser to provide that not the President, but Parliament alone can legislate in this regard.

One other point, and it is this. Is there really any need for this article specifically relating to article 13 of Part III? I urge my honourable colleagues here to study carefully article 13. Article 13 is already laden with five provisos. Everyone of these provisos provides that in no event, in no contingency, in no emergency, in no case shall the security of the State, or public order or public interest be jeopardised. This article, as was remarked in the course of the debate thereon in this House, as a matter of fact, confers rights, and then abridges them, if not abrogates them, at one and the same time. In view of this consideration that the article as it stands, as we have adopted it, has got safeguards in the interests of the safety of the State, in the interests of public order, safeguards against the exercise of the fundamental rights comprised in the sub-clauses (a) to (g) of clause (1), I feel that there is absolutely no necessity whatever for incorporating article 279 here. Because, article 279 has got relation to the situation where the security of the State, the security of the country or any part thereof is endangered and we have already made provision for that through the provisos (2) to (6) suffixed to article 13. All these provisos have one meaning; though they may be couched in different language they all bear the same significance, that is, in the exercise of the fundamental rights guaranteed by this article, public order, public peace and the safety of the State shall not be jeopardised. If that stands in danger, this article lays down specifically that nothing shall affect the operation of any existing law in so far as it relates to, or, —this is important, in view of the article that we are now considering —prevent the State from making any law, so on and so forth with regard to the different rights comprised in the article. What do we find here in article 279? "Nothing shall restrict the power of the State as defined in that Part to make any law or to take any executive action which the State would otherwise be competent to make or to take". This is already provided for in article 13 and this would be merely an overlapping, if not a cumbersome repetition of what we have already adopted in article 13.

I say, firstly, that this article 279 should be deleted; not that I do not want such a provision, but it is unnecessary because of article 13, adopted by the House already. If that does not find acceptance, I would welcome the acceptance of the amendment of my honourable Friend Prof. Shibban Lal Saksena to the effect that Parliament and not the President may be empowered in this regard.

Dr. P. S. Deshmukh: Mr. President, Sir, I think the provision of article 279 is unnecessary from many points of view. I would like to urge that we ought not to make any provisions which detract from the fundamental nature of our fundamental rights. Even if in an emergency it was necessary to suspend any fundamental rights, there is ample provision already existing in the clause that we have passed so as to make it unnecessary to have an article like this, where we specifically say that laws will be promulgated irrespective of the fact that they nullify or abrogate fundamental rights provided in article 13, Part III. I would like to refer to article 13 and point out what a number of important rights are likely to be affected by the passing of the present article 279. It is not merely

[Dr. P. S. Deshmukh]

prevention of association of people, or prevention of people from inciting other people to violence and utilising the right of speech and expression. It also refers to free movement throughout the territory of India, refers to the residence and settling down in any part of the territory of India, to acquisition of land and disposal of property, to the practising of any profession or carrying on of any occupation, trade or business. So, to infringe in any way these rights is to declare martial law, and even that is unnecessary because both by the second sub-clause in article 13 there is provision which will give sufficient power both to President as well as Parliament to intervene. This has been pointed out by Mr. Kamath. It has been laid down for instance in article 13 (2).

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State *from making any law*, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines *the authority or foundation of the State.*"

There is therefore sufficient provision recourse to which could be had in an emergency of the type which has been described under article 279. Then, if we refer to the new article which we have just passed *viz.*, article 278, as I pointed out yesterday—there is also another wide provision for setting aside the provisions of the Constitution and I do not think there is anything to suggest that the article referring to the Fundamental Rights are excluded from the operation of those sub-clauses. It has been stated in article 278 (1)(c)—

"make such incidental and consequential provisions as appear to the President to be necessary or desirable etc. etc. in the State".

In view of these provisions, I do not think there is any necessity to have this article 279 and I therefore urge reconsideration of the position and if possible withdrawal of this article altogether.

Shri R. K. Sidhva (C. P. & Berar: General): Mr. President, Sir, this is a very simple article that has been provided under the emergency clauses. It is true that under article 13 provisions have been made to enact Acts as stated by my friends just now but I do feel that when the emergency arises, it should not be understood that the whole administration would be at a standstill, and therefore this article particularly defines that despite the emergency the State shall not be prevented from making any law under article 13. It is helpful and it is neither superfluous nor redundant. In my opinion the Drafting Committee has taken precaution to state that even in the event of emergency the States will function, if they so desire, by administering laws as defined in article 13 and nothing would prevent the state from making any laws. It is a very helpful provision lest generally in a state of emergency people feel that emergency is there and therefore all ordinary laws should come to a standstill and no more laws would be enacted. Here we have been told that despite the emergency the State can function if it so desires under article 13. Under these circumstances I feel it is a very happy and necessary article which is desirable under an emergency which may prevail in the States. Under these circumstances, I support this article.

Shri Brajeshwar Prasad: Mr. President, I had no inclination to take part in this debate but my Friend Mr. Sidhva has not, if I may be excused for saying so, understood the implications of this article. It means suspension of provisions of article 13 during emergency. There is no meaning in saying that the article vests the State with powers, in conformity with article 13. It means there may be suspension of freedoms of speech and association. If this article 13 would not have been present in the Constitution, the States could have taken powers in their own hands and restrict the freedoms of speech and other freedoms. So irrespective of the presence of article 13, the State Legislature can

do anything restricting the liberty of the individuals. That is the meaning of article 279.

Shri R. K. Sidhva : No.

Shri Brajeshwar Prasad : I do not know. Let the Drafting Committee explain the provisions of article 279, but I am quite clear in my mind that article 279 means that the State Legislature can make laws during an emergency restricting freedom of speech irrespective of article 13. This is my interpretation. I do not know if it is correct. If we do any act in politics, it results in either of two ways. Either we expand man's liberty or restrict it. There is no third possibility. I feel that during a period of emergency the executive and the legislature should have the power to restrict man's liberty.

The Honourable Dr. B. R. Ambedkar : Mr. President, I think there are only two points which have been raised which require a reply. The amendment which has been moved by my Friend Professor Saksena was to the effect that any change in the Fundamental Right should be made by Parliament and not by the State during emergency. Now if my friend were to refer to the provisions of article 13, he himself will find that we have permitted both the Centre and the Provinces to make any changes which may affect the Fundamental Rights provided the changes made by them are reasonable. Therefore under normal circumstances, the authority to make laws affecting Fundamental Rights is vested in both and there is no reason why, for instance, this normal right which the State possesses should be taken away during emergency.

Prof. Shibban Lal Saksena : But they will be suspended during emergency.

The Honourable Dr. B. R. Ambedkar : Suspension comes in another article. This article merely says that power may be exercised by the State—meaning both Parliament as well as the provinces—notwithstanding whatever is said in article 13.

Prof. Shibban Lal Saksena : During emergency ?

The Honourable Dr. B. R. Ambedkar : Yes. Because that is a normal power even in other cases. When there is no emergency both have got power to legislate on the subject. I see therefore no reason why that power should be taken away during emergency. On the other hand I should have thought that emergency was one of the reasons why such a power should be given to the State.

Then with regard to my Friend Mr. Kamath's criticism that the next article, 280, was enough for the purpose, I think that is a misunderstanding of the whole situation, because unless power is given to modify, the suspension has no consequence at all. Therefore article 280 deals with quite a separate matter and has nothing to do with this article. This article should be accepted in the form in which it is proposed.

Mr. President : I will put the amendments to vote.

Amendment No. 235, moved by Prof. Saksena.

The question is :

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the words 'the State as defined in that Part' the word 'Parliament' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the word 'State' where it occurs for the second time, the word 'Parliament' be substituted."

The amendment was negatived.

Mr. President : The question is

"That with reference to amendment No. [illegible] to article 279 the words 'or to take any executive action and the words [illegible] taking at the end be deleted"

The amendment was negatived

Mr. President : Then I put article 279 to vote

The question is :

"That article 279 stand part of the Constitution"

The motion was adopted

Article 279 was added to the Constitution

Article 280

Mr. President : Then we take up article 280

Amendment No. 3028—Dr Ambedkar

The Honourable Dr. B. R. Ambedkar : Sir, I move

"That for the existing article 280, the following article be substituted :

'280. Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in the order.'

The House will see that this article 280 is really an improvement on the original article 280. The original article 280 provided that the order of the President suspending the operation of article 25 should continue for a period of six months after the proclamation has ceased to be in operation. That is to say, that the guarantee such as *habeas corpus*, writs and so on, would continue to be suspended even though the necessity for suspension had expired. It has been felt that there is no reason why this suspension of the guarantee should continue beyond the necessities of the case. In fact the situation may so improve that the guarantees may become operative even though the Proclamation has not ceased to be in operation. In order, therefore, to permit that the suspension order shall not continue beyond the Proclamation, and may even come to an end much before the time the Proclamation has ceased to be in force, this new draft has been presented to this Assembly, and I hope the Assembly will have no difficulty in accepting this.

Mr. President : Mr. Kamath, do you wish to move amendment No. 3030 ?

Shri H. V. Kamath : Sir, I shall move the alternative in No. 3030. I move

"That in article 280, after the words 'by order' the words 'and subject to the approval of a majority of the total membership of each House of Parliament' be inserted"

Shall I move my other amendments now and speak on them later ? Prof. Saksena has an amendment also.

Mr. President : You may move your amendments.

Shri H. V. Kamath : I also move Sir, by your leave, the three other amendments. The first one reads as follows :

"That in amendment No. 3028 of the List of Amendments proposed to article 280, for the words 'enforcement of the rights conferred by Part III of this Constitution,' the words 'enforcement of such of the rights conferred by Part III of this Constitution as may be specified in that Order' be substituted."

The next one is

That in (3)(8) of the List of Amendments in the proposed article 280, for the words '..... such right' be substituted '

And lastly,

That in (3)(8) of the List of Amendments in the proposed article 280, for the words ..... of the end the words 'that order' be substituted."

If all these amendments were accepted by the House, the proposed article would read as follows :

'Where a Proclamation of Emergency is in operation, the President may, by order and subject to the approval of a majority of the total membership of each House of Parliament, declare that the right to move any Court for the enforcement of such of the rights conferred by Part III of the Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of any such right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in that order."

Sir, shall I take my turn to speak after Prof. Saksena has moved his amendment ?

Mr. President : You may speak now. Prof Saksena has only one amendment. You may finish your speech first.

Shri H. V. Kamath : All right Sir, thank you very much. While considering this article, the House has to view it from more than one angle. The fundamental question, the question which goes to the root of the matter, is the suspension of all the Fundamental Rights guaranteed under Part III of this Constitution. What are Fundamental Rights as envisaged in this Part III ? They are, as far as I have understood them, rights of the subject or individual as against another individual, and also the rights of the individual as against the State. And we wholly justified in suspending the exercise of these fundamental rights during the period when the Proclamation of Emergency is in operation ? I have studied the major constitutions of the world though not as carefully as Dr. Ambedkar might have done, but to my regret I have not come across any such wide and sweeping provision in any of the other constitutions. Turning to the U.K. in fact no need to harp on it overmuch, as it is an unwritten constitution the other day Dr Ambedkar or Mr. Krishnamachari referred to DORA Defence of the Realm Act) which was passed by the British Parliament in 1919 or 1920. It is true that under that Act some of the rights of personal liberty and so on were suspended, but there was a very wholesome provision made in that Act against the abuse of power conferred on the executive. The Emergency Powers Bill of 1920 was condemned in England as the first coercion Bill since the days of Castlereagh. But even that black Bill—as it was then called—contained many safeguards which toned down the harshness and tyranny that might have resulted from the operation of that Act. I shall read some of these safeguards :

> "Where a proclamation of emergency has been made by His Majesty the occasion thereof shall forthwith be communicated to Parliament and if Parliament is then separated by such adjournment or prorogation as do not expire within five days a proclamation shall be issued for the meeting of Parliament within five days; and Parliament shall accordingly meet and sit upon a day appointed by that proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued that day.
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> Any regulations so made shall be laid before Parliament as soon as may be after they are made and shall not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for the continuance thereof."

That is so far as England is concerned. In the U.S.A., from which we are proud to have borrowed much—there is provision for the supension of only one fundamental right though it is of the highest importance, namely, right to

[Shri H. V. Kamath]

the writ of *habeas corpus*. The U.S.A. constitution provides that this right shall not be suspended unless in cases of rebellion or invasion, when the public safety may require it. But there are adequate safeguards in that regard, namely, the suspension can be authorised only by Congress, *i.e.*, by the Senate and the House of Representatives combined. But it is for the Supreme Court to say whether conditions existed which would justify the suspension of that right. In the well known Milligan case the Supreme Court stated that martial law cannot arise from a threatened invasion; the necessity must be actual and present and the invasion real. The point I sought to make out yesterday was that there should not merely be an imminent danger of external aggression or internal rebellion. The U.S.A. Constitution provides that. Further, the Supreme Court observed that what is true of invasion is true of rebellion also. It said that in order to meet the constitutional requirements the privilege of the writ of *habeas corpus* shall not be suspended unless in cases of rebellion or invasion the safety of the State requires it actually—and not simply a constructive necessity, made by a declaration of the legislature,—and the court will be the judge. I am sorry to say that though Dr. Ambedkar and others of his way of thinking proudly claim that they have borrowed so much from the U.K. and the U.S.A. some of the safeguards obtaining there have not been incorporated in our Constitution. Even now if it is not too late I would appeal to Dr. Ambedkar and his team of wise men to look this matter closely and see whether some safeguards could not be provided against the abuse of the power vested in the executive by virtue of this article 280.

Then, Sir, coming to details, the article refers to fundamental rights guaranteed by article 13. The House will see in Part III that the fundamental rights are of various kinds; they are not of a uniform character. They are different in nature and in conception and they comprise various matters which are not interconnected with each other. Article 11 for instance.....

Mr. President: Does the honourable Member propose to go through the whole part, section by section, and sub-clause by sub-clause?

Shri H. V. Kamath: No, no: in so far only as they are relevant to any argument.

Mr. President: I think the Members are familiar with the fundamental rights and any general remarks the honourable Member may wish to make he may do so without going into details of each such fundamental right.

Shri H. V. Kamath: I shall abide by your ruling. I am referring to such articles as are relevant to my amendments. The amendment moved today is amendment No. 1, the new one where I have said that the enforcement "of the rights" should be substituted by "such of the rights conferred by Part III of the Constitution as may be specified in that order."

The point of my amendment is that there are certain rights guaranteed by article 13 which cannot be abrogated in any eventuality, not even in case of the gravest emergency. There are some rights given by article 13 which cannot be abridged, abrogated or annulled. *e.g.*, article 11 abolishing untouchability. It is a very vital right. Do you mean to say that when there is an emergency we can permit the observance of these taboos and will not take any action those who enforce untouchability in any form on anyone else? Then there are the cultural rights and educational rights, but as I have just remarked, I do not wish to transgress your ruling and go into details. I shall only refer to untouchability, educational and cultural rights. If the House will study them closely and Dr. Ambedkar will give thought to the matter, he will find that there are certain rights

which cannot be suspended in any case, however grave the state of emergency may be. Therefore, I have sought to amend this article in this fashion—that the order must specify those rights which are sought to be annulled or abridged, or curtailed or suspended.

The other two amendments are merely verbal and I do not wish to speak on them. I leave them to the wisdom of the Drafting Committee to which mine is no match at all.

Amendment No. 3030 of the printed List of Amendments is a vital amendment, which is to the effect that the President's order declaring that the fundamental rights or any of them shall remain suspended—that order shall be subject to the approval of Parliament. We have already provided for that in articles 275 and 278. In 278 it is laid down that any proclamation made shall be laid before Parliament for its approval. In article 275, clause (2) (b) and (c), it is specifically laid down that the proclamation shall be laid before Parliament for its approval. Does this mean that once this proclamation is approved by Parliament the President is free to do by order as he likes? If that be so, it is a pernicious article. The suspension of fundamental rights is not an ordinary matter. It is a very grave matter. I will go so far as to say that it is even graver than the gravest emergency with which the State may be confronted. Do we in that eventuality empower the President to declare by order that these fundamental rights, conferred by article 13 shall be suspended? I hope that will not be done. I hope that is not the intention of this House. In whatever form this article may have been brought before the House today I hope that the House will not adopt this in a hurry: on the contrary, that it will give it mature consideration. I trust that the House will consider this matter in greater detail and will amend it suitably so as to provide more safeguards. I only wish through my amendment to see that any order made by the President in this regard—namely with regard to the suspension of fundamental rights—shall, similarly to an emergency Proclamation, be laid before Parliament and if Parliament approves, well and good: if Parliament rejects it, then that order should not have any force. As I have stated, though we hope and pray that the President may be a wise man, there is no guarantee in the Constitution that a philosopher-king—whom my honourable Friend Mr. Brajeshwar Prasad wants to be in the highest office of the State—will be elected. Human failings and human imperfections there will be. If the President decrees that all the fundamental rights are suspended, there is under the proposed article no provision for Parliament considering the matter. My Friend, Prof. Saksena, has tabled a little more radical amendment. I for my part, will be satisfied that, if the President passes an order before Parliament is convened, that order is laid soon before Parliament for it to debate on and approve or reject it. We are pleading, Sir, in season and out of season, that we are passing through a crisis. I am sure that the Italian Constituent Assembly, when it met two years ago soon after World War II was over, was faced with no less grave a crisis. There was danger of upheaval within the State and Communist were rising against the State. Italy was a border State between the Russian bloc and the Western bloc and it was wedged in between the two, and it was thus subjected to various stresses and strains. Even then, the Italian Constituent Assembly which adopted the Constitution in 1947 did not go so far as we are going today. What did they do? They were faced with a very grave crisis, the Communist near—insurrection within the State: and as we all read in the papers the other day, there were free fights within the Chamber of Deputies in the Italian Assembly when the Atlantic Pact was ratified. The Constituent Assembly adopted, however, an article, with a view to meeting the grave crisis confronting the State, but they provided adequate safeguards, and the relevant article in their Constitution reads thus:

[Shri H. V. Kamath]

"When in extraordinary cases of necessity and urgency the Government [illegible] responsibility adopts provisional measures having the force of law, it must on the same day" (in the U K the Act provides that Parliament is to be summoned in five days) present it for conversion into law to the Council which, if dissolved, should be convoked for the purpose within five days. The decrees lose effect as on the date of [illegible] into law within 60 days of their publication. The Council [illegible] regulate by law political relationships arising from decrees [illegible] law."

Again the power is left to the Chamber.

I have placed before the House the constitutions of U K, U S A and Ital I would like to place other constitutions also before the House but I do n propose to do so. I do not find in any constitution a similar provision of su sweeping character, as the provision in this chapter.

There is one more point and it is this We have already provided in article 278 that even otherwise than on the receipt of a report from the Governor proclamation can be issued by the President. I suppose under article 275 if India as a whole or even any part thereof is threatened by invasion, external aggression or internal disturbances, the President is empowered to proclaim a state of emergency. If the President issues a Proclamation of Emergency without receiving a report from the Governor and takes action subsequent thereto, annul ling the fundamental rights, there is one grave danger. The Governor or the ruler of a State or other authorities within the State will feel that they have been bypassed or ignored and a very serious conflict may arise. The authorities within the State—the ruler, Governor, his ministers or other administrative apparatus in the State—God forbid they should,—may refuse to co-operate with the Central Government or President and refuse to execute or conform to the decrees issued by him as a sequel to or in pursuance of the Proclamation of Emergency This is an eventuality or situation which, I am sure none of us desires to bring about Therefore, bearing all these considerations in mind, and taking serious notice of these possibilities and dangers, I feel that article 280, moved as amendment 3028 of the List of Amendments, (which has been couched in rather unfortunate language) is to my mind fraught with grave consequences not merely to the liberties of the individual but also to the powers of the constituent units. I once again urge, in all humility and with all the emphasis at my command, that the House should deliberate very coolly upon this article and provide safeguards against the abuse of power by the executive which is very likely,—nay, I am certain will result—from the operation of the article if it is passed as brought before the House today.

Prof. Shibban Lal Saksena : Sir, I beg to move :

"That in amendment No. 3028 of the List of Amendments, in the proposed article 280 for the words 'the President may by order declare' the words 'The Parliament may by law provide' and for the words 'the order', occurring at the end, the words 'that law' be substituted."

My amendment if accepted will read as follows :

"Where a Proclamation of Emergency is in operation, the Parliament may by law provide that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the proclamation is in operation or for such shorter period as may be specified in that law."

I would have very much wished that this article was completely deleted. It is even more far-reaching than the preceding article to which I voiced my opposition That article has not taken away the liberties guaranteed under article 13, but this is of much greater import. In fact it nullifies the subject's right of constitutional liberties, which have been provided in the Constituiton. I would invite the attention of the House to article 25 which says :

"The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."

The Supreme Court can always be approached whenever any of these rights is infringed. The second clause is even more important. It says:

"The Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus, mandamus* prohibition, *quo warranto* and certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by this Part."

Clause (3) says:

"Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article."

Clause (4) says:

"The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

Here we are invading the powers of the Supreme Court in regard to the liberties of the subject, not only the liberties guaranteed under article 13 but all the rights plus the right of the subject to obtain a writ of *habeas corpus*. When I read this article I was transported back to the glorious revolution of 1942, when India waged her war of independence and we were thrown into dungeons on charges which were fantastic such as waging war against the King, etc. Even then the British Government did not suspend the power of the High Courts to issue writs of *habeas corpus* which is guaranteed by Section 491 of Criminal Procedure Code. I remember numerous detenus sent applications under the *habeas corpus* section and they had to go to a High Court and were heard there. But in this free India we are providing for the suspension of this most fundamental article and section 491 of the Criminal Procedure Code will not have any effect if the article is adopted. Supposing a war last for ten years; is nobody to have the right to approach the Supreme Court with an application for a writ of *habeas corpus* during that whole period? This gives the bureaucracy the right to arrest any person without any cause whatsoever. One cannot even go to the Supreme Court for redress. I do not think that in any emergency this right of the Supreme Court to do justice should be taken away. After all, the Supreme Court which will be created under this Constitution will be presided over by a Chief Justice who will be nominated by the President on the advice of the executive and the other judges also will be eminent men appointed more or less in the same way. Cannot such gentlemen be trusted in an emergency? I cannot conceive how we can trust the executive which can ride roughshod over the liberty of the citizens. I can understand the provision of safeguards for an emergency, but not the complete suppression of the liberty of the citizen. I do not know of any parallel for this anywhere in the constitutions of the world. I, therefore, suggest strongly that this article should be removed from the Constitution; but if that be not possible, I would suggest that my amendment which gives power to the Parliament to make any law which it considers necessary for an emergency may be accepted. The President may order the issue of a proclamation and the executive will be supported by Parliament. I do not see what harm is there in giving the Parliament the right to pass laws for emergencies. Why should the President alone have the power which in effect means power for the executive behind him? The Parliament must have the right to say what sort of action should be taken in an emergency. I do not think that this article is at all necessary. But if it is considered necessary, my amendment must be accepted and Parliament should be empowered to safeguard our freedom even in emergencies. Let it not be said that we distrusted our sovereign Parliament and gave power to one single individual.

[Prof. Shibban Lal Saksena]

My Friend Mr. Kamath quoted many articles to show how foolish it is t suspend the entire Chapter XIII. I am surprised to see that the Drafting Committee considered this necessary. There are some articles in this Chapter that have nothing to do with an emergency. Why should they be suspended? If this article comes into operation, discrimination can also be practised. And that would go against the spirit of the Fundamental Rights we have conferred on th citizens, such as non-discrimination between citizen and citizen, untouchability and other things. I do not think that this article has been drafted with proper care and with a proper understanding of the situation. I do not know what defence Dr. Ambedkar can have for this provision. In replying to my amendment in the previous article, he said that power had been given to all the State legislatures also to make laws in violation of article 13. That is something which can be understood. I wanted that Parliament should have this power and he said that the States also should have this power. But here the President only is given this power to issue orders and the question of States does not arise. I only want that Parliament by law should do this. Why do you want the President to be an autocrat? If my simple amendment is not accepted and the fundamental right of the people safeguarded, people will not have much respect for this Constituent Assembly; for the Constitution made by it, because this article cuts at the root of our freedom and should not be in the Constitution. It should at least be amended as I have suggested.

Mr. President: Pandit Kunzru has given notice of an amendment to article 280. That is No. 211 in the printed Supplementary List.

Mr. Tajamul Hussain (Bihar: Muslim): What about my amendment, Sir

Mr. President: What is it?

Mr. Tajamul Husain: It is for deletion.

Mr. President: That is only negative. You can vote against the motion

Shri H. V. Kamath: Yesterday, Sir, a motion for the deletion of an article was allowed by you.

Mr. President: Because it was moved by the Drafting Committee itself.

Shri H. V. Kamath: I suppose the rules must be the same for all.

Mr. President: The Drafting Committee has the right to ask for a deletion In the case of Members, such a motion will not come in as an amendment.

Do you wish to move your amendment, Dr. Kunzru?

Pandit Hirday Nath Kunzru: Yes, Sir. I move:

"That in amendment No. 3028 of the List of Amendments, for the proposed article 280 the following be substituted:—

'280. Where a Proclamation of Emergency is in operation, the President may, by order, declare that the right to move any court for the enforcement of any of the rights conferred by articles 13, 14, 15, 16 and 24 of this Constitution and all proceedings pending in any court for the enforcement of any such rights shall remain suspended for the period during which the Proclamation is in operation or for such period as may be specified in the order.'"

Suspension of the enforcement of certain fundamental rights during Emergencies.

The object of this amendment is a very simple one. The amendment that Dr. Ambedkar has moved covers all the fundamental rights. What I want is to limit the operation of article 280 to certain rights only. It is not necessary that, when a Proclamation of Emergency has been issued by the President, all the fundamental rights should be suspended. Take for instance, the right of a man, to whatever caste he belongs, to stay in a hotel or go to a restaurant or

draw water from a public well. Is this right too to be suspended while a Proclamation of Emergency is in force? All that is desired is that, so far as the right to free speech or the right to form associations or the right to assemble peaceably are concerned, it should not be enforceable through the courts of the land while a Proclamation of Emergency is in force. I am not entirely of the same opinion as Dr. Ambedkar in this matter, I share the opinion of his critics; but I can understand his desire that in times of serious trouble, the State should not be hampered by any formalities in the formidable task of restoring law and order. It is however not necessary for the purpose of quelling internal disturbance or meeting external aggression that we should deprive the people of all their fundamental rights. All that is necessary is that notwithstanding the rights conferred by this Constitution on the people, such of them as, if allowed to be exercised in an unrestricted manner, will create difficulties in the way of re-establishing peace, may not be legally enforced. I think this limited purpose will be gained if the amendment that I have moved is accepted. It does not seem to me to be at all necessary or desirable that the scope of the article should be wider than this. However serious the situation may be, the State will be armed with ample powers to bring it fully under control if my amendment is accepted. The entire suspension of the fundamental rights is neither necessary in any case nor desirable. Indeed, it would be deplorable. I hope, therefore, that my amendment which gives the executive all the powers that it need possess in troubled times, will be acceptable to the House.

Shri Mahabir Tyagi (United Provinces: General): Sir, in view of the fact that the House has already passed article 279 as desired by the Drafting Committee, I think, the passing of 280 is rather too serious. The House has already permitted the future governments to override important fundamental rights in the case of an emergency. Now, to go further and to allow the State to go beyond the powers of the Supreme Court is, in my opinion, too much. I agree with my Friends, Mr. Shibban Lal and Mr. Kamath, in their protests against this power being given to the future governments. An emergency has to be declared when there is danger to the peace or tranquillity of the country or to the existence of the government. But let us also understand that a Government is always poised as against the people it governs. So, while giving a Constitution to our country, we must not lose sight of the fact that the rights and privileges of the people being poised against the authority of the State, it is for us to see that the stress is not lop-sided. While assigning political rights, we should strike a balance between the governed and the governors. No doubt, in a democratic State, the government is necessarily formed in accordance with the will of the people, but even then, once a State is organised, the role of the people becomes passive. It is the people who are acted upon by the State. Now, for instance take our own case. It is the Members of the Constituent Assembly today who compose the State. In fact, all the State authority of India is in the hands of the Constituent Assembly (Legislative). We are wielding power. On whom are we wielding it? We are wielding it on the people whom we claim to represent. Have our electors any hand in the administration? Have they any say? No. Let us not be under the impression that we would last for ever. It is always the case that when one occupies an office of responsibility, one thinks that that office to be effective should be armed with more and more powers, because one is too self-confident and therefore one honestly feels that one will not misuse the powers given to one's office, but the one must not also forget that that office is not for the one to occupy for ever. Another may occupy it tomorrow and misuse the power. So, while giving more powers to the State, we as the representatives of the people and also as the judges of the rights of the people, must bear in mind the fact that the State might also change hands. And that the future governments might not be so considerate towards the rights of the people, and that they might also misuse these powers. The only guarantee that the people have against the high-

[Shri Mahavir Tyagi]

handedness of their State is the Court. And so if in our enthusiasm we empower the State to go beyond the judiciary and override it, there will remain nothing but the law of the jungle. There will be nothing to control either the government or the people. Sir, my experience is only from India, while many of my honourable Friends, who have read books on foreign countries, and seen their politics too, have a different picture of democracy in their minds, I value their experience and knowledge, but to me it seems that their opinions are mostly borrowed. I would appeal to them to study the march of democracy in India. Are they satisfied with the manner in which we are running our democracy? So my opinion is based on what I have seen with my own eyes. The present Government here and the governments in various provinces can claim to be known as the peoples' governments. Such people's governments are spread over the whole of India today; and also in such territories as used to be Princes' States, the government is no doubt of the people but even then the fact remains that in practice the Government stands in opposition to its people. I do not think by votes a government becomes the people's government, and it may be right to prove by logic that since the people had voted for the government, the government shall have to be the people's government, and it may claim that the people themselves carry on the government. It is not so in fact. They had exercised their votes once. But as the election were over, they got out of politics, now they have no control. Till the next elections or till such time as they have another chance to exercise their choice, they must remain like sleeping partners of democracy. We have not got the right to recall the Government. People after once voting for the Government have no right of recall or to censure it unless there is a fresh election. So whatever rights we give to the State or the Government those rights are not necessarily to be used in the interest of the people. For the present type of democracy in India, people do not count at all. Their only privilege is that they have a free access to the Judiciary. People, who feel that their privileges or their rights, fundamental or otherwise are violated, can have resort to a court of law, and that is the only guarantee, that is the only safety under which the people may remain contented. If the people were to be told that the State is supreme in India, and that the Supreme Court is liable to be over-ridden, they will lose confidence of their security and existence. With an Independent judiciary, it is not only the people who draw a sense of security, against the tyranny of the State, but even an individual feels confident about himself, whenever his rights and privileges come in clash with the vagaries of society. If the society is hard on an individual, even that single individual must have the guarantee, must have the security to stand alone and to live alone and he must have the guarantee that no wrong will come on him and that he will not be dealt with unfairly. That guarantee is there, only because he is confident the Court is Supreme. Even if the whole State pounces on him he has one guarantee, as a citizen of the land, to approach the Supreme Court for protection and relief. Therefore, Sir, I submit that this article will have an alarming reaction. It will shake an individual's faith that law will be justly exercised. It is through this faith that individuals cling to society. Devoid of this sense of security the society will diffuse and disperse like particles of sand. I submit, Sir, that the principle involved in the article under discussion is very pernicious. I for one cannot vote for it. Even if the whole House agrees to arm the Government with such powers even in the case of an emergency, I for one wish to bring it on record that I am opposed to this, now and ever. (*Hear, hear*). I think the rights of an individual to move the judiciary should not be taken away in any circumstances. And if we were to agree to the draft that has come before us then,—Sir, I do not know, my logic may be wrong, it is for the lawyers to say,—but I feel that no fundamental rights can remain protected and there would be no security of life or property or even of political rights and liberty. And having in view the poor training of political parties in their practice of democracy, I am inclined to

profess that we should not be surprised if individuals are ordered to be hanged for flimsy reasons of their not seeing eye to eye with the powers that be. All this will be done in the name of emergency. May be that Shri Alladi Krishnaswami Ayyar might find a way for the condemned to smuggle him into the court, but I do not see there shall remain a chance, because all fundamental rights or rights of *habeas corpus* shall stand suspended altogether. After seeing the people's government run for the past two years I am afraid it will take a long time yet for our representatives to know how to run the administration in the interests of the people. It is, indeed, wrong to say that even our government, however popular it may be, is really the people's government. Neither people have a voice in it or are we able to interpret their wishes into action. We were elected long ago to fight with the British, and now by indirect election we have come here; people have not given us their sanction to make a Constitution for them. It is the British who gave us that sanction, and with that borrowed sanction of the foreigners we are constituting for the people. And this Constitution is going to be inflicted on the people without their expressed consent or legal sanction. Therefore to legislate or to constitute in a manner whereby the people's rights are disregarded, will be rather unfair and bad in law and in constitution. I therefore submit, Sir, that the Drafting Committee might please review their opinions and see if they could still bring some change to the effect that the supremacy of the judiciary is not interfered within the manner in which it is proposed in this article. Sir, people's government will still take time to come and it is not by vote that we can make the people's government really so. It is by our aptitude and method of administration and behaviour that the Government may become really people's government. It is not that the ministers belong to the people, but the government belongs to the people. It is the policy of the Government that should belong to the people, that that Government will be the people's government. I submit, Sir, the people have not yet received any power. And so long as the people are not rich enough in their rights to enforce their policies on the Government, the Government howsoever popular it be, can never be the people's government. And I am afraid if things go on at this pace, the tendency of the government, being towards arrogance, it will soon become tyrannous for people, and time would come when people will make their own government, because after all it is a democracy. People's voice cannot be subdued for long and people will exercise their free voice at last. But the day they choose to exercise their rights and act freely, they will at once have their own government and when their own government comes and they begin to act there must crop up a party in opposition. But as I have seen we are not yet trained in democracy. Any opposition here even in this House is not seen, is not considered or treated with that much of generosity as in foreign countries opposite parties are treated. I submit that in India the generosity, the intellectual honesty and the strength of conviction has still to come, and so long as we are not trained to treat our opponents with respect and honour and so long as party bitterness exists in the politics of the country, I am afraid many rich and precious lives, the lives of many a learned and the patriots will be in danger if this pernicious article is allowed to creep into this Constitution; because as soon as there is war, the parties in power will try to exterminate their opponents. We must also remember the present century is a century of emergencies; there will be emergency at home, and emergency abroad all over the world; and these emergencies will be intermittent; they may repeat themselves very often; the future governments of most of the countries are going to be governments ruling under the emergency declarations. If times are really so 'disturbed', if times are so unstable, then our country will have emergency proclamations for most of the time; with too much of power and with little fear of re-election, the government must tend to become tyrannous and beastly. The opposite party will have no safety. For God's sake, therefore, let not the individuals, let not your opponents be deprived of their basic right of approaching

[Shri Mahavir Tyagi]

the Supreme Court for the protection of their life, honour and liberty. I therefore submit, Sir, that this article may not be accepted and the Drafting Committee might be pleased to reconsider, and in the interests of democracy, in the interests of our future freedom, they will please revise it and amend it in such a manner that the future Governments might not be able to misuse it in any manner.

With these words, I oppose this article.

Prof. K. T. Shah (Bihar: General): Mr. President, coming to this grand finale and the crowning glory of this chapter of reaction and retrogression, I fear one cannot but notice two distinct currents of thought underlying and influencing throughout the provisions of this chapter. On the one hand, there is a desire, it seems to me, to arm the executive, arm the Centre, arm the Government against the legislature against the units, and even against the people on the score of a possible threat to internal peace, a possible danger of war or external aggression, or even any local disturbance. Looking at all the provisions of this Chapter particularly, and scrutinising the powers that have been given in almost every article, it seems to me, Sir, that the name only of Liberty or Democracy will remain under this Constitution. Every one of these articles,—and ultimately this particular article,—suspending even the fundamental rights and the right of approach to the Supreme Court for the enforcement of those rights, merely on the ground that there is an emergency declared by the Head of the State, is, to my mind, a denial of any right of freedom or civil liberty of any kind that has been conferred in a previous chapter.

It seems to me, incidentally, that this article is inconsistent in spirit, if not in letter, with the articles previously passed, which require that while all other powers and functions may be arrogated to himself by the President, or may be delegated to some other authority named by him, the powers and authority of the High Courts will not be interfered with. In this article, though directly the powers of the High Courts or of the Supreme Court or any court are not interfered with, inasmuch as the right of the individual to move the Supreme Court as guaranteed in article 25 will remain in suspension, if this article is accepted, it would follow that even the powers of the High Court, the Supreme Court or any court would be suspended. For, the courts cannot go to the individual aggrieved by such acts of the Executive, and say, "bring your troubles to us and we shall redress them". The Courts must wait till any individual aggrieved comes to them, or raises the question of the Fundamental Rights under this Constitution. If that is not permitted, as this article seeks to do, then, I am afraid, the right or position of the court itself is put under suspension.

That, surely, should not have been the intention, and that should not be the purpose of a provision like this in the Constitution. The moment you introduce a provision like this in our Constitution, the moment you provide that the right to move the Supreme Court which has been guaranteed by a previous article shall be suspended by an order of the President, by an order of the Executive that moment you declare that your entire Constitution is of no effect.

Dr. Ambedkar takes credit, and I think he is fully entitled to it, that he has changed six into half a dozen; that is to say, instead of saying that the suspension shall remain operative during the period of the Proclamation and some time *after*, he now provides that the suspension shall remain in operation during the period of Proclamation, or for a shorter period. To that extent, I repeat his amendment deserves congratulation. But the essence remains; that is to say, the suspension of the right to move the Courts of justice for an aggrieved citizen, the only right guaranteed by the Constitution, who is denied his Fundamental

Rights as conferred by the Constitution itself, remains untouched, even if the period of its duration may be shortened in the manner that Dr. Ambedkar has done.

So long, therefore, as this provision remains in the manner in which it has now been put forward, so long as it is the power of the Executive only to make such an order, and suspend the fundamental rights in effect, so long, I think, this provision would be and must be objectionable.

As an amendment here has suggested, if you really feel that some extraordinary measures are necessary, when an emergency is so grave that you cannot wait for the ordinary individual's rights to be enforceable, and the legal technicality of procedure to take effect, by all means act; but in such acting take the Legislature into your confidence, and make the Legislature enact the necessary law. Why should you assume that the Legislature should be so un-responsive, so callous, so indifferent and unaware of the real situation of the country, that it will not agree to such legislation as may be necessary for preserving peace and tranquillity inside the country, and guarding the country against any danger of external aggression? After all, you have the example of Britain during the last two World wars that she has fought in this century. Then under the so-called Refence of the Realm Acts, again and again, certain rights what we call Fundamental Rights had to be suspended or denied; and nobody protested against any such legislation being passed. Why do you assume that the Parliament will be so unaware of the situation, or unwilling to pass the necessary legislation, that you must arm the Executive, the President on his own authority so to say, to pass such an Act by Executive Order, and go to the extent of stopping or suspending even the one guaranteed Fundamental Right of seeking justice in the courts of law?

I think this is an excess of power being given to the President, I think it is an excess, shall I say, of reaction against which the Draftsmen cannot be warned too strongly, cannot be warned too often. I would, therefore, suggest that if at all such a clause is necessary—for my part, I do not think it is necessary—it should be included as part of the powers of the Legislature. If at all you think that it is not possible to rely upon Parliament or upon the people's good sense, let the Executive take action face the consequences without an express provision in the Constitution to that effect. But it would be better if you make at least the legislature to pass a law giving these powers by a special provision in such an Act.

The difference between an executive order of the kind contemplated in this amendment and an Act of Parliament is quite obvious. Whereas in an executive order the President alone will act, or perhaps one or two of his Ministers will advise him and he will act on that advice without any further discussion, in an Act of Parliament, it would be unavoidable that the fullest searchlight will be thrown upon every provision and every word of the provisions. Not only the necessity for such special provisions would be laid bare, but also the limitations and restrictions that may be deemed necessary by Parliament to impose, before executive action of this kind can be allowed to take effect, and the conditions under which it takes effect. I, therefore suggest that instead of concentrating all effective power and authority and influence in the hands of the Executive, it would be better if at least the Central Parliament—I am not suggesting the local Legislature—of the country as a whole should have the right to discuss these matters, and pass the necessary legislation. If you have confidence if you really believe in the collective wisdom of the representatives of the people greater than your own wisdom as the Executive, then, I think there is no alternative but to accept the amendment which suggests that this power should be given by an Act of Parliament and not by Executive Order the President.

The Honourable Dr. B. R. Ambedkar: May I say a word? In view of the point that has been made as to whether the suspension of the proceedings should take place by the order of the President which of course means on the advice of the Executive, which of course also means that the Executive has the confidence of the Legislature, there is no doubt a difference of opinion as to whether suspension should take place by an act of the Executive or by law made by Parliament I should like therefore that this article may be held over to provide the Drafting Committee opportunity to consider the matter. We might take up the other articles.

Mr. President: This article may be held over.

Then we shall go to article 247.

Article 247

The Honourable Dr. B. R. Ambedkar: Sir, I move that—

"That for the heading to the articles commencing with article 247, the following heading be substituted '—

'General' "

Mr. President: I do not suppose any discussion of that is required.

The question is :

"That for the heading to the articles commencing with article 247, the following heading be substituted :—

'General' "

The motion was adopted.

Mr. President: Amendment No. 2832.

Mr. Naziruddin Ahmad: Sir, I beg to move :

"That in article 247, the words 'unless the context otherwise requires,' be deleted."

I submit that these words are not only unnecessary but somewhat misleading In article 247 there are certain important clauses. Clause (a) defines "Finance Commission." I submit that Finance Commission is a precise expression. It has only one meaning and it has been used throughout the Constitution in that specific clear meaning. In clause (b) 'State' has been clearly defined that it does not include a State for the time being specified in Part II of the First Schedule. 'State' has been clearly defined in the appropriate places and a State as specified in Part II has also been specifically defined without the possibility of any misunderstanding. So State here is clearly understood. In clause (c) it is said that "references to States for the time being specified in Part II of the First Schedule shall include references to any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule." I submit part II of the First Schedule and Part IV are clear and therefore these explanations in clauses (a), (b) and (c) are absolutely precise and incapable of being misunderstood even with reference to any context. Therefore the words 'unless the context otherwise requires' are absolutely unnecessary. I shall ask the honourable Member to point out any place where the context can possibly 'otherwise require'. In the Penal Code the definitions are very precise and therefore the misleading condition 'unless the context otherwise requires' is entirely absurd. The addition of these words will make the reader or Constitutionalist think

several times before giving these words the meaning which is here definitely given Therefore in order to remove any uncertainty or doubt in the minds of a reader, these words should be omitted. That is the purpose of my amendment.

(Amendments Nos. 2833 to 2836 were not moved.)

Mr. President: Does anyone wish to speak?

The Honourable Dr. B. R. Ambedkar: All that I need say is that those words are included by way of 'abundant caution'. It may be they may be unnecessary, but it may be they may be found necessary. We want to retain those words.

Mr. President: The question is:

"That in article 247, the words 'unless the context otherwise requires,' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That article 247 stand part of the Constitution."

The motion was adopted.

Article 247 was added to the Constitution.

Article 248

Mr. President: Then we take up article 248.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

Taxes not to be imposed save by authority of Law

"That for article 248, the following articles be substituted:—

"248. No tax shall be levied or collected except by authority of law.

Consolidated Fund

'248A (1) Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one Consolidated Fund to be entitled "the Consolidated Fund of India", and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the State".'"

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution"

These amendments are only consequential to what we have already accepted previously.

Mr. President: Amendment No. 196?

Shri T. T. Krishnamachari (Madras: General): Pandit Kunzru who gave notice of amendment No. 196 is not in the Chamber at present. There is another amendment, No. 198, which the Drafting Committee feel may be accepted, and in order that it may be accepted, this amendment No. 196 has to be moved and accepted. If I am permitted to move it, I will do so.

Mr. President: Yes.

Shri T. T. Krishnamachari: Mr. President, Sir, I move amendment No. 196 in the printed Supplementary List, standing in the name of Pandit Hirday Nath Kunzru:

[Shri T. T. Krishnamachari]

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A after the words 'Subject to the provisions of' the words, figures and letter 'article 248-B of this Constitution and to the provisions of' be inserted."

I have already explained, Sir, that there is another amendment standing in the name of Pandit Kunzru which the Drafting Committee felt it would be wise to accept, and that is also a matter about which I will explain subsequently. And therefore in order to enable that amendment to be accepted, this amendment is necessary.

Mr. President: Amendment No. 197 standing in the name of Prof. Saksena

Prof. Shibban Lal Saksena: Mr. President, Sir, I beg to move:

"That in amendment No. 195 above, in clause (1) of the proposed new article 248 A the words 'Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States,' be deleted."

Sir, at an early stage I gave my wholehearted approval to the new scheme of financial provisions, where Consolidated Funds and other such things have been introduced. But in this amendment of mine, I have only suggested that in the article 248-A as proposed by Dr. Ambedkar, the words, "subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States" may be removed. What will be the effect? At present, what is contemplated is that several taxes should be allotted directly to the States, even though they may be collected under the laws framed by the Government of India. But what I want is that every tax or duty or whatever money is realised from the people of the country under laws framed by the Government of India they should first come to the treasury of the Government of India and thereafter any assignment should be made and money transferred. It should not be lawful for any State to appropriate to itself any revenue collected on the authority of the laws passed by the Government of India. Money should not go to the States treasury without first coming to the Central Government. I want that all the money should be pooled together and then from there it should be distributed. That gives the Centre some idea of the total collection, and also how it has been distributed. Otherwise they will probably not know how much money has come under a particular tax. My amendment is a simple one, though it involves a change in procedure. But I think all will agree that all finance should first come to the Central pool and then get distributed. I hope this simple amendment will be accepted by the House.

Mr. President: Does any one wish to say anything about the amendments or the original article moved by Dr. Ambedkar?

(No Member rose.)

Then I will put the amendment first to vote. The first amendment is the one standing in the name of Pandit Kunzru.

The question is:

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, after the words 'Subject to the provisions of' the words figures and letter 'article 248-B of this Constitution and to the provisions of' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, the words 'Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States,' be deleted."

The amendment was negatived.

Mr. President: Then I put the amendment moved by Dr. Ambedkar. The question is :

"That for article 248, the following articles be substituted :—

Taxes not to be imposed save by authority of law

"248. No tax shall be levied or collected except by authority of law.

248-A. (1) Subject to the provisions of article 248-B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one consolidated Fund to be entitled "the Consolidated Fund of India," and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the State."

Fund.

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

I put this article, as amended by amendment No. 196, to vote.

The motion was adopted.

Articles 248 and 248-A, as amended, were added to the Constitution.

Article 248-B

Mr. President: Then we come to article 248-B, amendment No. 198, in the name of Pandit Kunzru.

Pandit Hirday Nath Kunzru: Sir, I move :

"That after the proposed new article 248-A the following new article 248-B be added :—

'248-B. (1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "The Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to be advanced by him for the purpose of meeting unforeseen expenditure which has not been authorised by Parliament pending authorisation of such expenditure by Parliament by law under article 95 or article 96 of the Constitution.

Contingency Fund.

(2) The legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled the Contingency Fund of the State into which shall be paid from time to time such sums as may be determined by such law and the said Fund shall be placed at the disposal of the Governor to be advanced by him for the purpose of meeting unforeseen expenditure which has not been authorised by the legislature of the State pending authorisation of such expenditure by the legislature of a State under article 180 or article 181 of this Constitution."

Article 248-A requires that all moneys received for the Government of India shall be paid into a fund called the Consolidated Fund of India, and that no amount shall be taken out of this Consolidated Fund without express parliamentary authority. Now it has been found from time to time that the expenditure voted by Parliament for a department is not enough; it has to be exceeded for some reason or other. If the expenditure is incurred without parliamentary authorisation it will be illegal. But if the executive awaits the sanction of the legislature before incurring the expenditure the department concerned may be put to great inconvenience. Besides, the expenditure may be urgently required and the inability of Government to make provision for it may be detrimental to the public interest. It is therefore necessary that some means should be found of enabling Government to meet unforeseen expenditure not authorised by Parliament. I have proposed that for this purpose a Contingency Fund to be called the "Contingency Fund of India" should be established. Parliament may fix the size of the Contingency Fund, but when money has been

[Pandit Hirday Nath Kunzru]

put into this Fund, the executive can legally draw upon it to meet [illegible] as has not been authorised by Parliament but is necessary. Of course the Contingency Fund will not absolve the executive of the duty of bringing all expenditure to the notice of the House for its sanction. But in any case it would be a limited fund and if it is exhausted the executive will have to come to the Legislature for sanction to replenish it. In other words it will [illegible] parliamentary control over expenditure, a control that does not exist at the present time. We know that in the year 1948-49 expenditure amounting to [illegible] crores was incurred without any authority from the legislature. We came to know of the large amount that had been spent in addition to that voted by the Legislature long after the expenditure had been incurred. The expenditure was of such a magnitude as to attract the attention of the House and compel some members to draw the pointed attention of the executive and the legislature to this matter. In order that such irregularities may not occur in future, it is necessary to establish a fund of the kind that I have proposed. Such a fund exists in Great Britain and we shall be wise in following that example in order to provide for unforeseen expenditure. The object of article 248-A and 248-B taken together is that not a pie should be spent without the sanction of Parliament. I hope my proposal will be acceptable to the House.

Prof. Shibban Lal Saksena: Sir, I move

"That in the proposed new article 248-B for the words 'such law' and the word 'advanced by him' wherever they occur, the word 'law' and the words 'used by him for advancing money' be substituted respectively"

The words 'such sums as may be determined by such law' do not make any meaning and we should say 'by law'. I further suggest that for the words 'to be advanced by him' it is better to say 'to be used by him for advancing money'.

Then Sir, in clause (2) it is said :

"The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled 'the Contingency Fund of the State' into which shall be paid from time to time such sums as may be determined by such law (it should be 'law' and not 'such law') and the said Fund shall be placed at the disposal of the Governor to be advanced by him (I say these words are not generally used in Constitutions. I would suggest 'by the Governor, to be used by him for advancing money') for the purposes of meeting unforeseen expenditure which has not been authorised by the Legislature of the State pending authorisation of such expenditure by the Legislature of a State under article 180 or article 181 of this Constitution."

The amendments though verbal are, I think, important in a clause dealing with the finances of the country. So far as the points made by the amendment are concerned, I agree with them. I think a Contingency Fund is necessary and without it our provisions in regard to finances of the country will not be complete. Therefore, this article should be passed and amended by my amendment. I hope the Drafting Committee will look into it and try to see that it is corrected.

Shri T. T. Krishnamachari: The Drafting Committee is accepting it.

Mr. President: There is an amendment by Prof. Saksena.

Shri T. T. Krishnamachari: We are accepting the clause as put forward by Pandit Kunzru.

Mr. President: I shall then put Prof. Saksena's amendment first.

Mr. President: The question is :

"That in amendment No. 198 above, in the proposed new article 248-B, for the words 'such law' and the words 'advanced by him', wherever they occur, the word 'law' and the words 'used by him for advancing money' be substituted respectively"

The amendment was negatived.

Mr. President: The question is:

"That proposed article 248-B stand part of the Constitution"

The motion was adopted.

New article 248-B was added to the Constitution

Article 249

Mr. President: We now come to article 249

But before that, there is an amendment No. 200—regarding the heading, by Dr Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That above article 249, the following sub-heading be inserted:

'Distribution of Revenues between the Union and the States'."

Mr. President: Does any one wish to say anything about it?

Shri Brajeshwar Prasad: About what?

Mr. President: About amendment No. 200 viz.,

"That the above article 249, the following sub-heading be inserted:—

'Distribution of Revenues between the Union and the States'."

Shri Brajeshwar Prasad: I would like to speak on article 249.

Mr. President: We are not taking up the article—only the heading. I take it that it is accepted. The question is:

"That above article 249, the following sub-heading be inserted:—

'Distribution of Revenues between the Union and the States'"

The motion was adopted.

Mr. President: Now we take up article 249. There are some amendments of which notice has been given. They may be found at page 296 of the second volume of amendments.

(Amendments Nos. 2837 to 2840 were not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (2) of article 249, the words 'in that year' be deleted."

May I also move Nos. 69 and 70?

Mr. President: Yes.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (1) of article 249, after the words 'such stamp duties' the words 'as are imposed under any law made by Parliament' be inserted."

Sir, I also move:

"That in clause (2) of article 249, for the words 'Revenues of India' the words 'Consolidated Fund of India' be substituted."

(Amendment No. 68 was not moved.)

Mr. President: The article and amendments are now open to discussion.

Pandit Hirday Nath Kunzru: Is the discussion on this article to proceed now?

Mr. President: Yes, in five minutes more we shall have at least one speech today.

Shri Brajeshwar Prasad: Sir, I am opposed to the general principles of article 249. I am not in favour of the existing or the proposed system of distribution of revenues between the Union and the States. I am in favour of two propositions, which I want to lay down before the House. The first proposition is, that all duties and taxes should be levied, collected and appropriated by the Government of India. The provinces should have no power of levying taxes, or collecting it, or of appropriating it. There should be no financial autonomy in this sphere because of a very valid political reason, which I shall mention afterwards.

The second principle which I want to lay down is that there should be an independent authority at the Centre to allocate funds between the different units in accordance with the needs of each province. That independent authority, Sir, may either be the President or the Parliament or a Finance Commission. I am not in favour of the existing system because, Sir, it is opposed to the basic concept of nationalism. The meaning of nationalism, Sir, is that every inch of the territory is as much mine as it is yours.

The second meaning of nationalism is that the total wealth of the country belongs to each and every citizen in an equal measure. The present system of distribution of revenue leads to inequality between man and man, between one province and another. Therefore, I am opposed to the present system of distribution of revenue. I am in favour of scrapping the whole thing.

Having due regard to the facts of our political life, I would suggest that the President should allocate funds. I want to see that day when the question of allocation of funds would not arise as there would be no Provinces left. Financial autonomy is dangerous, because it will pave the way for the establishment of independent States. This is the last straw on the camel's back. Already ample powers have been vested in the provinces and this is the only method by which we can keep the provinces under the subordination, direction and control of the Government of India. If a big province like Bombay or Madras (I am sorry to say this) is vested with financial autonomy, what will be the result? Tomorrow under the stress of some political movement these two provinces might declare their independence. Therefore I want that provincial ministers should come over here before the Government of India and place their case for allocation of funds, so that they may remain under the control of the Government of India.

Mr. President: A suggestion has been made that we might not sit on Monday next on account of *Sarvan Purnima*. We cannot afford to lose one day. I therefore suggest that we sit on that day from 3 P.M. to 7 P.M. that afternoon.

The Assembly then adjourned till Nine of the Clock on Friday the 5th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 5th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 249—(Contd.)

Mr. President: We shall take up the discussion of the article which we were dealing with yesterday.

Shri B. Das (Orissa: General): Sir, the House is discussing Chapter I, Part X which deals with "the distribution of revenues between the Union and the States". Article 249 and the subsequent articles up to article 260 deal with the collection and assignment of taxes between the Centre and the Provinces. Article 255 deals with grants-in-aid from the Union to the States and article 260 deals with the appointment of a Financial Commission to enable the making of independent grants to the Provinces without interference by the Finance Department of the Central Government.

Sir, this House had no opportunity to discuss this subject which concerns the social well-being of the entire population of India. In July 1947, Pandit Jawaharlal Nehru, the President of the Union Constitution Committee, reported and gave a small Chapter (Part VII) on Finances and Borrowing Powers. It was discussed later in the House and was incorporated in the report in the Second Series. In the July-August 1947 discussions, the question was left hazy. But, Sir, you at least appointed an Expert Committee to go into this question of the financial provisions of the Union Constitution. That Expert Committee reported sometime early in 1948. This sovereign House never discussed that report of the Expert Committee. The Drafting Committee must have taken into account the report of the Expert Committee and modified the articles under discussion. But, Sir, I must say that these articles remind me of similar articles in the Government of India Act, 1935. They do not show any tendency of the Finance Department of the Government of India to part with the resources arbitrarily commandeered, so that the Provinces can live happily and prosperously and do their duty by the people under their charge. Sir, the Expert Committee in paras. 27 and 28 have spoken about the needs of the provinces and the Centre. They say:

> "The needs of the provinces are in contrast, almost unlimited, particularly in relation to welfare services and general development. If these services, on which the improvement of human well-being and increase of the country's productive capacity so much depend, are to be properly planned and executed, it is necessary to place at the disposal of Provincial Governments adequate resources of their own, without their having to depend on the variable munificence or affluence of the Centre."

Sir, I have watched the Finance Department of the Government of India from 1925. It has always maintained its mood that it will give some charity to the provinces. They think that their primary responsibility is the defence of India, and not bringing about social and economic justice to the teeming millions of India after we have attained independence. Sir, this Expert Committee was appointed by you in accordance with the wishes of this House, so that their recommendations could be given effect to. But what is the attitude of the present Finance Department? It goes on merrily with its colonial pattern expenditure, without realising its primary obligation to the people of India and without giving a share of the revenues of India to the provinces so that

[Shri B. Das]

they can develop the social and economic well-being [illegible] Sir, I would have been happy if articles 249 to 260 had incorporated at least some of the recommendations of the Expert Committee Report. Sir, the attitude of the Finance Department has been the same since 1925. Why is it that the Finance Department of the Government of India is so heartless? We may be told that we are an independent nation now, but the Finance Department of the Government of India still lives in the days of 1925 and 1935. Perhaps it has become more authoritative than it was under the alien rulers, and does not think of the duties it has to discharge to the millions of this country. Here in the Constitution we are going to say in the Preamble that we will secure social and economic justice to the people of India. The House has heard thousands of speeches about political justice to the people, but when has the House heard during the last two and a half years anything about economic justice to the teeming millions of this country that are living in the provinces? Sir, the House appointed the Expert Committee, but why is it that the Government of India have not brought forward any proposals so that the provinces could get a share of the revenues of the country and spend it for the development of the undeveloped conditions of the people and for the social well-being of the people? The Expert Committee on pages 14 & 15 of their Report recommended the division of the proceeds of revenue between provinces, but the principle governing the award of Sir Otto Niemeyer is sought to be continued. Sir Otto Niemeyer came here to see that British rule was perpetuated in India. It was not his duty, it was not necessary for him to see that the provinces developed, to see that the people were happy and contented. The Government of India now seeks to perpetuate the award of Sir Otto Niemeyer even two years after independence was achieved! I would have been pleased if paragraphs 50-58 of the Expert Committee report with slight modifications had been incorporated in the Constitution. I do not find the Finance Minister here. I believe my honourable Friend, Dr. John Matthai, is a Member of this House. It is his responsibility, it is his obligatory duty to come here and explain why his Government has not come forward with assistance to the provinces in the last two years. He is not present here, but I hope some member of the Government who is a Member of this House will come forward with an explanation of this dilly-dallying and shilly-shallying policy of the Finance Department of the Government of India. Sir, the recommendations of the Expert Committee, which was appointed by you, made their recommendations as a whole. They are one piece of recommendation. The Government of India have accepted nothing, nor has their spokesman here explained why they are so inattentive to the recommendations of the Expert Committee appointed by you with the concurrence of this House. In Paragraph 71 of the report, it is stated :—

> "We would further recommended, in order to save time, that the Finance Commission may be set up in advance of the coming into effect of the Constitution, and its status regularised after the Constitution comes into effect."

In article 260, it is stated that—

> "The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such other time as the President considers necessary, by order constitute a Finance Commission . . ."

What is the use of this Commission and what is the use of this Constitution when the Finance Department of the Government of India maintains its autocratic independence and spends most of the revenues of India on the so-called defence of India, spends it on the inflated staff of the Government of India. The staff of the Government of India can be retrenched by half or more than half and considerable savings can be made. What is the condition of the finances of the Government of India? It is already running at a loss. Its revenues do not cover its normal

expenditure, and yet the Finance Department goes on merrily spending as it likes, without caring for the primary responsibility imposed on it by the Constitution that it should render social and economic justice to the people. Sir, this is a charge against the Government of India, and the Government of India must justify their position by explaining on the floor of this House why it has rendered no social and economic justice to the people of India during the last two years of our independent existence. It is no use saying that the Constitution will be promulgated on the 26th January 1950 and thereafter the Finance Department will formulate proposals with this end in view and put them before this House. That is not the real attitude of the Finance Department. The Finance Department has become too powerful. From six or seven departments, the Government has come to consist of nineteen Ministries, each Ministry as an autonomous body, each Ministry functioning and spending as it likes. Who are these finance officers? They are the traditional careerists who worked under Sir Basil Blackett in 1925, who worked under Sir James Grigg in 1936 and 1937. Such are the men who are guiding the financial affairs of the Government of India and they are arch-bureaucrats and arch-autocrats, and if any of them has any democratic spirit, I will bow to him. I know none of them have that; otherwise they would have shown it by their action in the last two years and I will say this, Sir, they have defied the Constitution. They have not understood the spirit of the independent Constitution that we are framing in this House and they will carry on in their autocratic way until we collapse.

Mr. President: I do not like to interfere with the honourable Member's speech, but here we are discussing a particular article of the Constitution.

Shri B. Das: Yes, Sir.

Mr. President: It deals with duties levied by the Union but collected and appropriated by the States. I do not think that criticism of the policy of the Government comes at all under this article. I will therefore suggest to him to confine himself to the merits of the article as it is and not to criticise the general policy of the Government of India for which he has got another platform and another place, where he can give expression to his views.

Shri B. Das: Sir, I bow to your ruling. This Constitution has three main aspects, namely, the political aspect, the social and economic aspects. The bed-rock of economic justice is based on the distribution of finances between the Centre and the provinces. I wish we had initiated a debate yesterday as soon as article 247 was taken into consideration. Sir, I did not like to talk on article 247 because it dealt with the interpretation of the term "Finance Commission" and others. I bow to your ruling but at the same time I suggest article 249 and the subsequent articles deal with the assignment of the revenues and taxes between the Centre and provinces. Although article 249 deals only with one aspect of duties levied by the Government of the Union but collected and appropriated by the States. It deals with one ambit of the recommendations but the Committee recommended that there should be an immediate division and allocation of resources between the Centre and the provinces. Is it not legitimate on my part to question why they have not been incorporated in the Constitution and why a representative of the Government has not come forward and opened the debate and told us if the portions of the recommendations I have referred have been accepted by them and what relief the Government of India contemplate to give to the provinces? If I was a little harsh on the Finance Ministry of the Government of India, it is because I know worst things of the financial structure of India.

Sir, I do hope the provinces will not be treated as charity boys of the North Block of the Secretariat. Somehow it has happened that people have to come with begging bowls. Whether it is in regard to the Food Commission or the

[Shri B. Das]

Bengal food problem of 1943, nobody wants charity. We put forth the just demands of the people of India and the Centre which was an autocratic Government intended to maintain the British Raj in the past should give up that mentality and should part with the legitimate resources to the provinces. I do not ask any further and I do not at present ask anything more. The Expert Committee has put forward its recommendations. Let the spokesman of the Government of India stand up here and say : "We have accepted *in toto* or with certain modifications the recommendations of the Expert Committee." That will give certain relief to the provinces. We can look forward to the development of the provinces and towards giving better public health standards to the people. I read in papers that our Public Health Minister has been approached and she wants to build *fabricated* hospitals in Delhi while the provinces have not got even a lakh of rupees to build their hospitals, while undeveloped provinces like Orissa, Assam—I will include even Bihar—have very few beds in their hospitals, the Centre goes merrily and talks of pre-fabricated hospitals at Delhi costing crores and crores of rupees. Is that the way to develop the provinces ?

I will again join in the discussion when the jute duty in article 254 comes up for discussion and when article 260 is taken up where the Finance Commission will have to be appointed five years after the Constitution. It is a very heartless and insincere draft. Is it the spirit of democracy working in the Finance Ministry of the Government of India that it will obstruct at every stage in order to maintain its hold on the finances and to spend it in the best way it likes ? I am giving out no secret when I say that in 1946 the Government of India decided that the Army expenditure should be reduced to one hundred crores. We know today it is one hundred and fifty-eight crores and that too after the partition. I cannot see why the Government of India should grab the wealth of the provinces and dispense it in the way they like. This sovereign House framing this sovereign Constitution is not going to allow the Finance Ministry of the Government of India to play ducks and drakes with the resources of India according to its fancy and whimsicality and thus let the provinces starve. Sir, on behalf of the provinces, particularly the undeveloped provinces of Bengal, Bihar, Orissa and Assam, I plead before this August House for justice for the undeveloped provinces; I plead that the pose of the Finance Ministry that no steps should be taken with speed and haste should be condemned and this House must accept the recommendations of the Expert Committee which had on it such expert financiers, namely, Sir Nalini Ranjan Sarkar, Mr. V. S. Sundaram, Mr. M. V. Rangachari (who was member Secretary). This officer is still a Deputy Secretary in the Finance Department of the Government of India. Why has the Finance Department overruled the decisions of this Committee? I plead before the House that justice should be rendered to the teeming millions of India and to the helpless provinces by giving them what is their due.

Mr. President : Any one else who wishes to speak ? (No Member rose.) Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar (Bombay : General): There is nothing to be said.

Mr. President : I shall now put the amendments to vote.

The question is :

"That in clause (2) of article 249, the words 'in that year' be deleted."

The amendment was adopted.

Mr. President: The question is:

"That in clause (1) of article 249, after the words 'such stamp duties' the words 'as are imposed under any law made by Parliament' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That in clause (2) of article 249, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That article 249, as amended, stand part of the Constitution."

The motion was adopted.

Article 249, as amended, was added to the Constitution.

Article 250

Mr. President: The motion is:

"That article 250, form part of the Constitution."

(Amendments Nos. 2842 to 2850 were not moved.)

Shri R. K. Sidhva (C.P. & Berar: General): Mr. President, I move:

"That at the end of article 250, the following be added:—

'The net proceeds of said distribution shall be assigned by the States to the local authorities in the jurisdiction.'"

I have got another amendment to this amendment, No. 201. Shall I move that also, Sir?

Mr. President: That has also the same effect.

Shri R. K. Sidhva: I want to move the second part.

"That with reference to amendment No. 2851 of the List of Amendments, in article 250, the following proviso be added at the end:—

'Provided that the proceeds collected by the Government of India under clause (c) shall be assigned to local authorities in the jurisdiction of the States.'"

Sir, this article has been more or less borrowed from the Government of India Act, Section 137. This article refers to the collection of four kinds of taxes: One is in respect of succession to property; the other is estate duty; the third is terminal taxes and the fourth is taxes on railway fares and freights. My amendment is to the effect that the taxes collected under clause (c) by the Government of India should be assigned to the local authorities in the jurisdiction of the States.

My object in moving this amendment is this. Tolls, octroi and terminal taxes are the major sources of revenue of the local bodies. Before the Government of India Act of 1935, these terminal taxes were a provincial subject; but under the Government of India Act, 1935, this has been put down in the Central List. Unless the Centre agrees to levy a terminal tax, no provincial Government can increase or put an additional item for terminal tax, which has created a great deal of difficulty to the local bodies. There have been a great many references on this matter to the Government of India.

The Honourable Dr. B. R. Ambedkar: I am very sorry, Sir. I should have requested you at the very outset to allow this article to stand over.

Mr. President: It is suggested that this article be held over.

Shri R. K. Sidhva: I would request, Sir, that my amendment also may be held over.

Mr. President: If the article is held over, your amendment also will be held over.

Shri R. K. Sidhva: All right, Sir.

Article 251

Mr. President: Then we take up article 251.

(Amendments Nos. 2852 to 2857 were not moved.)

Shri Upendra Nath Barman (West Bengal: General): Sir, I beg to move

"That in clause (2) of article 251, after the words 'such percentage' the words 'not being less than sixty per cent,' be inserted and the words 'or the taxes payable in respect of Union emoluments' be deleted; and the following proviso be added to clause (2) of article 251:—

'Provided that for a period of five years from the commencement of this Constitution, of the net proceeds assigned to the States, thirty-three and one-third per cent. shall be distributed among the States on the basis of population, fifty-eight and one-third per cent. on the basis of collection and the remaining eight and one-third per cent. shall be distributed in such manner as may be prescribed.'"

Mr. President, Sir, my amendment resolves itself primarily into three proposals, firstly, that the Central emolument should not be excluded in computation of the tax on income for distribution to provinces. The Centre will have a large amount out of income-tax and it is only proper that the Central emolument as described in clause (4) sub-clause (c) should also be computed in that allocation.

The next proposal is that some minimum percentage should be fixed here and now. It is a fact that after five years a Commission will be appointed which will go into all the factors under which a province is to work the Constitution *viz*., its requirements, commitments and its future advancement, but during this interim period it is not provided in the Constitution as to how this allocation is going to be made. I understand the Finance Department is going to appoint a Committee in order to make some interim arrangement but this Committee also will find the same difficulty as the ultimate Commission which is going to be appointed after five years is going to face then. This is a very controversial matter and the sub-committee to be appointed now will be troubled with various considerations and claims from different provinces. It will be extremely difficult for them to adjust different claims of different provinces. During the period before which the Finance Commission makes its recommendations of the principles on which allocation is to be made, the various provinces are to do several things, and they have to undertake several development measures. If they are in the dark as to what would be their income from this allocation, it will be very difficult for them to adjust their budget from year to year. If certain minimum of this distributable tax be fixed here and now, then the provinces will know how much they are going to get out of this tax, because every province from past experience knows what is the collection every year in their province and also what is going to be the collection in the year under question. So they shall know, at least roughly what amount they are going to get out of this Central distribution of income-tax. If that is not fixed and it is left to the Committee's recommendation, it will be very difficult for them to launch upon any permanent development scheme. It is for that reason that a certain minimum should be fixed. My proposal is that at least 60 per cent. should go to provinces and States and my main argument is that some minimum should be fixed.

Then in their allocation I have indicated that there should be some settlement about the different claims of the different provinces for the interim period because the committee will be non-plussed by the different claims of different provinces. Some provinces having large population ask that this allocation should be on population basis whereas other provinces want on collection basis. Other provinces that are backward say that this should be not on population basis or collection basis but on some other basis. Now the Committee will be confronted from different provinces and so if we can set this controversy at rest by fixing some percentage here and now and leave something for general allocation to the Committee, then the Committee will find it much easier. I submit that the provinces must be given a fixed minimum percentage so that they will be able to adjust their budget and launch upon any development schemes which shall continue for a number of years.

The Centre of course needs revenue in a much greater degree, but my submission is that the Centre has got several sources which can bring them a large amount; but the scope of the provinces is very limited and those scopes are very closely connected with the interests of the masses. As we find from List II of Seventh Schedule, the taxes which are given to provinces are of such a nature that they shall always be resisted by the people of the States. Those taxes are unpopular and their scope is very much limited. So at least this income-tax which will be substantial—a certain minimum percentage should be fixed here and now so that the provinces may adjust their budgets in that light. That is my submission.

(Amendments 2859 to 2878 of Vol. II and 75 of the Supplementary List were not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move :

"That in clause (2) of article 251, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

(Amendments Nos. 75, 77 and 78 were not moved.)

Mr. President: No. 244.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I beg to move :

"That for amendment No. 2875 of the List of Amendments, the following be substituted

"That in sub-paras. (i) and (ii) of sub-clause (b) of clause (4) of article 251, for the words 'by the President by order' the words 'by Parliament by law' be substituted'."

Sir, in this sub-clause (b) (i) it is said :

"'Prescribed' means until a Finance Commission has been constituted, prescribed by the President by Order,"

and in sub-clause (ii) it is said—

"after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission"

Sir, this article deals with the allocation of income-tax collected by the Central Government in the various provinces and it is said that "such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax, etc. etc. shall be distributed among those states in such manner as may be prescribed." Now "prescribed" means, before the Financial Commission has been constituted, "prescribed by President by order" and after the report also "prescribed by the Order of President, after considering the recommendations of the Commission." Now I want to substitute this, that instead of 'President by Order', we should substitute 'Parliament by law'. Sir, this is very important article by which Income-tax is to be distributed to the various states. Just now Mr. Barman moved his amendment that the percentage should be 60 per cent. and he

[Prof. Shibban Lal Saksena]

suggested how it should be distributed. He suggested all the three methods according to which it should be distributed, some percentage to the provinces from which it was collected, again on population basis and so on. So this is a contentious subject and in fact if we study the report of the Expert Committee on the Financial Provisions of the Union Constitution which you appointed, you will find that they have given the history of the tax and have pointed out as follows :—

> "On the question of apportionment of income-tax among Provinces also, the provinces differ widely in their views. Bombay and West Bengal support the basis of collection or residence, the United Provinces that of population and Bihar a combined basis of population and origin (place of accrual); Orissa and Assam want weightage for backwardness. East Punjab, while suggesting no basis, notes her deficit of Rs. 3 crores somehow to be met.

So we find there are different basis on which the apportionment is desired and we know that income-tax is one of the most important sources of Central Revenues. The whole thing in this article is how this adjustment between the claims of provinces and Centre is to be made, and it has been said that such percentage as are prescribed shall be distributed by order of President. I think such an important matter as distribution of revenues between Centre and States should not be in the discretion of the President alone. Of course it will be by the executive. But I want that it should be done by Parliament by law. Before the Finance Commission has reported, the Government must bring forward a Bill showing how they wish to allocate the proceeds of income-tax and it shall be for the Parliament to approve of it. Similarly, after the recommendations of the Commission, the Government must bring forward a Bill and must say which recommendation they accept and how the allocation should be made. When that Bill is brought then the Parliament should be able to decide how the allocation is to be made. I do not think that such wide powers of distribution of hundreds of crores of rupees between the provinces and the Centre should be vested in the President. This must be within the province of the Parliament. The Parliament must not be deprived of its right to allocate the finance between the Centre and the provinces. This is a very important question and I wonder how the Drafting Committee missed this point. I do not know why they want to centralise all powers in the President. At least the sovereign Parliament of the nation should have a say in the matter. If it comes before the Parliament the needs of the provinces will be known and we shall know what adjustment is justified. My amendments are very simple and I do not know whether the Drafting Committee would not accept them.

But they are the very essence of democracy. If the President can by order allocate crores of rupees I do not know what the Parliament is for. If Parliament is not to distribute the Income-tax to the provinces, what are its functions. It is something extraordinary. When the Finance Commission makes a report on principles. Parliament should after discussing those principles bring forward a Bill suggesting how it wants them to be implemented and it must be able to allocate the proper shares to the various provinces. It is a very important matter and I do think that these provisions giving the President, by order, the power to allocate these crores of rupees should not remain.

In fact, the remaining portion of the article deals with the way the amount is to be calculated. It has been said that taxes on Union emoluments should be excluded. There is a view that they should not be. Even the Expert Committee has said that they should not be. Anyway, even if I do not object to that, I do object to the other thing about allocation. It should be done by Parliament by law and not by the President by order.

Shri T. T. Krishnamachari (Madras : General): Mr. President, Sir, I have to move a formal amendment and it follows the scheme that the House has adopted all along, namely, substitution of the words "Consolidated Fund of India" for the words "revenues of India." I find there is an omission in sub-clause (c) of clause (4) of this article where the words "revenues of India" have been used. With your permission, therefore, I move :

"That in sub-clause (c) of clause (4) of article 251, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Shri Biswanath Das (Orissa : General) : Sir, the consideration of this article takes me to the consideration of the recommendations of the Sarker Committee appointed by you to recommend the financial relationship between the Centre and the provinces. Due to certain difficulties the report of the Committee could not be discussed in this Assembly. Necessarily therefore along with this article you will please allow us to discuss fully and frankly the contents of the Sarker Committee Report.

I expected that the terms of the Sarker Committee would be wide enough to include more things than have been undertaken for investigation. I plead with you and with the honourable Members of this House that the time has come when attempts should be made to find out means for evolution of a proper system of finance both for the Provinces and the Centre. Our finances have been allowed to develop without taking care to develop them properly and in a scientific manner. In the result, they have grown in their own way without any consideration of the scientific evolution of such an important question as this. The Sarker Committee Report has nothing in it to face the problem squarely and well. All that it has done is to recommend to this House in what manner certain items of revenue have to be distributed both between the Centre and the provinces as also among the provinces themselves. The limited scope of recommendations therefore makes me confine myself to the recommendations themselves. Considering this article I cannot go beyond the terms of this article, namely, the allocation of the proceeds of the Income-tax. The Sarker Committee proposes that 60 per cent. of the proceeds should go to the provinces while 40 per cent. should go to the Centre. I had expected that sufficient explanation should have been given why the Centre should have 40 per cent. In this connection let me refer to the report of Professor Adarkar and Mr. Nehru wherein they have shown that in Australia the Commonwealth retains to itself only 25 per cent. of the Income-tax. Why should you have 15 per cent. more than what Australia keeps for her ? It is a matter on which the Committee ought to have given us an explanation. True it is that the Centre requires more money under the present circumstances. But the present difficult circumstances are not to be perpetuated. I have little complaint with any one who pleads for some more expenditure for the Centre in the first three or five or ten years of its existence, but to have a permanent allocation of 40 per cent. out of Income-tax seems to me not very justifiable.

Having stated so far regarding the allocation of the proceeds between the provinces and the Centre, I come to the principle of distribution among the provinces themselves. On this question again I must join issue with the recommendations of the Sarker Committee. Till 1935, Income-tax was not a provincial source. Under the Government of India Act, 1935, Income-tax was kept with the Centre. Though its levy, assessment and distribution is kept in the Centre, yet it was clearly laid down that 50 per cent. of the net proceeds will be distributed among the provinces. Sir Otto Niemeyer's Award stood till 15th August 1947. Unreasonable as the principles of distribution are, it has crippled the smaller provinces. I must in this connection state that provinces under the British Government have had their peculiar existence. The British started, not to develop India in a distinct and defined manner, but wanted to have their own conveniences and set up administration and trade centres with a view to help British trade, with the result that the three presidencies have been propped up with a

[Shri Biswanath Das]

certain amount of prestige and convenience, all attached to the British administration and attached to the then conveniences of British trade. That being the position, all the business houses had been concentrated in the three presidency towns, and if they are in any other province it is in a few fortunate provinces like the United Provinces. That being the position, the proceeds of Income-tax have unfortunately been allowed by Sir Otto Niemeyer to be distributed mainly on the basis of collection, which is a very unfair and artificial method, for Income-tax or tax on income accrues out of consumption and utilisation of goods by the generality of the masses. Therefore, in whatever manner trade foreign or internal—may proceed from certain definite and established trade centres, it is unfair to say that the provinces having in their areas the business firms as the centrally distributing agencies or manufacturing centres should alone earn the profits. And therein lay the unfairness and unscientific method of the basis of distribution.

As I have already said, the British never attempted to evolve a national system of finance. The business view and the business propensities of the Britisher necessarily told him to look at it from the point of view of collection of taxes because in their country the various local areas have been uniformly developed. If one area has developed its trade the other area is developed in agriculture. So both the areas get the benefits in their due proportions and in due course. In our country unfortunately this is not the case. Therefore, the point of view taken up by Sir Otto Niemeyer cannot be regarded as justifiable. The failure of it can be seen from the recommendations of another Committee I am referring to the expert enquiry, the Federal Finance Committee that submitted its report in 1933 as a result of the Round Table Conference. Therein you find a decision has been taken that the principal basis ought to be population. Of course it was only an expert enquiry.

In this connection I again refer you to the recommendations of Professor Adarkar and Mr. Nehru wherein they have laid down three principal basis, namely, the basis of population, the basis of area, as also the basis of collection. They have given the last place to the basis of collection and rightly so, because collection is after all an artificial process. True it is that centres like Calcutta, Bombay and Madras need attention. Let them have something. But it is unfair to claim the major share from the distribution of Income-tax. Friends from the three presidencies will excuse me if they feel that I am hard on them. It is nothing of the kind. I want a uniform process of development—I do not want any province to be inconvenienced. In fact, I always feel as an Indian and speak primarily from the point of view of an Indian. While thinking of the three developed and advanced provinces I also want them to see that their brothers and sisters in other provinces also follow them. Let them be behind them but let them follow them. Otherwise they will be left singularly alone to themselves. Therefore I do not agree with the principle of distribution on the basis of collection.

The Sarker Committee committed the same blunder—mainly though not exactly as the blunder committed by Sir Otto Niemeyer. The Sarker Committee has taken a step forward by recommending 60 per cent. for the provinces and 40 per cent. for the Centre. I claim that they should have given more to the provinces who are in charge practically of all the nation-building activities of the country.

Severe condemnation of the report comes on another count also, and that is on the recommendation regarding the distribution of the proceeds on the basis of collection to the extent of 35 per cent. out of the 60 per cent. That means practically about 60 per cent. of the proceeds to be distributed on the basis of

collections. This to me is very unfair. As I have already stated, I repeat that the Income-tax or tax on income accrues from the incomes of the people and that is measured in terms of consumption or production. The agricultural provinces produce raw materials. The industrial provinces undertake the process of industrialisation and produce the finished goods. There again there is a roundabout process. There again those industrial goods are taken and the proceeds are distributed to the same fortunate provinces with the result that the business houses are all located in those three provinces and the agricultural provinces are being deprived of the benefits of the Income-tax, though they have rightly earned the Income-tax. Under these circumstances I do not agree that the basis of 35 per cent. out of the 60 per cent. is fair to the smaller provinces.

I further request the honourable Members of this House to think of a certain reserve fund. When I speak of a reserve fund I have before me certain precedents. You have got the Petrol Cess Fund, commonly known as the Road Cess Fund. That has been distributed on a certain specified basis. About 15 per cent of it or so is kept with the Centre to develop the undeveloped areas. Therefore, let the Centre keep something to itself and distribute it properly and equitably, I repeat in view the interests of the whole of India. With these words, I request the House to give due consideration to the aspects that I have raised in my speech.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, the issue raised by Mr. Upendra Nath Barman's amendment is of a vital character and requires the careful consideration of the House. In order to understand what the effect of this amendment will be it is necessary to go back to the past and consider the relations that exist between the Government of India and the provinces in regard to the distribution of the net proceeds of the Income-tax. Under the Government of India Act an Order-in-Council was passed in 1936 fixing 50 per cent. as the share of the provinces in the net proceeds of the Income-tax, excluding the proceeds attributable to Chief Commissioners' province and the tax on Federal emoluments.

Till the war broke out or rather till three or four years after the break of the war, the Government of India was unable to make over to the provinces their maximum share as fixed by the Order-in-Council. The Order-in-Council laid down that during the first of the two periods referred to in that Order, the Government of India might retain such an amount from the share of the provinces as, taken together with the contribution of the Railways to the Central revenues, would raise the total to Rs. 13 crores. During the war, when the railway surpluses increased considerably, it was not necessary for the Government of India to take any amount out of the provincial share in order to make up the total of Rs. 13 crores that I have just referred to. I do not know exactly what the share of the provinces at the present time is, but I believe that they are getting 50 per cent. of the net proceeds of the income-tax calculated in the manner explained by me. We have to see whether the position of the Central Government has improved so much since, say, the termination of the war as to enable it to give a larger share of the net proceeds of the income-tax to the provinces. Anyone that is familiar with the Budgets of the Government of India for the years 1947-48 and 1948-49 knows how parlous the position of the Central finances is. Some of us ventured to draw attention to the very unsatisfactory financial condition of the Centre during the last Budget debate. The Finance Member thought that the arguments that had been advanced on their point were puerile but I trust that even he is now convinced that our position is far more serious than even the most pessimistic amongst us had imagined three or four months ago. Can we, when we appear to be faced with a huge deficit, when our credit has fallen so low that we cannot accept to raise large loans, say that it would be advisable to accept the amendment moved by Shri Upendranath Barman? His proposed is based on the recommendations of the Expert Com-

[Pandit Hirday Nath Kunzru]

mittee which was presided over by Mr. N. R. Sarker. He has not gone as far in claiming a share in the income-tax for the provinces as the Expert Committee had recommended, but so far as the proportion of the net proceeds of income-tax to be assigned to the provinces goes, he follows the recommendation of the Expert Committee. The Expert Committee has pointed out in its report that if its recommendations were accepted, the Central revenues would lose about Rs. 30 crores less 40 per cent. of the net proceeds of the Estate and Succession duties Even granting thart Shri Upendranath Barman's proposal is more moderate than that of the Expert Committee, it is obvious that the House should not accept the principles laid down by a Committee that thought that the Centre could without difficulty make over nearly Rs. 30 crores to the provinces. Our financial position at present is as serious as it can well be. I do not therefore think that it will be in the interests of India as a whole to accept Mr. Upendranath Barman's proposals. It may benefit the provinces, but the financial and administrative stability of the provinces depends to no small extent on the position of the Centre. It would be short-sighted of the provinces to demand a larger share from the Centre, regardless of the effect that their claims would have on the position of the Central Government. I repeat therefore that, in my opinion, the state of our finances at the present time does not allow us to accept a proposal like that placed before us by Mr. Barman.

Pandit Lakshmi Kanta Maitra (West Bengal: General): I am sorry to interrupt my honourable Friend, but I would like to ask one question: What is the data in possession of the honourable Member? Paragraph 59 on page 4 of the Sarker Committee report says that it will not be beyond the capacity of the Centre to part with these Rs. 30 crores. So what data has my honourable Friend to contradict the finding of this Committee except saying, of course, that the finances have gone down?

Pandit Hirday Nath Kunzru: Well, that is a very important consideration to be taken into account. This Expert Committee reported in December 1947. Is the position the same as it seemed to be then or has it deteriorated to such an extent as to be alarming? My honourable Friend took part in Budget debate....

Pandit Lakshmi Kanta Maitra: But it is only a temporary phase.

Pandit Hirday Nath Kunzru: Well, he was no more optimistic about the financial position of the Government of India than any other Member. But today he comes forward with the argument that the position of the Central Government will not always be as unsatisfactory as it is now.

If it improves, then the financial relations between the Centre and the Provinces can be reconsidered. That is one of the purposes of the Government in recommending the appointment of a Finance Commission. My honourable Friend, I am sure, has read the Draft Constitution carefully and knows that provision has been made for the appointment of a Finance Commission, in order that the provinces may not be starved of the funds required for the development of the social services. But when he or any other Member of the House says that we should imagine that the position of the Central Government has already improved, I part company with him. If this is not my honourable Friend's point, then I cannot understand the purpose of the question that he put to me. All that I was saying before he put his question was that, even admitting that the provinces would be responsible in the main for the development of the social and other services on which the welfare of the people depended, we could not at the present time agree that the Centre was in a position to make over 30 crores or even 20 or 15 crores to the provinces.

Sir, Mr. Upendra Nath Baman's amendment does not merely propose that the share of the provinces in the net proceeds of the income-tax should be greater than what it is today. It also suggests a method of distribution of the provincial share between the provinces. The criteria laid down by him are those recommended by the Expert Committee. These criteria are population, place of collection and certain other factors. He suggests, following the recommendations of the Expert Committee, that 58 and one-third per cent of the provincial share should be distributed on the basis of collection. With all respect to the Expert Committee, I do not think that the basis of collection can in any circumstance be accepted as a sound basis for the calculation of the share of any province. The Government of India sent out a committee to Australia to consider how the Commonwealth Government assisted the State Governments in maintaining their solvency and in developing the social services. That committee which consisted of Mr. B. K. Nehru and Mr. Adarkar, has in its recommendations expressly ruled out the basis recommended by the Expert Committee and accepted by Mr. Barman. The test proposed by that committee for distribution are, population, area, and *per capita* income. According to the last test a more prosperous province should receive proportionately less financial assistance from the Centre than a province living from hand to mouth. These are the tests that the Commonwealth Grants Commission in Australia has worked out on the basis of the experience that it has gained. The reasons for trying these tests are perfectly simple. A province may have reached a large degree of industrial development and a large amount of income-tax may therefore be collected in that province. But the goods produced in that province are not all consumed there. The industries in that province can be in a flourishing condition only when their products are taken by people living largely in the rest of India. There is no reason therefore why the place of production or the place of collection of the income-tax should be taken as a test for the distribution of the provincial share. It is as unsatisfactory as any test can be.

Apart from this, if federation means anything, it means that there should be a transfer of wealth from the richer to the poorer provinces; just as the very concept of social welfare implies that there should be a transfer of wealth from the richer to the poorer people, so the concept of federation, the concept of national solidarity implies that the richer provinces should part with a portion of what may in strict theory be due to them, for the benefit of the poorer provinces. Otherwise it will not be possible to raise the less developed provinces to the level of the more fortunate provinces. It will not even be possible to guarantee that the social services in the less developed provinces will reach a minimum standard.

For the reasons that I have given, I think that it would go against the very principles underlying the establishment of a federation if Shri Upendra Nath Barman's proposals were accepted. It is true that the Expert Committee recommended it. But, even before the Government of India rejected the proposals of the Expert Committee, I personally found myself in complete disagreement with it. I was amazed to find that any committee of experts could propose such a basis for the distribution of the provincial share. I think that it is a matter for satisfaction that the Government of India have rejected the recommendations of the Expert Committee which would have placed them in a dangerous position.

Now, Sir, I should like to say a few words about what fell from my honourable Friend Prof. Shibban Lal Saksena. He suggested that the division of the financial resources of the country between the Centre and the provinces should be made by Parliament by law.

[Pandit Hirday Nath Kunzru]

I do not think that the suggestion made by him is a very happy one In Australia, the Commonwealth Grants Commission does not owe its existence to any Parliamentary statute. It is the result of an agreement between the Commonwealth Government and the States. Its recommendations have not to be placed prior to their acceptance before Parliament. If we divide the financial resources between the Centre and the provinces on a statutory basis, it would introduce a very undesirable element of rigidity in the financial relations between the Central and the Provincial Governments. I believe that my honourable Friend, Mr Saksena, has recommended that any recommendations that the Finance Commission might make should also be given effect to by Parliament by law. I do not at all see why this should be necessary. If the Finance Commission inspires general confidence, if the provinces and the Centre feel that its members do not allow themselves to be influenced by the opinions of any authority, I have no doubt that a convention will grow up in this country as it has in Australia that the recommendations of the Commission should broadly speaking be accepted by the Central Government. I say broadly speaking because in times of stress, it may not be possible for the Government of India to accept the Finance Commission's view of its position, but barring emergencies, I should think that in course of time both the Central Government and the provincial Governments would come to place confidence in the judgment of the Finance Commission and accept its proposals. Sir, the method of distribution of the financial resources of the country between the Centre and the Provinces as proposed in the Draft Constitution seems to me to be more elastic, based on a better principle and in every respect preferable to the amendment moved by Shri Upendra Nath Barman. I personally think that the powers given to the Finance Commission are wider than they should be but that is a different matter and I do not propose to deal with it at this stage.

Sir, my only purpose in taking part in this debate was to make it clear to the House how undesirable it would be not merely from the point of view of the Centre but also from that of the provinces, if Mr. Upendra Nath Barman's proposals were accepted. Provinces like Assam, Orissa and the C.P. which are starved for want of funds and whose condition is such as to extort the sympathy of all fair-minded people, would remain for ever in the backward condition that they occupy now. Their only chance of getting more funds for their development and for raising their standard of social services is that the basis of collection should not be the basis of the distribution of proceeds of the income-tax. I hope therefore that the House will unhesitatingly reject Mr. Upendra Nath Barman's amendment.

Shri M. Ananthasayanam Ayyangar (Madras : General) : The question may not be put.

Mr. President : There has been only one speech so far on the subject.

Shri B. Das : Mr. President, Sir, I am very grateful to my Friend, Pandit Hirday Nath Kunzru, for emphasising the distress of the provinces of Orissa and Assam. The income-tax collected is frittered away in useless expenditure by the satraps of the Finance Department. The Expert Committee recommended that 60 per cent. of the income-tax including all sources of income-taxes—super tax, corporation tax and everthing, should go to the provinces. The Premier of the United Provinces in his memorandum to the Expert Committee laid emphasis that not only personal income-tax but all kinds of income-tax should be distributed to the provinces. Sir, there is a legitimate demand by the Premiers of the various provinces that sixty per cent.—somebody demanded fifty per cent., but I claim sixty per cent. as has

been recommended by the Expert Committee —should go to the provinces. The question arises as to the basis of distribution. Should it be on collection basis or should it be on population basis or should it be on some other basis? Bombay naturally collects the largest amount of income-tax because most of the companies have their headquarters in Bombay. My honourable friend, Pandit Kunzru, just now stated that Bombay is not a consumers' province. Yet Bombay very much likes to get something for nothing, to get some percentage on a collection basis. M. N. R. Sarker, who today happens to be the Premier of West Bengal, knowing that Calcutta has the headquarters of many Companies, recommended that thirty-five per cent. should be on the basis of collection and twenty per cent. on a population basis. This is a very wrong system of allocation and we protest against it and I am glad this has been supported by my honourable friend, Pandit Kunzru. We undeveloped provinces such as Orissa, Assam particularly and Bihar, we do not accept that some people will get something for nothing because the foreign firms concentrated trade and commercial activities in Calcutta and Bombay. We do not subscribe to this method of allocation. I do claim that 60 per cent. of the income-tax and not personal income-tax as it is now done at present, should go to the provinces. Ten per cent. may be kept in the hands of the Central Government to meet the special needs of the State. The other 50 per cent. should be distributed on population basis. Sir, I have to point out that my province which had 9 lakhs of population before the merging of so many states has now got a population of 1 crore and 40 lakhs. These States have very primitive forms of administration, primitive sources of taxation, and they have been merged into the Orissa Province and have been incorporated to a standard of administration as is prevalent in the provinces, and the Government of Orissa have ensured that these merged States should have similar standard of administration as exists in Orissa Province, and yet the income that accrues from the States is very little. The allocation of income-tax, which the Otto Niemeyer Award gave about which I have said on a previous occasion this morning, was arbitrary. It awarded two per cent. out of this allocation of income-tax, and later the Government of India,—not this Government of India—changed into three points and Orissa got 3 per cent. of the income-tax allocated to the provinces.

I am surprised that the Government of India is a party to the draft article 251. Under the changed conditions this sovereign House has altered the position of many States. Why do not the Members of the Government of India who also Members of this House advise the Drafting Committee to change the system of allocation of income-tax, so that provinces like Orissa, which is more than doubly handicapped by the merging of the States, get an equitable share of income-tax. The only equitable share is allocation on *population basis*.

I am grateful to Pandit Kunzru and my honourable friend, Mr. Biswanath Das, for referring to the Adarkar-Nehru Report of 1947. The report was printed some time ago but it saw the light of day in March 1949. I had only a chance to glimpse through it. Why is it that the Government should pick holes with such weighty opinions, such weighty views and shelve it? Why should it not raise discussion in the country or even on the floor of this House? I think that as long as the Government of India remains blank on the subject and it follows a policy of grab and hold, nothing can be done. The Adarkar-Nehru Report provides a solution to develop the provinces. Provinces which are undeveloped, which are backward must get weightage by special grants as in Australia. Based on *per capita* income, undeveloped provinces should receive financial grants. Is it not the function and duty of the spokesmen of the Government of India here to take the House into confidence and to tell what they have in mind? Is their

[Shri B. Das]

mind blank or have they been thinking and thinking the [illegible] decide to part with resources?

Sir, I went through the memorandum that the Government of India submitted to the Sarker Committee. It is a heartless, colourless memorandum. It deals with its own difficulties; it never assume that the Finance Ministry of the Central Government has sovereign responsibilities to India and to the provinces at large. Nowhere in that long memorandum is there any mention that the provinces must develop, or the provinces must get more resources, more share of the income tax so that they can develop. I had never seen a more cruel document drafted by the foreign rulers that ruled us up to August 1947. I have seen the memorandum in 1936-37. I have seen the notes of the financial satraps and bureaucratic rulers in 1924 and 1925 and I never read such a heartless document and Sir, that was the considered views of our Finance Department, the Department of the independent Government of India—which now plays ducks and drakes with the resources of the provinces and overawes the provincial financial ministers! It is a shameless Government! It is a shamless Government I again say, and poor provinces poor Premiers of the provinces have to plead their own case, they have to plead their poverty, their backward conditions! Of course, Bombay need not plead. Why should Bombay plead with a *per capita* revenue of Rs. 25? Why should Madras plead with a *per capita* income of Rs. 19? Why should U P plead with income of Rs. 21? But Orissa, poor as we are with *a per capita* revenue of Rs. 4 or 5, should ask for something nearer a basic level. Assam spends much less after the partition of Assam; and is it not the sovereign duty of this House to ensure adequate and minimum basic expenditure for the development of these provinces? That can only be ensured if 60 per cent. of all sources of income-tax goes to the provinces, based by allocation on population basis and on no other basis.

Mr. President: Before Dr. Ambedkar speaks on this article, there is one which has struck me as requiring a little clarification and I would like you to consider that. In sub-clause (2) of this article 251 we find:

> "Such percentage, may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as these proceeds represent proceeds attributable to States for the time being specified in Part II of the First Schedule or the tax payable in respect of Union emoluments, shall not form part of the revenues of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed."

It is not clear to me what the significance of the expression "within which that tax is leviable in that year" is. Does it mean the States where the taxes resides or does it mean the States where the income on which the tax is levied is earned, or does it mean anything else?

Shri B. Das: Sir, when these financial matters are being discussed, it is necessary that the Finance Minister must be present on the floor of the House in view of the fact that he is a Member of this House. We are not discussing academic issues here when the Finance Minister need not be present here.

Mr. President: I trust some one will communicate the desire of the Member to the Finance Minister.

Shri T. T. Krishnamachari: May I mention, Sir, thtt the wording has borrowed practically word for word from section 138 of the Government of India Act. 1935? I can only say at this moment that it is sought to deal with that portion of the tax that would be collected from such Part III States as have a special arrangement with the Union Government.

Shri Biswanath Das: May I request you, Sir, to convey to the Honourable the Finance Minister who is also a Member of the House not to be present as the Finance Minister of the Government of India, but to be present as a Member of this House so that we will have the benefit of his wise counsel and advice.

Mr. President: That is why I said that the wishes of the Members might be communicated to him

The Honourable Dr. B. R. Ambedkar: Sir, I can explain the thing now. I do that, I will take up the other amendments.

There is an amendment by Mr. Barman and there is another amendment by Prof. Saksena I am sorry to say that I cannot accept either of the amendments.

This question whether the percentage of revenue collected by way of Income-tax should be prescribed in the Constitution itself either as sixty per cent. or any other percentage or should be left to the President to decide is a matter over which considerable thought has been bestowed both by the Central Government as well as by the provincial Governments in the Conference which took place the other day to discuss this matter. It was agreed that the best thing would be to leave the matter to be prescribed by the President and that no proportion should be fixed in the Constitution itself.

With regard to the other question raised by Prof. Saksena, that instead of the word "prescribed", the wording should be "prescribed by Parliament", again I am sorry to say that I cannot accept the amendment. Our scheme is to allow the President to prescribe the proportion in the first instance by himself and in the second instance after a consideration of the recommendations of the Finance Commission. We do not propose to bring the Parliament in. Because, in that case, there would be a great deal of wrangle between the representatives of the different provinces and great injustice may be done by reason of the fact that certain provinces may have a very large majority in the Parliament and certain other provinces may have a small representation. Consequently, to leave the matter to Parliament practically means leaving it to the voice of those provinces who happen to have a larger representation at the Centre, and that I think would cut at the root of the justice which you want to be done to the various provinces.

Now, Sir, coming to the difficulty that you have raised, the words "States within which that tax is leviable in that year" are necessary. They occur in the Government of India Act, 1935. The reason why these words were then introduced was because Income-tax was not to be levied in the Indian States which were to come within the Indian Union. In lieu of the Income-tax, the Indian States were required to make certain contributions. Therefore, if the tax was not to be levied in that State would not be entitled to obtain a share. We do not know what is going to be the procedure under the present Constitution. This matter is being examined by a Committee which has been appointed to investigate into the finances of the Indian States. If the recommendation of that Committee is that Income-tax should be leviable in all the States whether they originally constituted Indian Provinces or Indian States, then naturally these words would have to be altered. While moving this article, I retain liberty to the Drafting Committee to suggest to some amendment in that respect when the report of that Committee is to suggest to before us. That is the reason why these words are here.

Mr. President: Just one thing more. May I take it that it is not intended to cover cases within what used to be British India?

The Honourable Dr. B. R. Ambedkar: No, no, Sir, it is in Part III.

Shri B. Das: Dr. Ambedkar has referred to discussions of a Conference of Prime Ministers of Provinces and the Drafting Committee. I have no knowledge of what passed between the Premiers and the Drafting Committee. Unless a Minute of those discussions is laid on the table of the House in the form of a Note or otherwise, we are not in a position to come to any conclusion as to the action of the Drafting Committee.

Mr. President: I take it, if there had been any question raised by any of the Premiers of the Provinces, they would be here to say that they would not agree with the draft. Therefore I take the draft article as it is has the concurrence or the consent of the Premiers.

Shri B. Das: The House is not bound by what the Premiers and Finance Ministers did outside this House. If any decision was taken, it is the privilege and prerogative of this House to have copies of those documents.

Mr. President: No one is bound here by any decision taken by the Premiers and the Drafting Committee. The House is free to cast its vote in any way it likes.

Pandit Lakshmi Kanta Maitra: I would like to ask for clarification from Dr. Ambedkar on one point. The point is this. This article provides that the revenue shall be distributed among the States in such a manner and from such time as may be prescribed. Now, the word "Prescribed" has been defined in clause (4) sub-clause (b) and means. "Until a Finance Commission has been constituted, prescribed by the President by order, and after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission." This Finance Commission comes at a later stage. As has been settled so far, this Finance Commission, mentioned in sub-clause (b) (ii) of clause (4), is going to be appointed within a period of two years from the date of the commencement of the Constitution. Prior to that immediately with the commencement of the Constitution, what is going to be the criterion by which this allocation is to be guided? We have been told recently by the Honourable the Prime Minister that apart from this Commission, another Commission—call it a Commission or a Committee or whatever it may be something like an *ad hoc* committee is going to be appointed. How does that fit in with this? This word 'prescribed' in sub-clause (b) does not mean that the President will be acting on the recommendation of the *ad hoc* committee which will be appointed within three or four months time. Will the interim allocation be decided on the recommendations of the Finance Committee? It is not clear as to what is going to happen with regard to the period immediately following the coming into operation of the Constitution, and before the appointment of the Commission envisaged in a subsequent period.

The Honourable Dr. B. R. Ambedkar: Sir, the explanation is very simple. If we wanted that there should be no interim enquiry before the President made an order of allocation, we would have merely said that such allocation as existed before the commencement of the Constitution shall continue until they are redetermined by the President on the recommendation of the Commission. We have not said that, and we have not said that deliberately, because we want that an enquiry should be made and on the basis of the enquiry the President may prescribe by order. That is the reason for the difference in language.

Pandit Lakshmi Kanta Maitra: That is to say, the interim Commission will be appointed straightaway now and on the recommendation of that Commission the President will prescribe by order?

The Honourable Dr. B. R. Ambedkar: Yes. Otherwise we would have merely said that the existing allocation will continue until the President issued the new order.

Mr. President: I will now put the various amendments to vote. I will first put amendment No. 2858, moved by Shri Upendra Nath Barman.

Shri Upendra Nath Barman: Sir, in view of the statement of Dr. B. R. Ambedkar, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I put amendment No. 76, moved by Dr. Ambedkar. That is a verbal amendment.

The question is:

"That in clause (2) of article 251, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President: Then there is the amendment of Shri T. T. Krishnamachari.

The question is:

"That in sub-clause (a) of clause (4) of article 251, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President: Then there is Professor Saksena's amendment.

The question is:

"That for amendment No. 2875 of the List of Amendments, the following be substituted:

"That in sub-para (i) and (ii) of sub-clause (b) of clause (4) of article 251, for the words 'by the President by order', the words 'by Parliament by law' be substituted'".

The amendment was negatived.

Mr. President: Then I put article 251 as amended.

The question is:

"That article 251, as amended, stand part of the Constitution."

The motion was adopted.

Article 251, as amended, was added to the Constitution.

Article 252

Mr. President: Then we take up article 252. But there are two new articles proposed, 251-A and 251-B. Do you wish to move them, Mr. Krishnamachari?

Shri T. T. Krishnamachari: No.

Mr. President: Then we come to article 252 and to it there is amendment No. 2881 standing in the name of Shri Santhanam.

(Amendments Nos. 2881 and 2882 were not moved.)

Mr. President: Then there is amendment No. 79 in the name of Dr Ambedkar

Shri T. T. Krishnamachari: Sir, it is also in my name, and I may be allowed to move it. I move:

"That in article 252, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Mr. President: Does any one wish to say anything about this article? (*No Member rose*). Then I will put amendment No. 79 to vote.

The question is:

"That in article 252, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President: Then I put the article as amended, to vote.

The question is:

"That article 252, as amended, stand part of the Constitution."

The motion was adopted.

Article 252, as amended, was added to the Constitution.

Article 253

Mr. President: Then we take up article 253.

(Amendments Nos. 2883 and 2884 were not moved.)

Mr. President: What about amendment No. 2885? Do you wish to move it, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: No; Mr. Tyagi will move his amendment.

(Amendments Nos. 2886 to 2896 were not moved.)

Mr. President: Do you move your amendment No. 2897, Mr. Bardoloi?

The Honourable Shri Gopinath Bardoloi (Assam: General): I do not want to move the amendment, but I would like to speak on the article.

(Amendments Nos. 2898 to 2902 were not moved.)

Shri Mahavir Tyagi (United Provinces: General): Sir, I had an amendment.

Mr. President: I have not finished all the amendments. I am taking them in order and will come to your amendment later. Amendment No. 81.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (2) of article 253, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Mr. President: Then amendment No. 214, in the name of Shri Mahavir Tyagi.

Shri Mahavir Tyagi: Sir, I move:

"That with reference to amendment No. 2886 of the List of Amendments, clause (1) of article 253 be deleted."

Sir, clause (1) of article 253 runs as follows:—

"No duties on salt shall be levied by the Union."

Sir I am one of those who had participated in that great movement of salt *satyagraha*, and I appreciated then, as I do appreciate today the argument that since the salt tax tells on the pockets of the poor it should not be levied. I still stick to that old opinion of mine. I also confess that it is on account of that conviction that most of the Members of this August House have preferred to bring in through this clause, the prohibition of any duties on salt. But, Sir, to levy a duty, or not to levy it is the business of the State and the Parliament. We are sitting as the Constituent Assembly. I object to this clause being here, not because

I am in favour of salt duties being levied, but because I do not want to tie down the hands of future generations for ever. Once we put it down in the Constitution there shall be no salt duties for centuries to come; and so long as there does not come into being another Constituent Assembly, the government's hands shall remain tied, and even if they want to levy any salt duty and even if circumstances are so changed that salt duty is warranted, they will not be able to levy it. That is the kind of thing we should always avoid. That is the only reason why I wish to commend this amendment to the House.

Sir, at present, after the division of India, we are having most of our salt supply from foreign countries. From Pakistan, in the year 1948-49, we imported about 40,000 tons of salt, from Egypt about 25,000 tons and from other countries, about 34,000 tons. This foreign supply of salt—ordinary crude salt and not the table one —was about 300,000 tons. There are agreements between one country or the other. Sometimes, while discussing our import-export problems with Pakistan our future Government may feel the necessity of levying a duty on salt imported from Pakistan. It may also be necessary to levy an import duty on foreign salt in order to protect our own indigenous industries of salt against competition. There are so many other advantages of the duty. Sir, this is a very simple case, and I do not want to dilate on it and waste the time of the House in pressing the issue. I only want that the hands of the future generations and of future Parliaments should be free to act. If to-day the Parliament were to decide the issue about levying the salt duty, like many of my Friends I will put up a strong opposition. We have only lately, and deliberately, given up this income. The income from this source was not less than one to ten crores. For the sake of the principle we have already sacrificed nine crores. If ever the Government feel that instead of resorting to other direct taxes, it is convenient to have some income from salt, must be free to take advantage of and tap this source of revenue. With only these words, I commend this amendment and I hope I shall not be misunderstood. Although this amendment obviously seems to be unpopular, but I want to make it clear that by this amendment, I do not mean to ask the Government to levy any salt duty. Here it is not a question of levying or not levying the duty. It is a simple question of not shutting the door for future governments to exercise their discretion. That is the only question. I hope the House will rise above sentiments and exercise a free vote. Let the future Governments be as free in the matter as we are today.

Mr. President: Amendment No. 215, do you move it, Mr. Bardoloi?

The Honourable Shri Gopinath Bardoloi: I do not propose to move the amendment, but as I said, I would like to speak on the article.

Mr. President: Yes, let me first get through the List. Amendment No. 216?

The Honourable Rev. J. J. M. Nichols Roy (Assam: General): I do not propose to move it, but I should like to speak.

Mr. President: Amendment No. 217?

The Honourable Shri Gopinath Bardoloi: That forms part of the same thing.

Mr. President: These are all the amendments. Mr. Bardoloi can speak now.

The Honourable Shri Gopinath Bardoloi: Mr. President, Sir, it is with considerable hesitation that I am proposing to make certain observations in regard to article 253, of the Draft. I must take this opportunity of conveying my thanks to the Chairman and the Members of the Drafting Committee for having given the Premiers an opportunity to discuss this and other questions, and also for

[The Honourable Shri Gopinath Bardoloi]

giving me an individual interview for the purpose of explaining the special difficulties of the province of Assam. I must say, however, that while I am not satisfied with what they have proposed, I am surely grateful for their courtesy I also want to mention in this connection, Sir, the courtesy which I received from the honourable Member for Finance of the Government of India in respect of reply to certain questions which I had raised in connection with these financial arrangements, deserves grateful acknowledgement.

Now, I think I will not be doing my duty to myself, I will not be doing my duty to my people, if I did not place before this House the real financial situation of the province. To put it, in a word it is facing a financial crisis and unless the Government of India by a short-term measure and the Constitution by a long-term measure did something for pulling this Province up, the situation as it appears to me is very dark in the future. I want to lay special stress on this on account of the special difficulties of the Province, on account of its being now a border Province of India, on account of it being a sort of a guardian of the eastern gates of India.

Sir, talking about the history of the financial arrangements from which this Province is suffering, I do not propose to take the time of the House; but I would like to observe that even from 1919 this Province has been suffering from grossly unfair treatment in the matter of financial arrangement. In 1919, although the Province had not even anything which would go by the name of social service —not even educational institutions enough for giving education to students, when even 10 per cent. of the school-going students had not the opportunity of going to primary schools—even then this Province was put under the obligation of contributing Rs. 15 lakhs to the Centre under the Meston Award. The result was that the finances of the Province broke down and within seven or eight years the whole thing had to be revised. I think in 1927 or 1928, Sir Alexander Muddiman revised this scheme and exonerated Assam from the payment of this contribution Soon after that there was a proposal for the revision of the financial arrangements but things went on like that till the picture of the new Constitution under the Government of India Act of 1935 loomed large before the country. At that time, the Percy Committee thought that the arrangement under which Assam was suffering must be removed and a fair deal must be meted out to the Province. I do not propose to repeat the various stages through which the final award given by Sir, Otto Niemeyer had to be accepted, but all that the Otto Niemeyer award gave us was only Rs. 30 lakhs of subvention. The result was that the situation which existed in the Province in 1919 continued; no social service whatsoever could be possible with the finances available and no educational institution worth the name. I do not think the Government of the time was very anxious for that either. It was a planters' *raj*. It cannot be the object of an alien Government to educate the people; and when things could run so smoothly possibly without education and other social service to pay, they thought that things would go on like that.

This was the position of Assam before partition. The period of deficit continued in the budget of the Province excepting perhaps in those two years of war when some revenue was obtained on account of sales-tax on petrol etc., and which brought in an amount of about a crore or more each year. But all these years the provincial budget had to run at a deficit although as I said just now the social services were *nil*, and there were no educational institutions where you could educate your children, and although in every sphere of development we were held up. This was the pre-partition position. With partition, is thrown a responsibility which I hope we have all been able to realise. We are cut off from India, and though most of the linking work is being done under the provi-

sion of Central grants, a lot of provincial expenditure had also to be incurred in order that from the link up to the areas within the Province some kind of communication is possible. But the most important fact in regard to communications is this. All the four hundred miles of border area verges on Pakistan, China or Burma and the border with Pakistan runs through hills. The entire economy of this Hills area was disturbed and these poor people in the border areas, particularly the hill people, have to depend entirely upon supplies from the Province of Assam instead of Sylhet or Mymensingh as it formerly used to do. The necessity therefore of linking these areas with road communications has become very imperative and the Government had to undertake the work Some money was provided in the post-war grant for that purpose; but I regret to say that on account of the curtailment of the post-war budget, these activities had, most unfortunately, to be curtailed.

Then, on account of the creation of the border, and I must add, the difficulties created by the communists, we had to increase the number of the provincial police force to an extent which bears no proportion whatsoever to the provincial revenue and expenditure. We had to increase our expenditure on police by more than 150 per cent Those frontier areas which were formerly looked after by the Centre through the Assam Rifles which were entirely paid by the Government of India, had also to have provincial police force. The result was that about five districts had to be immediately posted with police forces, on account of which, formerly, the Province did not have to pay anything.

Sir, I want specially to stress the mischief from which the Province is suffering and is likely to suffer from the communist activities in that part of the country. You know that an attempt is being made by this party to connect themselves with people of the same profession in Burma and China. Already a recrudescence of violent actions has taken place; and if you go through the newspapers you will see that the tactics they have adopted at Dibrugarh are the same as they adopted in Calcutta, namely trying to occupy places of Government by violent means like acid-throwing, bombing, hand-grenading, pistol-firing etc. Now, the police might show you one way of putting down some of these activities; but my point of view is—and I hope this view is shared by all of us - that if we want to root out the evils of communism it can never be done with the police force alone. We have to take recourse to ameliorative measures to raise the standard of the people and give them training in a sort of self-government which I suppose is being preached by these communists also. That can be done only by having a very much more *per capita* expenditure on the people than the Province is able to give today from its finances.

What I want to point out, Sir, is that these circumstances have made the financial position of the Province very difficult. Its original revenue was Rs. 3½ crores just before partition. It is almost the same today. Today we have little over 5 crores with the Government of India grants. But we cannot definitely manage with that income of Rs. 5 crores and over. Already the provincial budget is suffering a deficit of Rs. 70 lakhs; I understand Rs. 30 lakhs will come in as a supplementary demand in the coming session. So it is absolutely necessary that there should be an increase in the provincial revenues by Rs. 1½ crores if the Province is to run in the most normal level, according to the pre-partition standard. In the meanwhile, through the kindness of the Finance Ministry, we, as all other Provinces, have got some development grant. It has been calculated that that grant will throw a recurring expenditure of about Rs. 2½ crores a year on the Provincial finance. In other words for the immediate requirements of the Province we shall require Rs. 4 crores—1½ crores immediately and 2½ crores in the course of the next four or five years.

The point therefore is, how to meet this demand. I have tried to examine the benevolent provisions that have been put in the Draft, one of which we

[The Honourable Shri Gopinath Bardoloi]

accepted just now—article 251. According to the present distribution, on the basis of which money is given to Assam, we will get only 3 per cent. of that revenue and it does not come to more than 11 crores. There is a [illegible] subvention of Rs. 30 lakhs. I do not know what will be proposed [illegible] by the Financial Commission. We have also been given about Rs. 40 lakhs on jute duty. But when I am speaking about the deficit of the Province I want to say that all this income has been taken into consideration and the deficit is there in spite of them. The fact, therefore, is how are you going to get the money? I am prepared to believe that the Financial Commission would be very favourable to the Province and will be able to find some more money, but will that be enough to meet the requirements of the Province even to the minimum? That is the reason why I think, Sir, that a share of the excise duties, particularly on product which are produced in the Province, might very well be allocated to us and that was the reason why I had proposed two amendments. The existing provision is to the effect that "if only Parliament passes the law, the duty will be distributable". I wanted that that clause should be substituted by a positive clause by which the duty would be distributable as a matter of fact without any reservation as to legislation by Parliament. In that connection I want to say that for the last twelve years the same provision has been there in the constitution, but no Province has got any benefit out of it because the Parliament in the meantime did not pass any law. What, therefore, I want in order that the Province might get a little benefit is that the excise duty on tea which is produced in Assam—and the total produce of Assam is two-thirds that of India,—petroleum which I suppose is produced only in Assam, and kerosene, should be distributable immediately after the House passes this provision.

The second point was that I wanted that of this duty 50 per cent. should be allotted to the Province. I should like to point out in this connection that the Government of India gets on petroleum and kerosene about Rs. 2 crores of revenue from the produce of Assam. I want you also to consider that the mineral wealth of this Province is being depleted every day by the extraction of petroleum and when it is exhausted the Province will have to suffer a big loss of revenue, even on crude petrol, and ground rent. If at least a fair portion of the duty is given to us it would not only be helpful but equitable. Then as regards tea, two thirds of tea that is produced in India comes from Assam. The Government of Assam gave a special concession to the tea planters in the matter of land revenue and many other things for bringing this industry into existence. Now that sphere has been taken by the Centre and the Province has suffered a lot and should be entitled to obtain compensation on account of that. I thought therefore that I was making only a fair proposition when I was putting these facts before the House. When the Centre was getting Rs. 8 crores I could see no reason why 50 per cent. of the duty could not be allotted to the Province so that it might be saved from the difficulties which it is facing today. Against that argument, it may possibly be advanced that the overriding needs of the Centre should overweigh the considerations of a particular Province. I am no less an appreciator of the overriding needs of the Centre; mine is a frontier Province and I should realise it more than any other man. But after all Assam is India also, it is a very important part of India today on account of the frontier; and therefore if you wanted that it should function as a province it should have a level of administration which should at least be able to stand in such a manner as you could keep the people contended, you could have a little development and be able to do away with those evil forces which are out to destroy society today. I was therefore not claiming anything extraordinary. I again plead that I am not asking for anything extraordinary, but only for a fair deal.

Then, Sir, I would like you to consider the expenditure which provincial revenues have been able to incur per head of the population. In that connection, if I want to compare with a province like Bombay, I should not be mistaken. I wish well to any other province, but it does us good to have that comparison. The poor province of Orissa has been able to spend only Rs. 3 per head of the population for their social service including Government expenditure charges. Assam is able now to spend only Rs. 5. But Bombay spends, I think Rs. 22 per head of the population and that does not include, I am sure, the food grains concessions that the Government of India make to keep up supply to the deficit areas. If all that is taken into account, I am sure the expenditure per head will come to Rs. 30 in the case of Bombay. I do not want to cast any reflection on any body. When passing the Objectives Resolution, we had high hopes of the future of India. When passing the clauses on Fundamental Rights, we thought that poverty, distress, disease and ignorance will be dispelled from the face of India. Now, I want to ask : How are you going to do it? Well, I am personally not saying that my amendments are sacrosanct. All that I plead to you is that unless you look at the whole thing from that standpoint, India is not going to be the India of the Objectives Resolution or according to the Fundamntal Rights that we have passed. I further want to point out to you that Bombay possibly imposes a sort of taxation for all exports of textiles that go out of Bombay. On the other hand, look at Assam with Rs. 5 per head. Its sources of revenues from petroleum and tea are depleted in every way and it is not able to give the necessary social services that the State ought to give to the people who are so backward and lowly; I want to put it to you whether this not a case of :

> To him that hath, more shall be given, and
>
> From him that hath not, even the little that he hath shall be taken away.

I believe that this state of things will not be allowed by this House to be continued and that if they are not able to accept my amendment, then at least they will look at the questions of provinces like Orissa and Assam with sympathy for adequate grants.

Shri B. Das: Sir, the heart-rending speech of the Premier of Assam revealed in what way the finances of India are being allocated or are being thought of being allocated Central Excise should mainly belong to the provinces. The Sarker Committee report in para. 18 remarks :

"During the war, all provinces except Bengal and Assam, had surplus Budgets."

We have heard from the Premier of Assam in what distressful condition Assam is at present, and that distress has been enhanced by the advent of Communists both from the East and from the West -from Burma and from East Bengal both foreign governments. Therefore, Assam's needs deserve very careful consideration by this sovereign House. If the Government of India is careless, if it has no idea of helping the Provincial Units or observing the fundamental duty of the State, if the Finance Department of the Government of India is adamant and bureaucratic then this House must compel the Government of India to function as a democratic government. In para. 40, page 9, the Sarker Committee has discussed the Central Excise duties and it has reached the conclusion that at least 50 per cent of the Central Excise duties collected by the Centre must go to the provinces. My honourable Friend Mr. Bardoloi has said that he would like Assam to get 75 per cent. of the Petroleum and Kerosene excise duties. I think on the ground that he has advanced, he is justified in claiming that percentage of Central Excise duty.

I am very grateful to him for referring to Orissa. Talking of Orissa, we are entitled to the share of the excise duty on tobacco. Government of India is

[Shri B. Das]

at present adamant. It does not accept N. R. Sarker [illegible] page 10:

> "We accordingly recommend that 50 per cent of the net proceeds of the excise duty on tobacco should not form part of the revenues of the Federation, but should be distributed to the provinces"

Sir, the Government of India enjoys a superior position. It does not think it has any responsibility to explain its conduct, or its attitude towards financial [illegible] ment to this sovereign House. A moment ago, we heard Dr. Ambedkar saying that a Special Officer or a Special Committee is going to be appointed to examine how resources can be re-allocated to provinces. That came out incidentally in the course of his reply. Why was it that the spokesman of the Government of India on the floor of this House did not feel it his responsibility to take this House into confidence? I wish to criticise again the conduct of the Finance Ministry of the Government of India, that it is not observing democratic principles. Excise duties are produced by the sweat and toil of the citizens of the provinces. If my honourable Friend Mr. Bardoloi referred to Communists threatening Assam, I may say that the Central Excise duty ought to be used for fighting them, as the very method of collection of the Central Excise duties in the Provinces is strengthening communist activities. The excise duty which is being collected in every province, in the United Provinces, in Madras, in Orissa, etc., is done by an undemocratic method and this is seized by the communists in their propaganda. We all know what is happening in the north Madras districts in Nalgonda and in Chittoor. One of the items in the agitation of the Communists among the peasants is: "You grow your tobacco and the Government of India comes and charges duty". The Government of India are so silly that they stick to this method of collection. They do not collect this revenue through the officers of the provinces. They have got their own staff for the collection of the excise duty from tobacco from the villagers. Who are the Central Excise officers? They are all urban people. Talking of my own province, most of them come from Calcutta. Speaking their Calcutta language, they adopt a highbrow attitude towards the villagers in Orissa. They do not know how to talk as brothers to brothers. They irritate the poor peasants who have grown the tobacco from which the Government of India collect so much excise duty. Sir, this House has had no opportunity to discuss the proper method of taxation and allocation of the taxes. If we had such an opportunity we would have advised the Government not to follow the British methods which they have inherited. The provincial officers know and are in constant touch with the local people and they are alive to the needs of the public and handle problems with human sympathy. Let them collect the tobacco duty. Incidentally I may say that the Government of India in the Finance Department must mend its manners.

Sir, I support on principle my Friend Mr. Bardoloi's demand that 75 per cent. or a higher percentage of the duty on petroleum and kerosene should go to Assam in view of its great need and lack of expanding resources. I support also whole-heartedly the recommendations of the Sarker Committee that 50 per cent. of the Central Excise duty should go to the provinces.

I also hope that the point which I have raised, namely that the Central Excise duty should be collected by provincial agencies and not through the alien agency of the Central Government who have very little sympathy for the villagers who produce the article on which this duty is charged, be immediately given effect to.

Next I come to article 253 (1) which says : "No duties on salt shall be levied by the Union". This is a sentimental provision. Already in another place during the last session my friend Mr. Chinnmala Rao advocated that salt duty should be re-imposed. The removal of the salt duty has benefited nobody. It has only helped the black marketeers and the salt manufacturers raise the price of salt. When the salt duty existed we used to buy salt at one anna per seer, today I think we have to pay five or six annas per seer. So, the provision contained in article 253(1) is a mere sentimental provision. I do not say anything more about it.

As regards sub-clause (2), the draftsmen including Shri T. T. Krishnamachari may take pride, saying that they have included such a provision in the Constitution, but what is the use of such provision if it does not give the full benefit of its provisions to the masses? I have also, although I did not move any amendment to this sub-clause, I may say now that my intention was to compel the Government of India to bring legislation before Parliament within six months from the date of the commencement of the Constitution over such redistribution. The sub-clause says that *by law* so much of the excise duty shall be distributed. But who will compel Parliament to pass such a law? This Draft Constitution is so worded that it does not compel the Government of India Finance Department to do any thing so as to part with the monopolised sources of revenue. We are slowly giving all the powers to the Central Government and taking away the little freedom and the little power that the provinces now possess. In this matter of the Central Excise duty which is to be collected by the Union, why this pious language here, 'such duties as are mentioned in the Union List'? We have not yet settled the Union List. If it wants, the Finance Department of the Government of India will direct the Drafting Committee to omit from or include in the Provincial List such items as they want. That is why the sub-clause says : 'if Parliament by law provides ... in accordance with such principles of distribution as may be formulated by such law.' I think this goes against our principles. This august House has every right to demand from the spokesmen of the Government of India what will be the principles of such law the principles of distribution. We see everywhere a lukewarm sympathy. I find that no Government of India spokesman is present here. Always the Draft is accepted; that is how we are carrying on. How does it benefit the masses? It is no use our passing a Constitution which cannot be implemented automatically and the Government of India is not compelled to let go its hold on the finances of India. This is a point on which I am shouting too much. I do ask you, Sir, with all respect, to examine whether the Draft articles on the financial distribution are fair to the masses and whether they automatically provide for the Government of India Finance Department pursuing the resources which the British Government financiers from 1924 have commandeered from the provinces. I hope in due course you will direct the Drafting Committee to examine the aspects which have been brought to your notice.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, I had sent in an amendment that clause (1) of article 253 be omitted. I was not present in the House at the time of the consideration of that article and therefore somebody else moved the amendment. Sir, I do not think it is right to incorporate in the Constitution that no duty on salt shall be levied by the Union. I think this is an important matter and should be left to the Parliament to decide. Parliament can make any law it likes. It is the duty of the Parliament to tax or not to tax and so far Parliament has been doing it, *i.e.*, levying tax on salt. Why prevent Parliament from making laws? After all, Parliament is the representative of the people and if at any time the Parliament feels that this tax should be levied, it should be free to do so. If this provision remains in the Constitution, Parliament will be helpless and the people will be helpless. You are binding the people by this article. If the representatives of the people feel that in the interests of India

[Mr Tajamul Husain]

this tax should be levied, they should be at liberty to do so. It should be left to the discretion of the Parliament. Now, Sir, the question is, who will benefit by it? If there is no duty on salt, none will benefit. If foreign salt is imported into India, are we then to lose money and not tax the salt which is imported? Who will be the loser in that case? It will be the people only. No doubt we have got to respect the wishes of Mahatma Gandhi. He was at one time of the opinion that there should be no duty on salt, but the time has changed. In those days we were a subject people and we used to do many things in order to turn out the British from this country. The British are no longer here; we are now completely independent and it is for us to increase our income without detriment to the country at large. I hope that the honourable the Law Minister will consider the position and accept the amendment that has been moved.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I wish to confine my remarks to the deletion of clause (1) of article 253, to the effect that no duties on salt shall be levied by the Union. The amendment of Mr. Mahavir Tyagi seeks to delete it and I desire to support his amendment. I may inform the House—as they will find from the printed blue book of amendments—that my honourable Friend, Sardar Hukam Singh, Mr. Tajamul Husain, I and some others gave notice of this very amendment long before. We did not move the amendment so that Mr. Mahavir Tyagi who has suffered in the last non-cooperation movement, especially in connection with salt, may have the honour of moving it.

Sir, I shall discuss the amendment purely on a statistical basis. Speaking of pre-Partition figures, the salt tax brought to the Central Government nine crores of rupees per annum. That amounted, on a pre-Partition basis, to a tax of three annas per head per year, *i.e.* three pies per month per head, which actually works out at one tenth of a pie per head per day. The amount per head is so infinitesimal that if this tax is remitted, it is impracticable to pass on this small exemption to the poor consumer, and the result has been that the poor consumer for whose benefit this remission was intended, could not be benefited. The result of this remission has been that some middlemen in the salt trade got the entire benefit. It was practically a gift from the Government to some big salt dealers and therefore the pious purpose for which this salt tax was remitted has been entirely frustrated, and there is practically no means of giving effect to this laudable object. I therefore suggest that the tax should not be abolished by an article in the Constitution. It should be left to the legislature to deal with this subject in the way best suited for the benefit of the poor. I would suggest that this tax should be imposed and the amount collected should be reserved for the benefit of the poor who are the real object of Mahatma Gandhi's solicitude. Sir, there is no point in retaining clause (1) in the Constitution. We have violated the sacred principles of Mahatma Gandhi so often in this Constitution that the deletion of clause (1) should not be objectionable on that account. One of the principles of Mahatma Gandhi was that there should be decentralisation, that power should be taken away from the Centre and made over to the Provinces and States. Istead of that, we find that so long as Mahatma Gandhi was alive, there was some amount of sympathy for that view, but after his death, the idea of decentralisation has been given up and excessive centralisation is our object today. I think Mr. Mahavir Tyagi's amendment should be accepted by the House.

Shri Raj Bahadur (United State of Matsya): Mr. President, Sir, I regret I do not find myself in agreement with the amendment which has been moved by my honourable Friend, Mr. Mahavir Tyagi. He has urged only three or four points in support of his amendment. He says that we should not tie

down the hands of the future generations in this respect, and he goes on to say that we have been importing huge quantities of salt from Egypt, Pakistan and other foreign countries to the tune of one hundred thousand tons annually. The last thing he said was that the deletion of the salt duty has resulted in a loss of rupees nine crores to the revenues of India. These are mainly his arguments.

I think, Sir, that on a closer scrutiny these arguments would be found to hold no water. It is true that human memory is proverbially short. But I would still remind my friend, that the glorious salt satyagraha under the leadership of the Father of the Nation constitutes a glorious chapter in the history of our nation, which can hardly be forgotten or ignored on the mere question of tying down the hands of the future generations. On the other hand, we should embalm the memory of this heroic struggle in our Constitution itself so that it may serve as a source of inspiration for the coming generations. It is a short-lived consideration to say that loss has resulted to the revenues of India. Objection has also been taken by certain other friends that the abolition of salt duty came as a free gift to the black marketeers in the country. I say that black market does not prevail in the salt market alone; it prevails elsewhere also. The remedy is not to deny the principles, to deny the heroic struggle by which we stood during the course of the struggle for Independence; the remedy lies elsewhere. We should abolish the black market entirely not only from the salt market but from other commodities also. It is obvious that after food grains and cloth, salt constitutes the third most important commodity for human consumption and is required by human beings to the greatest extent. As such the effect of abolition or retention of salt duty would fall on the masses in general. I would submit that I stand for the retention of this clause not on purely sentimental grounds, and yet I say that I do not, in any way, intend to minimise the importance of sentimental grounds. National sentiments, I think, every Member of this House must covet and for them every member of the nation must lay down his life. This provision should therefore, be enshrined in the Constitution in memory of the glorious salt satyagraha under the leadership of the Father of the Nation. How can we forget the famous Dandi march? If not for anything else let it remain at least as a tribute of the nation, a homage of the country, to the memory of that heroic struggle and to the memory of the Father of the Nation. We must preserve something in our Constitution which may reflect the tone and temper of our struggle, which may serve as a proud reminder of the glorious struggle against foreign domination. As I said earlier it is not a question, merely of national sentiments alone. I oppose it on ground of national economy also. As I said, it in the past the abolition of salt duty constituted a gift to the black marketeer, then that black market may properly and effectively dealt with elsewhere. But somehow this question brings to the forefront of the present discussion another problem. The problem of how our salt industry was suppressed by the British and what we should do to revive it. Coming, as I do, from one of the Indian States which have suffered heavily on account of the suppression of this industry, I have got a special feeling in this respect. In my own province, Rajasthan and in my own state, the Bharatpur State, several lakh maunds of salt were manufactured annually by way of a well-developed cottage industry, but in the year 1879 the British suppressed that industry for their own purposes and for their own ends. The result was that the population of that State dwindled and the people migrated to other places. It resulted in the loss of employment to hundreds and thousands of people. Have we not to rehabilitate that industry once again? While we may lose by the abolition of salt duty a few crores of rupees as revenue to the Union, we shall be providing employment to hundreds and thousands of people if we try to establish the industry once again At the same time we shall become self-sufficient so far as the salt supply for our country is concerned. It is a shame that even at the present day we have got to import as much as one lakh of tons of salt from other countries If we take certain steps so that our industry is revived and if it flourishes we can eliminate these

[Shri Raj Bahadur]

imports of salt entirely. Meanwhile we can impose added customs tariff for such imports. We can devise means and ways by which the industry may thrive once again and in that case what little we may lose by way of revenue, we shall gain in other ways.

The third point which also is as material as the previous ones is the psychological factor which the deletion of this clause involves. Supposing we delete this clause. People rightly or wrongly already accuse some of us that although we profess loudly from the house tops the principles by which Mahatma Gandhi stood, the principles which he preached to the nation, not only preached but practised himself, we have abjured all those principles. In case we delete this clause from the article the charge will come : It is hardly two years that Mahatma Gandhi is not amidst us and we have denied ourselves even the remembrance of his great deeds. We have refused the retention of a clause in our Constitution, which could have made immortal the cause for which he once sacrificed so much and on the basis of which he aroused millions of our countrymen. I would submit therefore that the psychological effect on the masses would be very bitter in case we remove the clause and we would come in for criticism at every doorstep and at every street corner. It is therefore proper that at this stage of our nation's existence, we must see that we do not do anything which may result in bitterness amongst the masses. Salt is a thing which comes in for daily use by everybody, particularly the Kisans of our country require salt for their cattle and for their own selves. It may be true that the duty on salt may be very little *per capita* but the psychological effect would be great and as such it is necessary that this clause must be retained.

While giving my opinion for the retention of this clause, I would submit that it requires certain amendments. We cannot use the word "salt" alone here, because from Calcium Chloride to Platinum Chloride there are a thousand and one salts and it would be better if the word "common salt" is used. Similarly it would have been better if we use the words "produced in India" after the word "salt". If these amendments are incorporated the clause would leave nothing to be desired I think. With these remarks, I submit Sir, that this clause must be retained in our Constitution.

The Honourable Rev. J. J. M. Nichols Roy : Mr. President, though I have not moved the amendment which stood in my name, yet the feeling is that there must be certain adjustments regarding the excise duty between the Union and the Provinces or the States, so that the States might have enough money to carry on their own administration. I realize that there is an opinion that the excise duy belongs to the Centre and must not be considered as a duty which should be given as a vested interest to a province or a State. But at the same time, Sir, we must also realize that the States which produce the commodities from which these duties are realized feel that they have a right simply because these commodities are produced from their areas. For example, petroleum is produced in Assam as the Honourable the Premier of Assam has already stated, and the Centre realizes about two crores of rupees from that petroleum and kerosene as the Central Revenue. Moreover, Sir, this House and the country know that two-thirds of tea produced in India is produced in Assam and the Central Government gets excise duty *plus* export duty on tea, about which I shall have occasion to speak afterwards, of about more than 6 crores of rupees. We in Assam do not get anything from that. We surely feel that we have a right to get something, at least some percentage and our claim is not less than 50 per

cent. of the amount of duty that has been realised from the commodities produced in Assam. That feeling is there, it has been there for many years from the very beginning when petroleum was produced in Assam. Now, Sir, we have got our own Government and we realise that it is no use fighting against the ideas of the Central Government which is also sympathetic to all the States and especially to our backward Frontier Province of Assam. We expect that some kind of adjustment will be made and aid given to the States so that the States may be able to run their own administration.

The reason why we are so much troubled on this question is this. As the Honourable the Premier of Assam has stated, we are in a very bad financial condition. We have a revenue of three and a half crores. We get from the Central Government one crore and twenty lakhs by way of Income-tax. We also get from the Central Government as share of jute duty about forty lakhs and a subvention of thirty lakhs. In spite of all that we are now in deficit and the deficit runs to about one crore. This will be more when our institutions which we have just started will be carried on and maintained by the provincial Government. We have calculated that that deficit would come to about two and a half crores, may be about three crores. This is the position in a province which is a frontier province and not well developed. We need, as the Honourable the Premier of Assam has stated, four crores just now in order to balance our budget and also to carry on those institutions which we have started. We hope that immediately a Finance Commission will be set up and that the President will give us at least four crores. If four crores are given, we shall be getting about what we demand, that is fifty per cent. of the excise and export duties. For this reason, we believe that immediately the Finance Commission must be set up which must give relief to the provinces of Assam, Orissa and other provinces which are running in a deficit.

Sir, I want to speak on one point more, that is, clause (1) of article 253. I myself have always considered that the fight against the old regime was strengthened by this great weapon of abolishing the salt duty and stirring up the masses of India against the then ruling Government. That seemed to me to be the cause of the abolition of the salt duty and the sentiment in India against the salt duty. But, I see no reason why we should bind the future generation by putting it in the Constitution at all that there shall be no salt duty realised in the Union of India. The word "Duties" in this clause will include also import duty. Parliament can make law if they want regarding this. But, once we put it in the Constitution it becomes almost a permanent fixture. Therefore, I should say that we should not bind the power of Parliament to make laws regarding this. Parliament may easily help a place like Rajasthan as my honourable Friend Mr. Raj Bahadur has stated and encourage the people in that State and give them some financial help in order to bring up the salt industry, and I wish that Parliament would do something of the kind. Therefore, I consider that it is unwise for this House to put this in the Constitution itself. It may be the sentiment of many people on account of our great respect and admiration for Mahatma Gandhiji; but the cause that produced the sentiment that stirred us at that time against the old regime is now different altogether. Now, we must have a sentiment for helping the poor to get as much money as possible in order to raise the condition of the poor people. We should not tie up the hands of the Government and tie up the hands of Parliament to impose a duty on this commodity if it is necessary to do so. I believe members of Parliament will be able to decide whether to impose a tax or not impose a tax according to the conditions that exist at the time. Therefore, Sir, I would like, to leave out altogether clause (1) of article 253.

Finally, I would also request that this House will realise the position of the deficit States and render them help as far as possible and strengthen the hands

[The Honourable Rev J. J. M. Nichols Roy]

of Government also to help these deficit States like Assam, Orissa, and others. With these words, I resume my seat.

Sardar Hukam Singh (East Punjab: Sikh): Mr. President, Sir, I have come here to support the amendment moved by my honourable friend Mr. Tyagi. I congratulate him on moving this amendment because I feel that such a strong congressman, a staunch supporter and believer, in Mahatma Gandhi should take a realistic and practical view of the whole thing. Even after hearing my honourable friend Mr. Raj Bahadur I have not been convinced of the utility of this clause and I do not find any reason except sentimental ground, for keeping this clause. I had myself sent in this amendment and if I am permitted, I might say that this amendment to amendment is only a repetition of the old amendment itself. As it has been moved now, I heartily support it.

As I was saying, I do not find any grounds other than sentimental ones on which this clause can be supported by anybody. It has been said that it would be a fitting memory to our revered Mahatma Gandhi if we were to retain this clause. My submission is that in other places and other respects, we have disregarded many desires of our great leader. If we really want a memorial to Mahatma Gandhi we have other ample opportunities and I would remind my honourable Friends that there are amendments proposed to article (1) where some honourable Member of this House wants to propose that the great name should be introduced in our Constitution itself. I agree that that would be a proper place for a fitting memorial.

So far as I can make out, I think it would not have looked nice to keep a provision here in the Constitution itself binding all future Parliaments not to levy a particular tax. In my humble opinion it is not justified on any grounds whatsoever. This has been urged here by one of my Friends that it would have a psychological effect. I fail to understand what that effect would be. It is already remitted, we are not levying that; but I do not see any psychological effect. Rather we have suffered a heavy loss in our revenues and I do not feel any justification for such a loss under the present circumstances when our finances are so scanty and we are rather in an awkward position at this moment. Besides this heavy loss, I do not find any appreciable relief to the poor which was our real intention. My Friend Mr. Naziruddin Ahmad has referred to this aspect of the question that 9 crores of rupees distributed over our population—though I do not agree that he worked out the calculation rightly—that means 4 annas per individual per month, which will come to 2 pies per man per day. This reduction has not produced any psychological effect but it has lost us a great amount of revenue; and then the prices have even gone higher and so the effect has been rather reverse of what we desired. Then again there is a third thing that I wish to impress *i.e.*, this refugee problem is causing a very great headache to our Government and so far it has baffled any solution. In the last meeting that was convened where the officials and non-officials all assembled, it was discussed that the refugees could be given bonds for the present and payments could be made by instalments or even if they could be paid interest on those bonds they would be satisfied. I now find a solution of the whole refugee problem in this. If we were to levy this duty and to earmark this for rehabilitation purposed we could liquidate the bonds given to our refugee brethren and then there would be no additional burden on the State revenue as well. So in my estimate there is no justification on any ground in retaining this clause and I support whole-heartedly the amendment moved by my honourable Friend Mr. Tyagi.

Prof. Shibban Lal Saksena: Mr. President, Sir, that is another very important clause in the Draft Constitution. The first part deals with salt duty. My Friend Mr. Tyagi has moved an amendment for its deletion. I humbly beg to oppose his amendment. I do not appreciate why this clause should have been kept in the Draft and should now be sought to be deleted. Was it when Mahatma Gandhi was alive that this clause was put in and after him we want to remove it? In fact I notice that the Drafting Committee did not move the amendment, but got it moved by Mr. Tyagi. It has been said by Mr. Tyagi and other friends that the removal of the clause does not mean that we want to impose duty on salt, and what we want to see is only that we should not bind the future Parliament. They say it is only sentimental. I personally feel even sentiment has a great value in life. Salt has a history in our freedom movement and I think we shall not be doing anything harmful if we keep this clause as a memento to the great part which salt played in our freedom movement in the Constitution. I am therefore deadly opposed to the removal of this clause about salt. There is no sense in saying that because it is there that all future Parliaments will be bound by it. If there is an occasion when it is necessary to do it, then they can change the Constitution also; but why do you want to first remove it from here and then say in Parliament "we want revenue and so we must impose salt duty." It is not only on sentimental reasons that I object to its removal, in fact the reasons are mainly economic. It is even the poorest of the poor who have to pay duty on salt and therefore Mahatma Gandhi wanted that the poor man's salt must not be taxed. That was the principle on which that great movement of salt satyagraha was launched. I think by removing this clause we are denying all the arguments which we advanced at that time, for which we suffered and fought. I am therefore deadly opposed to the removal of this clause from this article. Removal of the clause would be really an outrage on the sentiments of the people and on the history of our freedom movement.

Coming to the second part, about excise duties, I think a very strong case has been made out by our Friends Mr. Bardoloi and Rev. Nichols Roy. They have shown that the present distribution of finances is wholly lop-sided. In fact I was surprised to learn that Assam contributes about 6 crores in excise on tea and 4 crores in export duty. Similarly we have 2 crores on excise on petroleum so that from these two products only Centre gets about 12 crores and yet we pay only thirty lakhs subsidy to Assam. I think a frontier province whose needs should be paramount should not be so badly treated. There must be some amendment of the present system of distribution of finances and at least Assam must get some share of the huge revenue that we get from Assam products. He has demanded 1¼ crores for meeting his normal budget deficit and 2½ crores for development purposes. I endorse his demands and I think we must be able to help Assam financially so that it may become fully competent to be our Eastern Frontier.

Then I want to raise another question of principle in this connection. This question is distribution of excise duty not only for Assam but to other provinces also United Provinces contributes about 6 crores on sugar excise. There should be some system by which the provinces should get a share out of their contributions. I realise that the principle of allotment out of these duties is not very fair.

The Next clause deals with jute export duty. We have to pay several crores as share to some provinces. I therefore think that all these clauses must be reconsidered. There must be some rational method of allocation of finances of the country. I suggest that all the collections from income-tax or excise etc. must be pooled and whatever the Centre requires must be set apart, but out of the remainder there must be an equitable distribution based on many things, on the

[Prof. Shibban Lal Saksena]

needs of the provinces, secondly, on their backwardness, thirdly, on population, fourthly, on sources of origin of the revenue and all these facts must be taken into consideration and an equitable distribution made on an examination of these things.

Only then can our provinces be run properly. At present the financial award of Sir Otto Niemeyer has been condemned by everybody, and yet it has continued and will continue. Of course there will be the report of the proposed Finance Commission and then a revision of the present arrangement, will take place but for two or three years just now, which are most crucial in the history of the nation, we shall have to continue under the same arrangement. I feel this question is a most urgent one and must not be delayed. The Centre also must be strong, financially. We have listened to the remarks of Pandit Kunzru about the burdens that the Centre has to bear. All these things have to be considered and so from the very commencement of the new Constitution, we should have a proper system. To say that when the Commission reports, we shall revise the arrangement, will not do. This part of the Constitution should be reconsidered and we must have a proper system of distribution of finances between the Centre and the provinces.

Shri T. T. Krishnamachari: The question be put.

Shri R. K. Sidhva: There has not been any discussion on the amendment moved by Mr. Tyagi.

Mr. President: There has been discussion on that amendment. About four or five Members have spoken on that clause.

The question is :

"That the question be now put."

The motion was adopted.

Mr. President: Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar: Sir, I am prepared to accept the amendment moved by Mr. Tyagi, and I think it is necessary that I should offer some explanation on behalf of the Drafting Committee as to why it has proposed to accept this amendment.

Before I begin with the main points, which justify the acceptance of the amendment, I should like to meet the point of criticism which has been levelled against the Drafting Committee by my Friend Professor Saksena.

Professor Saksena said that it was not proper for the Drafting Committee to have originally put clause (1) in the article, and now be ready to accept the amendment moved by Mr. Tyagi. I should like to state that clause (1), which the Drafting Committee put, does not have its origin in the deliberations of the Drafting Committee itself. That clause was suggested, if I remember correctly, in the report of the Union Powers Committee where a decision was taken that there should be no imposition of any salt duty. As the Drafting Committee was bound by the directions and the principles contained in the Report of the Union Powers Committee, they had no option except to incorporate that suggestion in the article which deals with this matter. Therefore, there is really no question of vacillation, so to say, on the part of the Drafting Committee.

I now come to the practical difficulties that are likely to arise if that clause was retained. It will be recalled that in List I, we have two entries, entry 86 which permits the levy of excise by the Central Government, we have also entry 85 which permits the levy of a duty of customs. Now, if sub-clause (1) of article 253 remained as part of the Constitution, it is obvious that the Central Government would not be entitled to employ either entry 86 or entry 85 for the purpose of levying an excise or custom on salt. That is quite clear, because

clause (1) takes away legislative power with respect to salt duty which was otherwise levied by entry 86, or entry 85. Now, it was represented that while the non-employment of the powers given under entry 86 to levy excise may not cause much difficulty to the country, the embargo, if I may say so, on the utilisation of the powers given under entry 85 to levy a customs duty may cause a great deal of difficulty, because that would permit the importation of foreign salt to be brought into India without the Government of India being in a position to apply any kind of legislative remedy to stop such influx of salt which may practically destroy the Indian salt industry. It was, therefore, felt that the better thing would be to remove the embargo and to leave the matter to the future Parliament, to act in accordance with circumstances that might arise at any particular moment. That is the reason why the Drafting Committee is prepared to accept the amendment of my Friend Mr. Tyagi.

Shri R. K. Sidhva: May I know why the item of prohibition was entered in the directive policy? If clause (1) of this article is to be deleted, may I know why the item regarding prohibition was inserted in the Directive Principles of the Government, and may I also know why the wearing of Kirpans was also put in the Fundamental Rights?

The Honourable Dr. B. R. Ambedkar: Oh, Kirpans stand on quite a different footing.

Mr. President: Before I put the amendments to vote, I desire to say a few words about the amendment moved by Shri Mahavir Tyagi. I was considerably surprised by the attitude which has been adopted by the Drafting Committee in regard to this amendment. It was not without reason that salt was selected by Mahatma Gandhi as the one tax out of so many taxes which the poor people of this country paid, for disobedience, when he started this movement of disobedience. It was because he felt that even the poorest beggar, when he took his morsel of food, perhaps once in a day, he had to pay a share of this tax, that he selected this particular tax, and it was for this reason that when he made his appeal it caught everybody throughout the country. There were people then who felt that this civil disobedience would not be a success because he had selected a tax which after all, was such a small tax, and which had such small incidence. But we saw the result. Within three weeks, from one end of the country to the other there was hardly a village, there was hardly a place where the law was not disobeyed.

I say that even today if you are going to reimpose this tax you will have the same kind of movement which convulsed the whole country from one end to the other. I would therefore suggest to the House to consider carefully whether it should not have this clause in the Constitution as a memento of that glorious struggle which we had. My advice—and deliberate advice—to this House is to reject the amendment of Mr. Mahavir Tyagi. But that is left to the Members of the House.

Shri Brajeshwar Prasad (Bihar: General): I formally move that the consideration of this article should be held over.

Mr. President: I think I had better put it to the House to vote.

Shri Mahavir Tyagi: Sir, if you will kindly permit my putting a question, Honourable Members: (No questions) do you think the deletion of this clause (1) will mean that the salt tax will be levied?

Mr. President: It opens the door for it, and in our present financial difficulties I am not sure that it would not be taken advantage of.

The Honourable Shri K. Santhanam (Madras : General): It refers not only to the excise duties on salt but also duties on salt coming from abroad That is why we wanted the deletion of this clause. Otherwise this will mean the Government of India cannot impose any duties...

Several Honourable Members : No speeches now.

Mr. President : Let there be no speeches. If the Members so desire, I may allow the article to be held over for further consideration.

The Honourable Shri K. Santhanam : The article may be held over

The Honourable Dr. B. R. Ambedkar : The article may be held over

Shri Mahavir Tyagi : The article may be held over.

Mr. President : This article will stand over. The House stands adjourned till 3 P.M. on Monday.

The Assembly then adjourned till Three of the Clock on Monday, the 8th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 8th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock in the Afternoon, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 253—(*Contd.*)

Mr. President: We shall take up consideration of article 254, to begin with

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, before we begin discussion of article 254, I would request you to allow consideration of Mr. Tyagi's amendment to article 253, because the Prime Minister wishes to speak on it. Although the debate is closed, I would request you to allow the Prime Minister to make a speech, before you put the amendment to vote.

Mr. President: Yes. Honourable Pandit Jawaharlal Nehru.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Sir, I am grateful to you for your indulgence in permitting me to say a few words in regard to this matter. There is hardly anyone in this House who does not feel rather strongly on this question of salt. Quite apart from the economic implications involved in this matter, salt, at one time in our national history, in the history of our struggle for freedom, became the word of power which moved large masses of human beings and brought about a strange revolution in the country in the courses of a few months. Therefore, whenever this question comes up, naturally, we are moved not only by the immediate exigencies of the situation but also by its past history. So, I suppose it is because of this that at one time the Drafting Committee, or some committee, put in this article in our Constitution. As I said all of us must necessarily feel a great deal of sympathy for their outlook. Nevertheless, when we gave thought to this matter, careful thought—because we are building something for the future and it would be wrong to do something which might come in the way of the national good of the future—we felt that if we put this clause in as it was it would certainly come in our way. For instance, as it is drafted, it would obviously prevent us even from dealing with foreign salt which may be dumped into this country.

Now it may be suggested that we might leave out foreign salt and deal with indigenous salt. Even then unless you go carefully into this matter and unless you provide for all kinds of possible anomalies, difficulties would arise. That kind of thing might well be done by way of legislation when you can go into all its details and clarify matters. But it is very difficult to deal with that in a constitution, clarifying conflicting situations which might involve many uncertain factors. Therefore, it seemed to us that it would not be desirable to include this article as originally put in the Constitution. Therefore, I stand to support the amendment that Mr. Tyagi has moved for the deletion of this article.

May I say just two things in this connection? One is this: let no Member of this House and let no member of the public outside this House imagine for an instant that this Government and, I imagine, any successor Government, will think in terms of taxing salt. That is quite clear. The second is this. If this House so desires, we can go into the question in a separate law which can be

[The Honourable Shri Jawaharlal Nehru]

dealt with by Parliament in detail, providing for all possible contingencies. If put it in the Constitution may tie our hands up and create difficulties in future. Therefore, I trust that this House will accept Mr. Tyagi's amendment.

Mr. President: I will now put the amendments to vote. The question is:

"That with reference to amendment No. 2886 of the List of Amendments clause (1) of article 253 be deleted."

The amendment was adopted.

Mr. President: The question is:

"That in clause (2) of article 253, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That article 253, as amended, stand part of the Constitution."

The motion was adopted.

Article 253, as amended, was added to the Constitution.

Article 254

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I move:

"That for article 254, the following be substituted:—

Grants in lieu of export duty on jute and jute products.

254. (1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Bengal, Bihar, Assam and Orissa in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute-products to these States such sums as may be prescribed by the President.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as export duty on jute or jute-products continues to be levied by the Government of India or until the expiration of ten years, whichever is earlier.

(3) In this article, the expression 'prescribed' has the same meaning as in article 251 of this Constitution."

Sir, this amendment makes an important change in the existing system of sharing the export duty on jute and jute-products. Under the Government of India Act, it was provided that certain provinces which are mentioned in this article should be entitled to a certain share in the proceeds of the export duty on jute and jute-products for the reason that jute forms a very important commodity in the economy of the provinces mentioned in this article. The proposal in the amended article is to do away with this right of certain provinces to claim a share in the export duty on jute and jute-products. The reason, if I may say so, is a very simple one. Ordinarily all export and import duties belong to the Central Government and no province has any right to a share in the export duty levied on any particular commodity which, as I said, happens to form an important commodity in the economy of that particular province. In view of the fact, however, that the finances of Bengal, particularly, could not be balanced without a share in the export duty, an exception was made in the Government of India Act, 1935, whereby the Bengal Government and the other Governments were given vested rights, so to say, to claim a share in the export duty which, as I said, was contrary to the general principle that the export and import duties belong to the Central Government. It is now felt that this exception which was made in the Government of India Act, 1935, should not be allowed to be continued hereafter. The reason why it is felt that this vicious

principle should be stopped right now is that it is perfectly possible to imagine that other provinces also who have certain commodities grown in their area and exported outside on which the Government of India collects an export duty may also lay claim to a share in the export duty on those products. If that tendency develops it would be a very difficult position for the Government of India. Consequently it has been decided that that principle should now definitely be abrogated. But it is equally clear that if that principle of sharing in the export duty was withdrawn suddenly it might create a difficulty in balancing the budgets of the several provinces which were up to now dependent upon a share in the export duty. Therefore a provision is made that instead of giving specifically a share in the export duty an equivalent sum or such other amount as the President might determine may be made over or assigned to those provinces for the period the export duty continues to be levied or until the expiration of ten years, whichever is earlier. The latter is introduced in order to enable those provinces to get sufficient time to develop their resources so that after the period mentioned in this article they would be in a position to balance their budgets.

I hope, Sir, the salutary principle which is now embodied in this amended article 254 will be acceptable to the House.

Prof. Shibban Lal Saksena (United Provinces: General) Sir, I beg to move :

"That in clause (1) of the proposed article 254, for the words 'by the President' the words 'by Parliament by law' be substituted."

I agree with the principle enunciated by Dr. Ambedkar that the export duty should be pooled together and then divided, if necessary, according to the needs of the provinces. But I feel that these allocations should only be made by Parliament by law. I am opposed to the principle adopted by the Drafting Committee of empowering the President, to allot funds. Such allotments should be included in the Finance Bill at the time of the presentation of the budget and should be properly discussed in Parliament. To give this power to the President is, I think, undemocratic and I see no justification for it. Otherwise the President might do something which might not be liked by Parliament and still the Parliament would not be able to interfere. By giving this power to Parliament we will make our Constitution more democratic. Parliament which is charged with the allocation of finances of the whole country will certainly see that funds are allocated in the proper way. I, therefore, think my amendment should be accepted

(No other amendment was moved.)

The Honourable Rev. J. J. M. Nichols Roy (Assam: General): Sir, I gave notice of an amendment—which, however, I am not moving.

The amendment reads as follows :

"That on the export duty levied by the Government of India on jute or jute-products and tea, such sums of at least fifty per cent. or any higher percentage as may be prescribed shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States which are the producing units of these commodities."

I find that the Drafting Committee have changed their former draft and a modified draft has been moved by Dr. Ambedkar this afternoon. In this new amendment the principle of giving a share of the export duty on jute and jute-products to the States has been conceded. "Such sums as may be prescribed by the President", will be given to the States mentioned in the amendment, but no percentage whatever is mentioned in this new amendment. The Drafting Committee has also indicated the idea that the grants-in-aid to the States of Bengal, Bihar, Assam and Orissa, which are the producing units of jute and jute-products, will be given until the expiration of ten years or so long as export duty on jute or jute-products continues, whichever is earlier. There is no certainty,

[The Honourable Rev. J. J. M. Nichols Roy]

however, how much each producing unit will get. This article as amended by the Drafting Committee deals only with the export duty on jute and jute-products. It does not deal with any other export duty. We in Assam feel that it should have dealt with the export duty on tea also. At least two-thirds of the tea produced in India is produced in Assam. About 395 million pounds of tea is produced in Assam. From the export duty on tea produced in Assam, the Government of India realised in the last five years about 19 (nineteen) crores and 90 (ninety) lakhs of rupees. Now, from the year 1947-48, the Government of India have been realising annually about six crores of rupees from export duty on tea produced in Assam. We feel that Assam should get a share from this export duty and we have not been paid anything from the Central Government out of this export duty. Assam has got only a subvention of about 30 lakhs. This is nothing compared with the amount of money which the Centre is taking from the export duty on tea.

Sir, when we calculate all the export duty on jute and tea produced in Assam, we find that the Centre is getting from the duties on Assam products about eight crores of rupees annually. In all, we find that the excise duty as well as the export duty on tea and jute produced from Assam and the Income tax realised in Assam bring in to the coffers of the Central Government about ten crores of rupees, whereas we are given by them only 120 lakhs in the shape of Income-tax and forty lakhs in the shape of jute duty and thirty lakhs of subvention, totalling 190 lakhs.

Now, surely we feel that there has not been a just treatment of the province of Assam by the Centre up to the present time. We hope somehow or other the present Government which is our own Government will consider all these points and give Assam at least a good subvention, if not a share from the tea duty. As the Centre is taking away about ten crores of rupees in the shape of income-tax and also in the shape of export duties and excise duties, we are entitled from the standpoint of justice to get at least half of that amount from them.

It appears that the attitude of this House and of the Government of India is that no share should be given to any province from the export duty, with the exception of jute export duty. I cannot understand why this exception was made. Dr. Ambedkar stated that at the time when this was given, Bengal was in great financial difficulty, and the Government at that time departed from the general principle of giving no share of the export duty or other duties to the provinces. But, Sir, that principle might be extended a little bit further to help Assam province that is now in reality in a state of bankruptcy. We have already stated that Assam has a deficit of one crore of rupees. From the official report sent to the Government of India by Assam and the other provincial Governments and submitted to the Expert Committee on financial provisions of the Union Constitution, which has been published in a book form it will be found that when all the schemes and institutions taken up now under the post-war grant of the Government of India are completed and also that if prohibition of alcoholic liquor is taken on hand by Assam as advocated by the Congress Party in India, Assam will have an overall deficit of about ten crores of rupees in future years.

Sir, in view of this I would request that this matter may be considered and that something may be done for the province of Assam. If this is not to be done from the duty on tea, it should be done by means of a subvention. But I see no hope of that when I look at the article dealing with Financial relationship between the Centre and the State. Look at article 253. This altogether

prevents the Government of India from giving any help to the provinces unless it is done by Parliament. Also article 255 will not give any power to the Government of India unless it is done by Parliament to give some grants-in-aid to those provinces which are in deficit.

Often it is difficult for a small province to get its desires carried out through any Parliament. Those provinces which have a large number of members in Parliament are able to pull the strings and get what they want. Small provinces sometimes go without being taken care of. I hope that such may not be the case in these matters. But if the House will consider these points I believe the Drafting Committee would reconsider the provisions under reference and treat the case of Assam as a special case in the matter of the tea duty as the former Government did in the case of the province of Bengal in the matter of the jute duty

Sir, I am sorry I am not able to press my amendment before this House for reasons which are known to honourable Members. But I would request that this matter may be considered carefully by this House whose members are also members of Parliament and by the present Government of India. With these words I hope that these conditions of Assam will be considered by the present Government and that, when the time comes for considering the grant of subventions that will be given to the different province, Assam's case will be carefully considered and that a subvention will be given to Assam which will help her to carry on her administration and raise her standard to the level of the administration in other parts of India.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, Sir, as a member hailing from one of the important jute-producing units of the Indian Union, I feel myself called upon to put in a few observations in connection with this article.

I generally agree in the view expressed as a piece of political and economic theory that all duties, import or export or otherwise, belong to the State and as such belong to the Government of India. As a piece of theory, it is unimpeachable, but I am afraid the Drafting Committee in the later stages of its confabulations lost its gear and brought about a proposition, which, though apparently innocent, is a grave menace to the whole taxation structure of the province now known as West Bengal. It will also affect to some extent the finances of other jute-growing units such as Bihar, Assam and Orissa, but in the case of Bengal, it will be a serious menace. Let me at once tell the House that when I make these observations on this particular duty, I do not at all stand before the Drafting Committee with folded hands. I am on very strong ground. In the first place. I would like to tell the House that there is a long history behind this jute duty. It is not as simple as Dr. Ambedkar sought to make it out. The jute duty was imposed first as a war measure in the year 1916, and from that year onwards up to the year 1936 the proceeds of the duty were of the order of four crores of rupees a year. When this tax was first imposed, it was generally believed that it was imposed, to raise finances for the effective prosecution of the First World War but that it would be discontinued at the the earliest possible moment after the termination of the war. Sir, as every one knows. Government is a particular type of institution which, once it imposes a tax, does not let go its hold on it easily. This jute duty came in for elaborate examination at the Third Round Table Conference and there it was very clearly made out that this was not an ordinary type of tax at all. According to the Taxation Inquiry Committee, export du'y could not be imposed if the commodity on which the duty was sought to be imposed was a monopoly one in the first place and secondly if the levy was on a small scale. These were the criteria laid down by the Taxation Inquiry Committee. Now,

[Pandit Lakshmi Kanta Maitra]

till 1936 jute was practically a monopoly of the province of Bengal. Therefore, the Government of India had some justification, in accordance with the Taxation Inquiry Committee's report, to levy tax on jute in Bengal. But it was pointed out at the Third Round Table Conference, and the point was discussed at very considerable length, as to whether or not the export duty on jute was justified at all. Sir, I do not want to go to great details but I would refer to one or two questions that were raised at the Third Round Table Conference. The question was raised by the Honourable Sir Nripendra Nath Sircar, the late Law Member of the Government of India, who interrogated Sir Edward Benthall, Chairman of the Chamber of Commerce, Calcutta. Sir Edward Benthall was also Leader of the House in the Central Legislature in the year 1946. In the course of this question and answer, it was established beyond doubt that it was a discriminatory tax—I ask the House to bear that in mind—a discriminatory tax, because this was a tax on the agricultural produce of a particular province; and as you know, agriculture is a provincial subject, and therefore the jute tax was a discriminatory tax not only from the point of view that it taxed an agricultural commodity, an agricultural product of a particular province but also from the point of view that it taxed only a few provinces as against others. Sir, I would read one or two passages. In reply to question No. 6257 by the late Sir N. N. Sircar at the Third Round Table Conference :—

"What effect does this tax have on the land revenue and the ryot ?"

Sir Edward Benthall replied :

"It is a direct tax on an agricultural product and it therefore has the same incidence as land revenue. It undoubtedly falls on the producer."

"When it was first imposed in 1916, it was imposed as a war measure and with the high prices obtaining then, it probably fell on the consumer, but today it undoubtedly falls on the producer, and mainly on the ryots of Bengal, and this incidence is actually in the neighbourhood of eighteen per cent."

Then on another question replied to by Sir Joseph Null (No. 6259), the matter was further clarified. On the point raised by Sir Abdur Rahim—the reply was :—

"It is a tax on agricultural income and it is a tax of a discriminatory nature on certain provinces only."

Sir, there was a long series of questions put on this jute duty, but I do not want to weary the House with all those details, but it was established beyond any dispute that this was a peculiar tax inasmuch as it infringed even in those days the constitutional provisions of the limited reforms. Therefore, I am submitting to you that Dr. Ambedkar will not at all be right if he feels that it is only out of generosity that the Centre grants a portion of the proceeds of this tax to the provinces concerned. It was as a result of these discussions at the Third Round Table Conference and on incontrovertible proof given on behalf of the province of Bengal by men like Sir Edward Benthall that the Government of Great Britain made a substantive provision in the Government of India Act, 1935, in Section 142, that fifty per cent. of the net proceeds of the jute duty should go to that province. Thereafter Sir Otto Niemeyer who was to fix the allocation of revenues between the provinces and the Centre, went into the whole question and raised this allocation of net proceeds of jute duties to Bengal to 62½ per cent. This will appear on page 10 of Sri Otto Niemeyer's Award.

"Therefore I recommend that the percentage should be increased under section 140(2) of the Act to 62½ per cent."

The jute tax is such that the Government of Great Britain had to give a

statutory recognition to the claim of the principal jute growing province of Bengal to this tax to the extent of 50 per cent. in the Act, but Sir, Otto Niemeyer went further in his Award and allocated 62½ per cent. Now, when the Constituent Assembly had been meeting in the earlier stages the Honourable the President appointed a Committee known as the "Expert Committee of the financial provisions of the Union Constitution." This Expert Committee, which has been referred to by several honourable Members in this House as the Sarker Committee, made certain specific recommendations on this. I have seen various views held on this Expert Committee Report in this House in the course of the last two or three days. I have seen some Members swearing by it, quoting some of its recommendations very earnestly in support of any contention that they wanted to be accepted by the House I have seen it condemned outright by Members for whose judgment we always have a high value. I want to know of these honourable Members why they go on changing their views from day-to-day It seems to me that the Constituent Assembly has been seized by the philosophy of Heraclitus—a policy of perpetual flux; I find constant change, not only in the views of the Drafting Committee, but also in the opinions of the Members of the House. Before the ink of the report of this Committee is dry we find it almost scrapped. But let me quote one relevant passage from this report bearing on this particular question.

> "It is necessary, however, to compensate the provinces concerned for the loss of revenue, and we recommend that, for a period of ten years or till the export duties on jute and jute products are abolished, whichever may be earlier, fixed sums as set out below be paid to these Governments as compensation every year
>
> | *Provinces* | *Amount* |
> |---|---|
> | | Rs |
> | West Bengal | 100 lakhs |
> | Assam | 15 lakhs |
> | Bihar | 17 lakhs |
> | Orissa | 3 lakhs" |

I am rather at a loss to understanding what led the Drafting Committee to depart from the previous position and make such a radical change in the original draft on this particular subject. The original article, namely article 254, reads thus :—

> "Notwithstanding anything in article 253 of this Constitution, such proportion, as Parliament may by law determine, of the net proceeds in each year of any export duty on jute or jute-products shall not form part of the revenue of India, but shall be assigned to the States in which jute is grown in accordance with such principles of distribution as may be formulated by such law :"

Suddenly a surprise has been sprung on us by a new draft today. I want to know what led the Drafting Committee to make this radical change negativing the original proposition altogether. It is a very serious matter Today the Province of West Bengal has got to shoulder the entire debt of the undivided province of Bengal. In these days it has become the fashion to describe the Province of Bengal as the "Problem Province". Have you stopped to consider how much of that problem is your own creation ? Have you ever thought how you can best solve the problems of this Problem Province ? Have you ever applied your mind to that question ? I ask, what is going to happen at the end of ten years or if this whole jute duty is abolished earlier ? What would be the fate of the Finances of Bengal ? From the Income-tax divisible pool Bengal used to get 20 per cent. but the men in authority have now cut it down to 12 per cent. on the ground that two-thirds of Bengal have gone out. They do not know the actual position. It is true that two-thirds of Bengal have gone out to Pakistan but 79/80th out of the total income-tax revenue is collected in West

[Pandit Lakshmi Kanta Maitra]

Bengal. Is this not known to the authorities? Two-thirds of the jute producing areas have gone to East Pakistan and do they realize that every single ounce of jute that is produced have got to be processed in West Bengal? This fact is not adequately recognized. You should view these economic problems against the background of realism. I emphatically maintain, Mr President that this fact is not given due consideration by the Government when making allocation of funds to my Province. I may tell the House that today West Bengal happens to be the home of jute industry in India. Do you know how much dollar it earns for you every year? In 1948-49 it earned a huge amount of dollars worth 76 crores. Can you point to any other item of export in the whole of the Indian Dominion, which earns for you much in foreign exchange? Now what is the actual position of jute growing in the Provinces? The Bengal jute mills industry requires 71,00,000 bales of jute every year. Immediately after the partition *i.e.*, 1947-48, the Indian Union could produce seventeen lakhs of bales. The next year Assam, Bihar and Orissa also increased its cultivation and the production rose to 21 lakhs and this year it is going to be in the neighbourhood of 30 lakhs of bales. If proper incentive is given by the Centre the percentage will increase still more. The most important consideration at the present moment is its bearing on foreign exchange. Now I ask in all seriousness if this commodity earns for the Government of India the much needed foreign exchange and dollar in such substantial measure, are not the Provinces which grow and process jute entitled statutorily to some *quid pro quo*. Today Dr Ambedkar comes forward and says, "Oh no, no; this is a most vicious principle; I want to leave it to the President." To rob the provinces of this share, is it a virtue? I am sorry I have to speak a bit strongly. When I feel that the whole House is being misled by a proposition which is apparently innocent, but which has very serious, very grave implications for the provinces, I cannot but raise my voice of protest against it. I wish that my honourable Friend had not brought this in at all, or dropped this article altogether. The way in which he has put it makes it more dangerous. If he had been absolutely silent on salt, and also silent on this particular item, jute, probably the danger would not have been so great. But, having once provided in the Draft for exclusion of the proceeds of jute duty from the revenues of India, suddenly, after the lapse of a month and a half, he provides that the Consolidated Fund of India will be charged certain grants-in-aid to these provinces, which will be prescribed by the President. I find "Prescribed" here means 'prescribed by the Finance Commission' and until the Finance Commission has been constituted, prescribed by the President by order, and after the Finance Commission had been constituted "Prescribed by the President by order after considering the recommendations of the Finance Commission." The other day, I had an occasion to ask the honourable Member a question *viz.*, immediately after the commencement of the Constitution what is going to be the position with regard to the allocation of jute duty to these provinces, Bengal, Bihar, Assam and Orissa.

Sir, the Honourable the Prime Minister who has just left, made a statement to us that he would be shortly appointing a Committee. I do not know how many Commissions would be there. There is already provision for a Finance Commission under article 251. Probably it will be something in the nature of an *ad hoc* Committee. That is how I understood him and how Dr. Ambedkar interpreted it for us. What is important to know is, if for any reason this *ad hoc* committee could not come to any decision or were late in coming to any decision, shall we have to wait till the regular Finance Commission as contemplated in article 251 clause (3), or pending any decision, as I find in subclause (b) (ii) or clause (4) of article 251, the President himself would make the grants-in-aid? Neither arrangement is satisfactory or suitable. If you can-

not do anything the *status quo* should be maintained. As to whether or not you will abolish the tax we will see, the future Parliament will see. But try to visualise what is going to happen at the very beginning of the enforcement of the Constitution. I am apprehensive, frankly speaking, because I know when the Montagu-Chelmsford reforms were introduced, the scheme foundered on the rock of finance. The Meston Award was responsible for this. Even the Otto Niemeyer Award could not rectify the errors of the previous Government. It will interest my honourable Friend Dr. Ambedkar to know that of the total revenues collected in Bengal, 70 per cent. goes to the Centre. This is a fact not known to many people. You get all these figures in Sir Walter Layton's report to the Simon Commission. It is no mercy, therefore, that we ask for when we want a substantial measure of the proceeds of the jute duty from the Centre. It is for this unfair and iniquitous allocation of finances throughout the past that my province has suffered and a problem has in consequence been created for you. If you do not solve this problem in a statesman-like spirit, the problem will multiply and these problems will ultimately devour you, all of you.

Shri Biswanath Das (Orissa: General): Sir, I stand to oppose the amendment.

In moving the motion, the honourable the Law Minister.....

Pandit Hirday Nath Kunzru (United Province: General): Which amendment is the honourable Member opposing?

Shri Biswanath Das: I am referring to his amendment regarding jute duty.

Pandit Hirday Nath Kunzru: Is he referring to Dr. Ambedkar's amendment or Prof. Shibban Lal Saksena's amendment?

Shri Biswanath Das: I said the Honourable the Law Minister, it could not be Prof. Shibban Lal Saksena.

The Honourable the Law Minister as the Chairman of the Drafting Committee characterised this system of distribution as vicious. I agree with him that it is a vicious system because it ought to be and it is a Central source. No stretch of imagination could bring it or ought to bring it under the purview of the provinces. As such, the system is vicious. A conviction such as this ought to have led my friend and the Government which he represents to undertake a full-fledged financial enquiry, a Taxation Enquiry and find out the taxable capacity and the taxation that is levied and collected from the various provinces and they should have come forward with a proposal acceptable to the House.

Sir, the British system of taxation which has been continued today is certainly vicious. It has not been undertaken with a view to evolve a scientific national system of taxation. The Britishers levied taxation as it suited them, just to meet the exigencies of the situation. That system prevailed for a time and the men with the loudest voice got most. From 1919, they professed to change the system and we got the Meston Award. That was found unsuitable and the result was an enquiry. Financial Enquiry undertaken by the Round Table Conference To their utter surprise, they found that Bengal, Assam, Bihar and Orissa were very hard hit. They also had advised the Government, which, if accepted, would have taken India a step forward, to allow a share of Income-tax to the provinces, and that on the basis of population. Unfortunately, as I have already stated, the British had their curious way of meeting the situation and arriving at decisions. In the result, we got the Niemyer Award.

[Shri Biswanath Das]

So awards after awards were thrust on India with the result that you do not have today a sound financial system which you could call national or desirable or essential. Therefore, I accept and agree with my honourable Friend that the system today of allocating the share of the jute duty to provinces is certainly vicious, looked at from this point of view; but my complaint against him is that he has done nothing, taken no steps as yet to undo the mischief as it shows. Sir, you were good enough to appoint an Enquiry Commission but I must frankly state, as I have already stated, that the scope of that enquiry was so very limited that the provinces hard hit cannot get the justice that they ought to have. I claim that a thorough enquiry into our system of taxation allocation and the rest should be undertaken in the future so as to devise a scientific and national system of finance in this country to keep pace with the needs of social justice. Until then necessarily these disparities will be continued

My Friend Mr. Saksena comes forward with his amendment His amendment—he will pardon me so characterising it—is the position of those who have You damn, you condemn the system as vicious and do nothing to wipe off the miseries that accrue out of the past sins committed by an alien rule Therefore, it will be unfair if you claim and have the benefits and advantages of the system to continue and thus have it both ways. You cannot have if both ways Sir, this levy of jute duty and the allocation of it to the provinces has a history of its own. I have already stated that the enquiry of the Federal Finance Committee found that Bengal, Bihar, Orissa and Assam were very hard hit and no action was taken to relieve the distress. Just before Sir Otto Niemeyer was coming to India to conduct his enquiry, the then Provincial Governor of Bengal in his famous speech he delivered at the St. Andrew's Day Dinner stated that he spoke this on behalf of himself and his Ministry and he made a claim that he cannot run the provincial administration of Bengal unless he gets two crores of rupees Curious it is that a Noble Lord, such as he, hurled a criticism on the British Imperialism stating that the Province of Bengal cannot be held responsible for the sins or ommissions and commissions done by the Centre *viz.*, the system of land lordism that was devised for Bengal. He stated that the Permanent Settlement has deprived Bengal from an annual revenue of four to five crores. Having done that it is for the British Government to make good the deficits of Bengal. Therefore he, among other things, claimed two crores as the minimum necessary for his own province. Other provinces also placed their own demands. The result was, as I have stated, other provinces got a good share of jute duty along with Bengal.

You are going to limit it to ten years. Many provinces have undertaken long-range annual commitments on the basis of allocation of this revenue. What are they going to do? Is it your idea that they should close this chapter of taking up national activities, constructive work in the sphere of nation-building activities and forego this revenue? If that is so, I cannot praise very much either the source from which this amendment is sponsored or the honourable Members of this House if they accept this motion. Sir, think of provinces like Bengal. If they are to be deprived annually of a crore, how are they going to meet their demands? Are you going to stop the educational and health activities of Bengal and Assam? A province like Orissa may not mind very much if it is deprived of Rs. 3 lakhs; still Rs. 3 lakhs; a year is not an ordinary sum to be left aside. Under these circumstances, I do not agree with those who claim that it should be confined only to ten years. If my honourable Friend had stated that in the course of these ten years he would undertake a thorough enquiry into the taxation system and structure of this country and devise ways and

means, I should have no objection. Sir, the Government of India in 1946 had deputed two officials—I believe Prof. Adarkar and Mr. Nehru—to study the financial system of Australia. Their report should have been utilised by the Constituent Assembly as also by the Drafting Committee. They have reported not only regarding the financial system of Australia but also the conditions under which the Australian system could be applied to India. They have clearly stated how allocation of grants were made on the basis of population and area and how the permanent commission that they have established is authorised to receive applications from needy provinces. The Commission looks into the provincial budgets and grants are made to such needy provinces. If that were the position there would not be any objection. Nothing of the kind is provided either in the provisions that have been passed in this Constitution or from any announcements made by Government in the Parliament or in the Constituent Assembly. Under these circumstances I must frankly confess that the motion moved by my honourable Friend the Law Minister is not very helpful to the cause of progress of national activities of these provinces.

Sir, one word more and I shall have done. You have barred and bolted the gates. You have laid down that no other provinces except the existing provinces will have the benefits of jute duty even if they undertake extensive jute cultivation in their provinces. If the news published in the papers is true, Travancore has undertaken the cultivation of jute in about a lakh of acres. What is the inducement that you are going to offer? The inducement is no thing. You give them nothing for the trouble they undertake in the Province of Madras or the United States of Cochin and Travancore.

Sir, whom are you helping? Are you helping yourselves or are you helping Pakistan? Pakistan, it has to be sadly admitted, holds the key. It has the raw jute and you have got the machinery for the finishing processes. Therefore Pakistan dictates its own terms, and you are anxious to accommodate Pakistan because you are anxious to get dollars. Under these circumstances it is the duty of the Central Government to spare no pains to undertake the expansion of jute cultivation in India. The motion moved by my friend gives me little hope in this direction, because it is confined only to those provinces that are at present getting the benefits of jute duty and it is again confined only to ten years.

I do not know the basis on which this money is to be allocated. If it is to be on the basis of past allocations there is no inducement at present or in the future for the provinces to extend cultivation. Sir, speaking of my own province, I must frankly confess that this comes to me as a great disappointment, because Orissa is undertaking a huge, extensive programme of jute cultivation. Added to it, the States of Orissa, which have been merged, were having lot of cultivation of jute. Are you going to deprive them of the benefits of this allocation? I do not know whether the provisions will benefit the Government of India or Pakistan. I leave it to honourable Members to think it out for themselves. My honourable Friend says that this is a very vicious principle and I agree with him. If any one thinks that this is an undesirable course of action, they why have article 249 at all. This article apportions the excise duty on certain manufactures, such as medicinal and toilet preparations, and the duties collected from these sources are to be assigned to the very provinces from which they are realised. If it is such a vicious principle, why again embody the same in the Constitution? Sir, "consistency is the hobgoblin of little minds."

[Shri Biswanath Das]

It is now time when you should have a judicious and rational system of finance or you give the provinces a certain degree of freedom to have their own taxation arrangements. While discussing this question I may refer the honourable Members of this House to certain acts done by the Government of Sind in 1942. In 1942, 43 and 44, the Government of Sind levied a duty on export of rice from that province and the result was that they could get a big sum which was enough to clear off her Barrage debts. We in Orissa could have done the same thing. But we refused to play into the hands of our friends in this game and we refused to have such benefits while our sister provinces were suffering. But is that the reason why the discrimination that is now proposed is to be perpetuated? As I have already stated, I plead with you that there should be a full-fledged enquiry carried out now. The taxation enquiry of India of 1924-25 is now out of date. So is the economic enquiry that was then conducted. I plead that the time has come when such an enquiry is a necessity and it should be undertaken.

Dr. B. Pattabhai Sitaramayya (Madras: General): May I know whether Shri Biswanath Babu considers that the wording of the article as it is, prevented the participation in jute duties, if Madras or Travancore were to grow jute in the future?

Shri Biswanath Das: I am sorry I do not carry the amendment with me. But that is my reading and I should be glad if it is not. I shall be glad if it is not so, but my conviction is that it is.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, my beloved amendment, which circumstances have compelled me to forsake at the present moment, runs as follows :—

"That for article 254, the following be substituted :—

'254. Notwithstanding anything in article 253 of this Constitution—

(a) sixty-two and a half per cent., or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on jute or jute-products, and

(b) seventy-five per cent. or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on tea, shall not form part of the revenues of India but shall be assigned to the States in which jute or tea, as the case may be, is grown in proportion to the respective amounts of jute or tea grown therein.'"

Sir, my honourable Friend Dr. Ambedkar has proposed an amendment—No. 72—which deals only with jute. So far as jute is concerned, I have nothing much to say, except that the grant which is now being made to the Government of Assam should not be reduced. I say this because in the new proposal it will be quite possible, on account of pressure of circumstances or on account of more weighty demands from more important provinces, the province of Assam may find itself neglected, and it may not get what it should; that is to say, the increased share in the jute duty may be subjected to further diminution. I would only wish that this amendment which the Honourable Dr. Ambedkar has proposed might not have a tendency to reduce the amount of jute duty which the province is already getting. I would like to draw the attention of this house to this matter, that all provinces, including Assam which produces tea, should get a share of the tea export duty which is now exclusively appropriated by the Government of India.

To the forceful and illuminating speech which my honourable Friend Gopinath Bardoloi delivered in presenting the other day a doleful picture of the province of Assam, I have very little to add. Mr. Nichols Roy also followed suit and completely proved to the House that unless something is done to improve the finances of the province of Assam, the crash may come at any moment. The amount which is said to be in deficit is, I am prepared to say, far more than what we expect after a close examination. My honourable Friends in this House will be, I hope, pleased to remember that Assam is a province of India, having an area of nearly fifty thousand square miles and with a population of 74 or 75 lakh. The revenue of the province is only Rs. 3½ crores and with the assistance they get from the Government of India, the total income at the present moment is Rs. 5 crores. I will ask the honourable Members of this House to consider that under the present circumstances, when the price of everything is on the rise, is it possible with this fund to run an administration of such a vast area and with such a mixed population of all kinds? Is it possible to carry on the administration and to improve it on such a slender income as we now obtain from the province? I would ask the honourable Members of the House, as I have asked the people of my province to consider for a moment, whether it would be of any use to carry on the province as a part of the Government of India? I ask the other people in other provinces to consider whether they should carry this rotten limb of India on, whether they should not—if they have any sympathy for that province forego a little of their own income and to give that province a larger share of the income which the Government of India derives, and repair the rotten limb? If they are unwilling to do it, it is better that the limb is amputated so that that limb may not affect the rest of the provinces of India. That is for this House to consider.

It has been said already and I do not wish to repeat it —with much greater effect than I can possibly say that you have to make up your mind. Are you going to have Assam with you or not? If you are going to have Assam with you, are you prepared to spend something from your own revenues? Are you prepared to do it and make Assam as it should be— a prosperous province, a forward province, a province which has strong men there, which has educated men there, a province which is full of people who can resist communism, because that is the place from which communism is spreading to the rest of India? Assam is the gateway through which communism is spreading. Are you going to allow this province to develop on such unsocial elements and movements? Or, are you going to put this province in such a position that it may develop on the right lines, that they may be able to keep the people contented, that they may be able to make them educated as the rest of India and progressive as the rest of India, so that those people themselves may rise against communism and take part in protecting that border of India, that frontier of India? That is a question which has to be considered by the honourable Members of the House. If they are not prepared to give them a share of the duty but the Centre of India must appropriate it and if they do not care what happens to Assam, then they can leave the matter as it is and things will drift in such a way that it will be difficult to retain Assam. It will either form part of the Pakistan province or it will be taken over by some other Communist power of Asia. That is a thing which I can foresee. I only wonder why cleverer people in the rest of India cannot foresee this. Things are coming to such a pass, that unless the rest of India sacrifices something and gives a helping hand to the province, then that province must go out of India. There is no help for it.

I can quite realize the volume of feeling which the people of Assam sometimes display against the people who come from outside the province. To some extent I am ashamed to say that some people of the province have gone

[Shri Rohini Kumar Chaudhuri]

to the length of showing a want of sympathy to people who go from outside the province to take shelter there. The reason for this malady is that the people feel that the people from the rest of India and the Government of India do not feel as much as they should for that province, and therefore they should reciprocate by showing some amount of unsympathy for the rest of India That is the feeling of some. I am not justifying it. At the same time, I can not justify the callous attitude of the rest of India so far as that province is concerned. That is what I have to say.

If you want to retain Assam, if you want to have a peaceful India, if you want to protect the frontiers of India, then you must bestow more care and thought on that province and improve that province. After all, a large proportion of the people of that province are tribal people who for so long under British rule were never allowed to mix with the people of their own kith and kin : they were not allowed to mix with the indigenous people of the plains Therefore, those people cannot have any sympathy for the rest of India because they were never allowed to mix with the rest of India All sorts of restrictions were imposed and some still linger. You have now to convert those tribal people and educate them in the new nationalism of India They are in India but they have not been able to feel that they are Indians and they have not been able to feel that we have any connection with that part of India in the hills which they inhabit and that they have no connection with the India which we see in Delhi, Bombay, Madras and other centres. What steps, then are you going to take to let them feel it ? If you are goin gto take any steps, then you must give more finance. What is the way of getting more finance ? That province cannot tax itself any more. They have gone to the limit. Long before any province had an agricultural tax that province had it. In fact every form of taxation has been resorted to in order to follow in the path which was laid down. They have taxed all luxuries as far as possible. They have taxed land to the highest pitch. No more is possible. No more money can be collected within that province. India must give up a part of the loot of petrol and other excise duties. Even the British people living in Assam had considered that to be a loot. The kerosene duty has also been dubbed as a loot not only by the people of the province but also by Englishmen residing in that province. Speeches have been delivered in that way but the previous Government was impervious to this criticism, but under the present Government today we have to see that the needy are helped and not the rich and not the more educated, nor those who are clever enough to take care of themselves. The people who have to be benefited are those who have exhausted all their resources. They ought to get some kind of legitimate treatment from the Government of India. It is legitimate to expect a share of the export duty on tea which is taken entirely by the Government of India. Why could not Assam get a part of the tea duty ? Tea is grown in the province. Whenever you think of taking tea, you ask your hotel-keeper or your house-keeper whether it is Assam tea or some other tea which you are getting and you taste it and if you find it is Assam tea you smack your lips and say, here is a real cup of tea, which is a solace to life. You say all that and yet after that you take away the entire excise duty. Do you for a moment consider how much Assam has to pay for this production of tea ?

Vast acres of land in Assam are under a monopoly of European planters. Where only a few hundred acres of land are under tea, about thousand acres are in their possession for future expansion. This is a permanent arrangement which has been made by the then Government. Unfortunately, the unutilised land cannot be put to use by the other people either.

The majority of the labourers in these plantations come from outside the province of Assam on very low wages, as the local people are not prepared to work on those wages. Labourers from other parts of India are indentured to serve on these plantations. That means the people of Assam get no share in the considerable sums of money that are distributed to the workers on these plantations by way of wages.

Nor does the Government of Assam profit by these plantations. Vast tracts of land have been allotted to European Planters for a nominal rent under the original settlement.

Prof. Shibban Lal Saksena: Cannot that be enhanced now?

Shri Rohini Kumar Chaudhuri: That is part of a contract. Some legislation will have to be enacted to change that.

What I say is this. My land is occupied; my labourers do not get a chance of working on these plantations. Even for the tea I take I have to pay the same price. I am told that outside India tea is sold cheaper than here. If you are getting so much money out of us, after having put me to so much sacrifice, after having prevented me from using the land which I could otherwise have utilised for better purposes, after having done all that, why should you not give me a share in the profits? I do not mind my neighbouring provinces getting a share of it. Unfortunately, the new amendment which has been put before this House by Dr. Ambedkar does not take any notice of this question of tea. That is my grievance. I, therefore, suggest that tea should be put on an equal footing with jute and that you give us a share of the export duties. The Government of India have so long proved a greedy Government and have taken the entire export duty of the province. I hope I am still not too late in asking the honourable Members of this House to insist that justice is done to the province of Assam. If the benegt of the production of jute can be obtained by the provinces of Bihar, Bengal, Assam and Orissa, why should not the benefit of the production of tea be obtained by Assam? In pleading for Assam I am pleading for all these provinces as well.

With these words, I appeal to the honourable Members of this House to take more interest in the province of Assam, if they want to retain it in the Indian Dominion. After all you are our elder brothers. You are more progressive than us—that is what the world says, though I am not prepared to admit it fully. At any rate you have a major voice in the administration of Government. Even in your own self-interest, even for your protection, you should think of us.

Pandit Hirday Nath Kunzru: Mr. President, Dr. Ambedkar's amendment raises two questions, namely, the propriety of distributing the proceeds of export duty on jute between the Government of India and the provinces and giving adequate grants to those provinces that stand in need of them. These are two distinct questions and they should not be mixed up.

So far as the first question goes, the Expert Committee on which a good many of the various speakers have relied, does not support the case for the distribution of export duties between the Centre and the provinces. I do not know what Mr. Rohini Kumar Chaudhuri said on this point but I believe all the other speakers agreed with the Expert Committee on this point. They recognised that no province had any right to the proceeds on an export duty. Some of the Members have come forward with a demand that the export duty on tea should, like the export duty on jute, be shared by the Centre with certain provinces. But if the principle that the proceeds of an export duty should be retained by the

[Pandit Hriday Nath Kunzru]

Centre is accepted as sound, there can be no harm in that decision. I agree with Dr. Ambedkar that export duties like customs duties should be placed in the central and that the entire proceeds should be retained by the Centre. This does not, however, mean that needy provinces should get no assistance. My honourable friend Pandit Lal Bihari Kanta Maitra pleaded hard for Bengal and pointed out that it would be impossible for Bengal, without the assistance that it was getting from the Centre, to make both ends meet. He quoted from the report of the Expert Committee, but forgot to read out one sentence which is of great importance to provinces like Bengal, Bihar, Assam and Orissa, and this sentence is this:

> "If at the end of ten years, when the Constitution comes up for revision, it is found that the provinces have failed to develop their resources adequately, the provinces will not be entitled to any assistance in order to make up for the loss of revenue."

i.e., the loss due to the retention of the entire jute export duty by the Centre—

> "It would no doubt be open to them to seek grant-in-aid from the Centre which would be considered on their merits in the usual course by the Finance Commission."

I have read out this sentence in order to satisfy the representatives of provinces like Bengal and Assam who have pleaded for generous treatment for their provinces. There is no doubt that these provinces need help from the Centre; but it is not necessary, in order to get this help, to claim a share in the export duty on jute or of the proceeds of any other export duty. The Centre can retain the proceeds of all these duties and yet be morally bound to help the provinces that are unable to balance their budgets without substantial central grants. These provinces will doubtless be able to place their demands before the Central Government and the Finance Commission when it is appointed. The Finance Commission, I suppose, will scrutinise the provincial budgets, will see to what extent the provinces have tried to help themselves. It may further want to assure itself that the provinces are taking proper steps to exploit their resources fully in order to add to their revenues; and if after an examination of these points it is satisfied that any of the provinces that have applied for Central Grants should receive help from the Centre, it will no doubt make a recommendation to that effect. There need, therefore, be no fear that if the export duties are made wholly Central the provinces that are benefiting now by receiving a share of the proceeds of jute export duty will be left in the lurch. I do not think that this can happen. My honourable Friend Pandit Lakshmi Kanta Maitra asked Dr. Ambedkar what would happen if the Finance Commission was not immediately appointed. Clause (2) of Dr. Ambedkar's amendment says that the word "prescribed" in article 254 has the same meaning as in article 251. Pandit Lakshmi Kanta Maitra asked in connection with this whether Bengal and the three other provinces that are receiving a share of the jute export duty will be left to their own resources if the Finance Commission was not immediately appointed. If he or any other Member who is interested in this question turns to the definition of "prescribed" in article 251 he will find that it means:

> "Until the Finance Commission has been appointed, prescribed by the President by order, and after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission."

It is therefore clear that whether a Finance Commission is appointed or not the four provinces concerned will be given definite sums out of the proceeds of the jute export duty, or to speak more accurately they will get out of the Consolidated Fund of India such sums as may be prescribed by the President by order; nothing depends on the appointment of the Finance Commission.

Pandit Lakshmi Kanta Maitra: On what principle would the allocation be made by the President?

Pandit Hirday Nath Kunzru: The Government of India cannot dictate to the Finance Commission what it should do. I suppose my honourable Friend Dr. Ambedkar has proposed that the word "prescribed" should have the same meaning as in article 251 so that the Central Government should not be accused of arriving at a one-sided decision in its own favour. The matter has been left entirely to the Finance Commission for its decision. The Government of India cannot decide for the Finance Commission on what principles it should proceed. If the Government of India were to do that, the provinces concerned would undoubtedly accuse it of gross unfairness.

Pandit Lakshmi Kanta Maitra: I did not say that. I said, on what principles will the President make the allocations in the absence of the report of the Finance Commission?

Pandit Hirday Nath Kunzru: That I cannot say, but obviously the President will have to consider the needs of the province concerned. I cannot say too strongly and too clearly that, in my opinion whether any province gets any portion of an export duty or not, if it is unable to balance its budget without assistance from the Centre, the Centre will be morally bound to give it.

Pandit Lakshmi Kanta Maitra: If the Government gives such an assurance, it will be all right.

Pandit Hirday Nath Kunzru: The Government may or may not give such an assurance. But I am quite certain that the Central Legislature will not allow the Central Government to ignore the needs of the provinces. My honourable Friend is a member of the Central Legislature. Is he going to keep quiet on this subject if the Central Government arrives at an arbitrary decision which is manifestly and grossly unfair to his province? And, if the decision of the Central Government is grossly unfair, I have no doubt that he will not be the only person to stand up for Bengal; every fair-minded Member of the House will stand up for it and try to get for it the financial assistance that it needs.

Pandit Lakshmi Kanta Maitra: Thank you very much.

Pandit Hirday Nath Kunzru: Sir, I wish that clause (3) of the amendment proposed by Dr. Ambedkar which has created this misunderstanding had been left out. No harm could have been done had the word "prescribed" in this article not been defined in the same manner that it has been defined in article 251. I still appeal to my honourable Friend Dr. Ambedkar that clause (3) of the amendment proposed by him should be dropped. But this is not the only reason on which I make this suggestion. I have one other reason for asking him to omit the definition of the word "prescribed" from the amendment that he has proposed. It is right that the Finance Commission, when appointed, should consider the needs of the provinces. It should consider how much money they need as grants-in-aid in order to meet their ordinary expenditure. It is further right that it should consider how much money they should spend on nation-building services, for instance the development of education, public health and agriculture. It is equally right that it should consider any plans prepared by them for their industrial development and, after considering all these things, recommend to the Centre what should be the grant given on each count and also lay down how much money should be raised by loan either by the Centre or by the Provinces or by both. But I do not consider it desirable that the Commission should be able to say to the Centre that it should part with a particular source of revenue or that it should share it with the

[Pandit Hirday Nath Kunzru]

provinces. It will be within its province in examining the needs of the provinces and making such recommendations on the subject as it considers fit. The Central Government will take recommendations into account and, as I said the other day, I hope that a convention will grow up that Government should normally, that is, except in emergencies, accept the recommendations of the Commission. But if the Commission is allowed to make recommendations with regard to the distribution of the proceeds of certain sources of revenue between the Centre and the provinces, a difficult position may arise. It may not be possible for the Government of India to accept such a recommendation of the Commission and, in that case, the growth of the convention that I should like to come into existence will be retarded. Besides, no Commission can weigh fully the responsibilities of the Central Government. The Central Government is responsible for many things, the most important of which is the security of India. It should therefore rest with it to decide whether certain sources of revenue should be shared between it and the provinces or not. If the grants to be given to the provinces are large, and if they have to be given grants year after year, if in other words the provinces have to be assisted by the Centre to meet large recurring expenditure, then it will probably be found to be desirable that the Central Government, instead of giving lump sum grants should share a certain source of revenue with the provinces. But, otherwise I do not think that it will be desirable for the Government of India to do so. On these grounds, Sir, I am of the opinion that clause (2) of the amendment proposed by Dr. Ambedkar to article 254 should be omitted.

Mr. President: I think you mean clause (3) ?

Pandit Hirday Nath Kunzru: Yes, Sir, it is clause (3). It is clause (3) of the amendment moved by Dr. Ambedkar to article 254 that should be dropped. No harm will be done thereby. If the President in any case desires to have the help of the Commission, he can refer the matter to it under sub-clause (d) of clause (3) of article 260. Under that article, even if clause (3) of article 254 proposed by Dr. Ambedkar is dropped, the President will have the power to ask the Commission whether a particular head of revenue should be shared between the Centre and the provinces, but I think it is desirable from every point of view that the question of allocation of such sources of revenue as are meant to be wholly Central immediately or in the near future should not be considered by the Commission unless the President asks for its views on the subject. It is a matter that ought to be settled between the Central Government and the provinces. For these reasons, Sir, I propose that clause (3) should be dropped. If you will allow me to do so, I will move an amendment to that effect. But if it is too late now to move an amendment, however formal it may be, then I shall support the amendment moved by Mr. Shibban Lal Saksena asking that the matter should be determined by Parliament by law. If that is accepted clause (3) will be automatically ruled out.

Shri T. T. Krishnamachari (Madras: General): I move that the question be now put.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, this is a very important matter and discussion should not be closed now.

Mr. President: I am entirely in the hands of the House. The question is:

"That the question be now put."

The motion was adopted.

Mr. Naziruddin Ahmad: Sir, I had a point of order to make.

Mr. President: A point of order at this stage ?

Mr. Naziruddin Ahmad: I was waiting all the time.

Mr. President: You ought to have raised your point of order at an earlier stage. It is too late now to raise any point of order.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, in my reply to the debate, I do not propose to go over the many tales of woe that have been sung in this House by Members from different provinces who feel that they have been badly treated in the distribution of revenues that has been ordered under the Government of India Act, 1935. I just propose to take the few more concrete points to reply to.

First of all, I propose to say a word with regard to the amendment moved by my Friend, Professor Shibban Lal Saksena. He wants that the grants, instead of being fixed by the President, should be fixed by Parliament. Now, in the course of the debate on other financial articles that took place last time, I said that it was not the intention to bring Parliament in in the matter of the distribution, because we do not want that the distribution of revenue should become a subject matter either of log-rolling between different provinces or wrangling between the representatives of different provinces. We want this matter to be decided by the President or by the President on the advice of the Finance Commission. That is the reason why I am not prepared to accept Professor Saksena's amendment.

Then I come to the point raised by my Friend, Mr. Maitra. His first argument was that he saw no reason why the Drafting Committee should now bring forth an amendment so as to change the original article. I am sure he forgot to refer to the recommendations of the Expert Committee on Finance. If he will refer to that, I think that he will agree with me that it was the Expert Committee who recommended that the system of allocation of the jute duty and the duty on jute-products should be altered. It was therefore not a matter of any volition or wish on the part of the Drafting Committee to effect a change in the original article.

Pandit Lakshmi Kanta Maitra: They referred to compensation also.

The Honourable Dr. B. R. Ambedkar: I will come to that. The only thing which the Drafting Committee did not accept was the allocation suggested by the Expert Committee on Finance, to be given to the different provinces which would be losing their share in the export duty on jute. It was felt by the Drafting Committee that probably the figures suggested by the Expert Committee required further examination. Having regard to the very short time that was at the disposal of the Expert Committee, the Drafting Committee did not feel sure that the figures suggested by the Expert Committee could be accepted by them without further examination. It was because of that fear that the Drafting Committee, instead of adopting the figures suggested by the Expert Committee, adopted their own formula which now finds a place in the new article, *viz.* that the grants-in-aid in lieu of compensation for the loss of the jute duty shall be prescribed by the President. There is therefore no desire on the part of the Drafting Committee either to take away a legitimate source of revenue from the four provinces which have been mentioned in this particular article, in which, so to say, they have a vested right, nor has the Drafting Committee attempted to make any fundamental alterations in the figures suggested by the Expert Committee. All that they have done is to leave the matter to the President.

Now, my Friend, Pandit Hirday Nath Kunzru, pointed out that the Drafting Committee was wrong in inserting a definition of the word "prescribe" in the article now before the House. He went further to say that even in the last article which we passed, which is 260, the word "prescribed" ought not to be

[The Honourable Dr. B. R. Ambedkar]

there. Now, it seems to me somewhat difficult, whatever may be the merits of the proposition that he has urged, to avoid the definition of the word prescribed." We have said in the main part of article 254 that the grants-in-aid shall be such as may be prescribed. Now, any lawyer would want to know what the word "prescribed" means. Either we would have to have a special definition of the word "prescribed" which would be confined to or circumscribed by the provisions of article 254 or we would have to alter the provisions contained in article 260 where the word 'prescribed" has been defined.

Mr. President: Probably you refer to 251.

The Honourable Dr. B. R. Ambedkar: I am sorry. I stand corrected. It is 251. It seems to me that so far as prescription of allocation is concerned, the Drafting Committee has suggested two different definitions of the word "Prescribed." One definition of "prescribed" means prescribed by the President when there is no report before him of the Finance Commission and the second definition of "prescribed" is prescribed when the President has got before him the recommendations of the Finance Commission. The reason why the Drafting Committee has been required to give two different definitions or interpretations of the word "prescribed" is this. It is quite clear that the Provinces want that the existing allocation not merely of the jute duty but the allocation of other sources of revenue provided under other articles of the Constitution must not be the same as are now existing, because their complaint is that the amounts now given to them are neither adequate nor just and that some revision of the allocation is necessary. Obviously if the alolcation is to take place immediately so that the new allocation would commence on the commencement of the Constitution, it is obvoius that such allocation can be made only by the President without waiting for the recommendations of the Finance Commission because it is inconceivable that no matter what amount of hurry the Central Government was prepared for, it will not be possible to appoint a Commission to have its report before the Constitution commences. Consequently, we had to devsie this double definition of the word "prescribed". In the first place the prescription will be by the President without the recommendation of the Finance Commission. That, of course, does not mean that the President will act arbitrarily. That does not mean that the President would act merely on the advice of his Cabinet, which might be interested in safeguarding and securing the position of the Centre *vis-a-vis* the Provinces. It is, I think, in the contemplation of the Central Government and I should like to make that matter quite clear that the Central Government does propose to appoint some Committee, which will be an Expert Committee or some expert officer, which would of course not be a Commission within the meaning of this Constitution, for going into the question and finding out whether the existing allocation, not merely of the jute duty and duty on jute-products, but other allocations of other sources of revenue required to be so revised as to do justice between province and province and between the Centre and the provinces. Consequently, when the first order of the President would be issued, it would not be issued, as I said, arbitrarily by the President or merely on the advice of the Executive at the Centre, but he would have some independent, some expert opinion by which he would be guided. After that when the further question arises of revisnig the orders, the question that will arise is this, whether the President should act on the advcie of Parliament or whether he should act on his own advice or whether he should act on the advice and recommendation of the Finance Commission which is to be appointed under the Constitution. As I said, there are three different alternatives which we could adopt. I know my honourable Friend, Pandit Kunzru with the best of motives, suggests that the President should act independently and not

be [illegible] Finance Commission. There is a section [illegible] Financial Secretary, that any [illegible] be made by Parliament upon the recommendation of the Finance Commission. Parliament has sanction to it. As I have said there [illegible] I do not think that it is right for the President [illegible] Commission to recommend the allocation, that [illegible] recommendations of that Commission, pursuant [illegible] the allocation. That I think would be showing [illegible] Commission. As I have said the third alternative of leaving [illegible] Parliament [illegible] to be full of danger, involving provincial [illegible] jealousies. Therefore, the Drafting Committee has adopted what I may say is the middle way namely, that although the matter must be decided by Parliament in the action taken by the President, he should be guided by the recommendation made by the Fiscal Commission and should not act arbitrarily. I hope the House will accept this. This is the most reasonable compromise that could be made and it is the best way of dealing with the matter.

Mr. President: The question is

That in amendment No. [illegible] above in clause (1) of the proposed article 254 for the words by the President the words by Parliament law be substituted."

The amendment was negatived

Mr. President: The question is

That for article 254 the following be substituted -

"254 (1) There shall be charged on the Consolidated Fund of India in each year as grant in aid of the revenues of the States of Bengal, Bihar, Assam and Orissa in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute-products to these States such sums as may be prescribed by the President."

Grants in lieu [illegible] jute or jute products

(2) The sum so prescribed shall continue to be charged on the Consolidated Fund of India so long as export duty on jute or jute products continue to be levied by the Government of India or until the expiration of ten years, whichever is earlier.

(3) In this article the expression prescribed has the same meaning as in article 251 of this Constitution.

The amendment was adopted

Mr. President: The question is

"That this proposed article 254 stand part of the Constitution."

The motion was adopted.

Article 254 was added to the Constitution

New Article 254-A

Mr. President: Then we shall take up 254-A.

Mr. Naziruddin Ahmad: I have a point of order. Sir, the point of order is that amendment No. 82 seeking to introduce a new article 254-A is entirely a new matter. We have already decided in the House that amendments to the Constitution should be presented by a certain date. We have presented our amendments. No further amendments to the Constitution could be allowed according to the rules. The only amendments which are admissible today would be amendments to the original amendments as well as amendments to regular amendments. I submit that the present amendment is not related to

[Mr. Naziruddin Ahmad]

any amendment at all. I have carefully gone through the Amendment List the original Printed List as well as the others, and this has no relation to any amendment at all. Further the amendment itself is so worded that it is not related to any other amendment but it is an independent proposition altogether. It says that "after article 254 the following article be substituted." There is here no attempt or even a pretence of it being with reference to or related to or being in connection with any amendment. I submit, Sir, that this article cannot be inserted in this way.

The Honourable Dr. B. R. Ambedkar: No doubt the point raised by my honourable Friend is quite valid, but I submit that you have infinite discretion in this matter to allow any amendment if it is an amendment of importance

Mr. President: I think on previous occasions also we have allowed new articles to be inserted and this is a new article which is sought to be inserted after article 254.

Shri T. T. Krishnamachari: When you have allowed the Drafting Committee to function, it will be its duty continually to examine the Draft Constitution and if they find that there is a lacuna, because of the fact that the Committee is in existence, it has got to take steps to fill in this lacuna. The present amendment arises out of that necessity.

Mr. President: On previous occasions I have allowed fresh articles to be introduced, and this is a new article which is sought to be introduced after article 254 and so I allow this.

Dr. Ambedkar, you may move the amendment.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after article 254 the following article be inserted:—

254A. (1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian Income-tax or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provision of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

Prior recommendation of President required to Bills affecting taxation in which States are interested.

(2) In this article the expression 'tax or duty in which States are interested' means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State."

Sir, I might mention one or two reasons why we felt that at the fag end, so to say, this new article be inserted in the Constitution. A similar provision exists in the Government of India Act. The Drafting Committee considered the matter. They did not think it necessary to incorporate and transfer that article into the new Constitution. However, when a Conference of Premiers was held, it was suggested that such an article would be useful and perhaps necessary, because, once an allocation has been made by Parliament between the provinces and the States, such an allocation should not be liable to be disturbed by any attempt made by any private member to bring in a Bill to make alteration in matters in which the provinces become interested by reason

of the allocation. It is because of this that the Drafting Committee has now brought forth this amendment in order to give an assurance to the provinces that no change will be made in the system of allocation unless a Bill to that effect is recommended by the President.

Mr. President: There is no amendment to this article. If any Member wishes to speak, he may do so now.

Mr. Nazmuddin Ahmad: Mr. President, apart from the technical objection which I took, I have another objection, namely, that it is again another instance of an insidious attempt to encroach upon the provincial field. I shall point out only one such instance in this article. This article indirectly gives power to the Parliament to vary the definition of the expression 'agricultural income.' I suppose it is well known that agriculture and agricultural income is a Provincial subject. It has been a Provincial subject for a long time since the Act of 1935 came into force. It is also the scheme of the present Draft Constitution that agricultural income and agricultural subjects should be Provincial subjects. Again, coming to article 303 clause (1), sub-clause (a), "agricultural income means agricultural income as defined for the purposes of the enactments relating to India Income-tax." This was the definition which was accepted also in the Government of India Act of 1935. That the definition of agricultural income as given in the Income-tax Act was taken as the basis showed the limit of the Centre and the provinces. The Government of India Act actually adopted this definition in the Indian Income-tax Act and crystallised it for ever so far as that Constitution was concerned as to what agricultural income meant. If we now try to vary the meaning of agricultural income, the result would be that agricultural income which is a provincial matter, and which is a provincial subject will be seriously encroached upon. Parliament may easily encroach upon the definition and might easily say "agricultural income is an income which does not arise from agriculture." There is nothing to prevent Parliament from doing so. Parliament would have been prevented under the existing state of things as in the Draft Constitution. This new article tries to improve upon this and make a change. Agricultural income might now mean anything or nothing. It will mean exactly what Parliament might desire. This is another way, another instance of however encroaching upon the Provisionces. I have already dealt with the disastrous consequences of this attempt. We have already in the last article seen a tendency and we have encroached upon the allocation of jute and other taxes. In fact, jute under the original Draft article was to be given over to the provinces, where they were grown, in proportion. But, now the whole conception has been changed; this is also another change. I submit, Sir, if we pass this article as it is, including an inherent right to Parliament to change and modify the meaning of the expression 'agricultural income,' we will be forced to secure your permission to change the definition of agricultural income. If you begin in a non-scientific manner in an aggressive manner to collect all powers in the hands of the Centre, there will be no limit to this attempt. I find this insidious attempt everywhere visible in all these articles

I know that the result of my arguments will be absolutely nil; I therefore simply enter my humble protest.

Prof. Shibban Lal Saksena: Sir, this article demands the prior sanction of the President for moving Bills in Parliament relating to taxation in which the States are interested.

I do not want to attack this provision on the grounds on which the honourable Member preceding me has attacked it. But, I want to challenge the principle on which this is based. In fact, there is article 97 which we have passed in which powers of Members of Parliament are restricted about Bills or

[Prof. Shibban Lal Saksena]

amendments to money Bills. I do not see why this article should further restrict the powers of Members of Parliament from hereafter forward Bills relating to taxation in which the States are interested

The fact that Members of Parliament may not be permitted to bring a Bill on their own account which may affect taxation in which a State is interested is an infringement of the inherent right of the Members of Parliament. Why should they not be allowed to bring forward Bills in which their States are interested? If the majority in the Parliament is opposed to it, it shall be thrown out but why should a Member be restricted from bringing forward such a Bill? But if any Member feels that a particular taxation affects his province or is not fair or proper, he should be entitled fully to bring that point of view before the Parliament. He may belong to a Party which is in Opposition and Government may not bring forward that Bill. Why should he be precluded from bringing a Bill? I therefore think that this article is an infringement of the inherent rights of Members of Parliament and I do not see any reason for it. If this is passed, it will mean that no member can bring forward any legislation in the form of a Bill for the benefit of his province. If there is a tax in existence which hits his province very hard he cannot get that repealed. He will have to submit it to the President and that means that it will be the pleasure of the Executive to allow him to bring it forward or not. It is a big limitation on the rights of Members of Parliament and it should not be accepted

Mr. President: Do you wish to speak, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: I do not think any reply is necessary.

Mr. President: The question is:

"That New article 254 A stand part of the Constitution."

The motion was adopted.

Article 254-A was added to the Constitution.

Article 255

Mr. President: We go to article 255.

(Amendment No. 83 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

"That in article 255, for the words 'revenues of India', wherever they occur, the words 'Consolidated Fund of India' be substituted.

"That in the first proviso to article 255, the words and figures 'for the time being specified in Part I of the First Schedule' be omitted.

"That in clause (a) of the second proviso to article 255, for the words 'three years' the words 'two years' be substituted.

The first two amendments are just formal.....

Mr. Naziruddin Ahmad: On a point of Order. No. 86 is entirely new and not related to anything. It is not a formal matter. It is a serious matter.

The Honourable Dr. B. R. Ambedkar: That is what I am trying to explain.

Mr. Naziruddin Ahmad: It is not an amendment to an amendment. It is an amendment to the Constitution.

The Honourable Dr. B. R. Ambedkar: I move it with the permission of the House.

Mr. Nazirudd'in Ahmad: I wanted Dr. Ambedkar to be forced to take the permission of the Chair to move it.

The Honourable Dr. B. R. Ambedkar. I have taken his permission. President can give his permission before or after moving it.

The matter refers to grants and the provision in the original article itself is that an average of three years should be paid to Assam. It was represented to us that if the average of three years is taken, the Assam Government will get very little because in the first year they did not spend anything but if we took the average of two years, they would get more. It is to meet this difficulty that the Drafting Committee has introduced the words two years instead of three years

(Amendment No. 87 was not moved.)

Syed Muhammad Sa'adulla (Assam: Muslim): Mr. President, Sir, the passing of the previous articles of the Draft Constitution so far as financial provisions are concerned, has passed the death sentence upon all hopes and aspirations of the provinces, not merely of the backward and poor provinces but also of all the richer provinces. I say this after going through the memoranda that were submitted to the Expert Financial Committee presided over by Mr. N. R Sarkar, the present acting Premier of Bengal. If anybody had cared to go through this volume which was supplied by the Assembly Office, they must have noticed that everyone of the provinces, whether their income was three crores or fifty crores, wanted a revision of the divisible pool of Income-tax They wanted that Corporation Tax should be included in the divisible pool of Income-tax. They recommended that all excise duties on commodities produced in a particular province and all export duties should also be brought on the divisible pool. The "tale of woe"—in the phrase of Dr. Ambedkar—which the representatives from Assam have been placing before the House is nothing new as I will show by giving references from these memoranda that even the richest province in the Dominion of India—I mean Madras—wanted all these things which Assam representatives wanted the Centre to give.

Sir, I am speaking not as a member of the Drafting Committee but as a representative from the very benighted province of Assam. On behalf of Assam I express our heartfelt gratitude to those honourable Members who spoke on Friday last, Pandit Hirday Nath Kunzru Mr. B. Das, and Professor Saksena who were kind enough to extend their support for Assam's claim for a fairer deal from the Centre. If my honourable Friends will listen to what I have got to say and whatever I will say I will quote from documents that have been supplied by the Constituent Assembly - I am perfectly sure that they will show us the same sympathy and support. By a happy coincidence, the Constituent Assembly, yesterday supplied each Member with two pamphlets which have been issued by the External Affairs Department giving a detailed description of the Excluded and Partially Excluded areas of Assam and the North-eastern Frontier Tribal and Excluded areas. As the time is so short, I do not think honourable Members had either the time or, shall I say, the inclination to go through these pamphlets Therefore, I have to give you a word-picture of the conditions of Assam, not merely its topography and geography, but its economic, political and financial conditions.

The topography of Assam, I always describe as that of a poor man's hut It is just like a ridge on the top with two sloping roofs on either side. From our western boundary, namely the district of Mymensing in Eastern Pakistan runs eastward a range of high hills through Assam right up to a point which is the tri-junction of Tibet, China and Burma This range of hills has divided

[Syed Muhammad Sa'aduila]

the province into two valleys which have been described in this pamphlet as the Brahmaputra Valley on the northern side and the Surma valley on the southern side. Since the partition of the district of Sylhet, portions of which have now gone into Eastern Pakistan, that valley should be called the Barak Valley because the river that bisects this area is called Barak. Now, the division of the valley by the mighty Brahmaputra on the one side and the smaller Barak on the other, has created problems for the province of Assam and has added to her increased expenditure and misery. If we are to have some utility services, say a trunk road on the southern bank of the Brahmaputra, there must necessarily be a trunk road on the northern side for the convenience of the inhabitants on the northern bank. Similarly with the conditions in the other valley. Then again, it will be news to many of you, including my friends the representatives from Assam who stated that after the partition, Assam has got only 50,000 sq. miles in area, but I say that the very first sentence of this pamphlet issued under the aegis of the External Affairs Department runs as follows—"Assam and territories associated with it, have an area of roughly 100,000 sq. miles." When you think of this vast area, with its population of only 73 lakhs, you will know that for every administrative purpose, from a magisterial court down to a police-station, our administration cannot but be very very costly, compared with densely populated provinces. I can place before you one fact, on the authority of the Finance Minister of Assam who while moving his budget estimates in March last before the Assam Assembly had to say that 72 per cent. of our total revenues goes to pay our salary bill. If as much as very nearly three-fourths of the provincial revenue goes towards the payment of salaries of its public servants, no wonder very little is left for any development or for any social service. No wonder, Sir, that Assam is so backward, in providing all the amenities that go with an efficient and full-fledged autonomous government. Assam now is the poorest province in the Dominion of India, poor not in resources, but poor in numbers, poor in its financial position and poor in the economic condition of her population. But this poverty has been forced upon her by man-made laws and the inequity of Central Governments. During the Minto-Morley Reforms of 1911, the financial conditions of India was that the Central Government functioned as a unitary government and appropriated all the revenues of India. The Provinces got only whatever they required from the Government of India. That was somehow tolerable, although the weak Assam could never impress upon the then Government to give her a little more to increase her social amenities and services. Then in the next period of the Montague-Chelmsford Reforms, the greatest injustice was done to the poor province of Assam. Everyone remembers that in that Reform, the financial arrangement was that certain heads of revenue were allocated to the provinces and certain others to the Centre; and Lord Meston, by a curious calculation, either through want of proper appreciation of the condition of Assam or through negligence of Assam's representatives in placing their case before him calculated that Assam was not merely solvent but will have such a surplus that it will be able to give the Centre a contribution of fifteen lakhs per year. But all these calculations were found to be entirely wrong and divorced from facts. Assam was a deficit province, to the tune of Rs. 25 lakhs every year, and in spite of that, Assam had to pay this Rs. 16 lakhs contribution, increasing her deficit every year, till the year 1927, when through agitation in the Assam Council, this imposition was withdrawn from Assam.

Then I come to the Simon Reforms when Assam prepared and placed her memorandum—I myself drafted it because I was then the Finance Member of the Government of Assam—before the Commission. We were prepared to prove by irrefutable figures that Assam cannot be put on a footing which will

make her run as a Major Province—not to speak of the question of adding institutions which every self-governing province must have. The Federal Finance Committee that sat along with the Simon Commission, presided over by Lord Eustace Percy, were compelled to admit in their report that Assam must have a subvention of Rs. 65 lakhs to balance her budget. This document was considered during the time of the Joint Parliamentary Committee and the Round Table Conference by another Committee in England, presided over by Lord Peel. Even that Committee had to admit that certain Provinces—and they used the words "notably Assam and Orissa"—cannot function as a major province unless substantial help is given to them for some time. In spite of those recommendations from unimpeachable quarters, by what freaks of accounting I cannot say, Sir Otto Niemeyer came to the conclusion that Assam ought to be quite satisfied to get a subvention of Rs. 30 lakhs. This is the cruellest joke that could be perpetrated upon a poor province like Assam, for you will be surprised to hear that Assam is contributing to the Central coffers to the tune of Rs. 10 crores every year whereas we get the small pittance of Rs. 30 lakhs as annual subvention.

I will give the figures just now. If the Members representing Assam had to dilate on a tale of woe it is on account of these man-made laws which have left Assam in the poorest of condition, with the barest of institutions that go for a self government. But Assam is not poor in her natural resources. If Assam was allowed to run her own course she would be in the fore-front of all the Indian provinces. In spite of the poverty of its exchequer Assam stands fourth in the matter of literacy throughout India. That shows that we have been spending, proportionately, a higher percentage on education than the comparatively richer provinces. Similarly we stand third in the matter of road communication. One can motor throughout the year, in spite of very heavy rain-fall, from one corner of Assam to the other. Very few provinces have that.

Shri Brajeshwar Prasad (Bihar: General): Is the system of communications developed in the frontier tracts?

Syed Muhammad Sa'adulla: Yes, there are, not *pucca* roads, but winter tracks right into the interior in the frontier. I myself have travelled from Sadiya which is our eastern frontier to a distance of twenty-five miles by motor car to a place called Nizamghat which is right into the interior, and on the other side there is a sub-division fifty miles away called Pasighat to which you can motor.

If we could utilise the resources that we have, then we could have brought Assam to the fore-front of India's provinces. What are the resources? Take petroleum and kerosene. Assam is the only province which produces that very valuable commodity in the dominion of India. We get only a paltry sum of Rs. 5 lakhs of royalty of the crores of rupees worth of crude oil that is pumped out the bowels of mother earth, whereas the Central Government by way of excise duty on the manufactured articles is enjoying for the past twenty years or more a sum of very nearly Rs. 2 crores of rupees annually. We tried our level best to get a share of it. But all our petitions, all our threats, went in vain. The Central Government was adamant and we did not get a single pice out of that excise duty, although, if I remember aright—I dealt with the subject in 1929 and it is full twenty years ago—there is a Privy Council case from the Dominion of Australia where this very question arose and the Privy Council decided that the proceeds of such excise duty ought to go to the State, and for very good reasons. The more you produce petrol from the crude oil the more you are depleting the natural resources and the natural wealth of the province. This excise duty is in the nature of tax on capital.

[Syed Muhammad Sa'adulla]

Secondly, this industry has been the target of Communist [illegible] for a very long time. Some honourable Members may still remember that the Assam Government had to use force in 1938 and mine had to [illegible] at Digboi, the headquarters of the Petrol Industry, when some people were killed. There was such an agitation about that episode that the then government a Congress government, not my government—had to requisition the [illegible] no less a person than the late Sir Manmathanath Mukerjee, retired Chief Justice of the Bengal High Court to sift the evidence to find out if the firing was justified. Production of petroleum, which is such a [illegible] of civilisation and which brings such a big revenue to the Central exchequer, had to be protected at very heavy cost and no wonder as you heard from the Honourable the Premier of Assam on Friday last that they had to double the police force in the province since they came to office in 1946. Where would the Central Government be if the Assam Government did not sacrifice her meagre and exiguous revenues for the protection of that oil-field? If for nothing else, at least for this reason that we are protecting the source of revenue which is [illegible] enjoyed by the Centre, Assam could legitimately claim her share in this excise duty.

Next I come to jute. Sir, through the efforts of the representatives of Bengal in the Joint Parliamentary Committee, the then Government was forced to adopt the principle of giving a part of the export duty on jute to the growing provinces. In that year,—it was first given in 1934,—Assam was supposed to produce 5 per cent. of the total jute grown throughout the world and on that basis she was getting on an average 14 lakhs of rupees per annum. But since the declaration of independence, when the largest jute-growing area of Bengal fell to the lot of East Pakistan, the position of Assam has gone very high as one of the jute-producers of the world. Assam, which had a vast area of waste land was increasing her jute acreage every year. And, if I remember aright, now Assam stands, next to Bihar, among the highest jute-growing area of the Dominion of India. This adjustment of percentage has its necessary repercussion in the amount of the jute export duty that fell to Assam's lot.

We were told by the Prime Minister of Assam on Friday that recently (that is in 1947-48) from the meagre 14 lakhs, Assam's share had gone up to 40 lakhs. But there is a Bengalee saying that even if the "Data", the donor, wants to give the "bidhata" steps in and stops it. Similarly, at the time when we had a morsel of food close to our mouth, it was snatched away by the present National Government of India. Whereas previously during the British regime the percentage allotted to the provinces stood at 62½ per cent. it has been reduced last year by a stroke of the pen to 20 per cent. by the present Government. Now, it was asserted by the honourable representative from Bengal that jute was one of the commodities that was earning the much-required dollar exchange for India. Now what incentive will there be for the provinces to increase their jute area, or to produce more bales of jute, if they get nothing from this? Article 254 which we have passed just now is merely a soap. It says that for ten years or even earlier if the Government thinks it wise to abolish jute export duty, these four provinces will get a pittance. I say, Sir, if the provinces had been left alone, they could have very well realised something from jute producers. Assam has been very patriotic in the past and when there was no tea export duty or tea excise duty levied, the Assam Government requested the tea industry to submit to a voluntary taxation and the industry without the least demur voluntarily paid a cess of eight annas per acre of planted area to raise a road fund and that continued from 1927 to 1937.

[illegible]me to tea. People who have got no idea of the tea industry cannot [illegible] great sacrifice Assam has made in the past, which sacrifice [illegible]w. The tea industry in Assam is more than a hundred

years old and in order to attract foreign capital and to clear the wild-animal infested malarious jungles, the then Assam Government had to offer very easy terms of land settlement. The earlier grants were all fee-simple, which meant that they paid no land revenue to the Government of Assam. Next there are 99 years' leases, for which Government levied the ludicrously low land revenue of about 4½ annas per acre, whereas the ordinary cultivator has to pay about Rs. 4 per acre. So, in order to establish the tea industry on a very stable and firm footing in Assam, the Assam Government sacrificed an incalculable amount of money in the shape of land revenue. And now when the Central Government has stepped in and has started levying an excise duty of 3 annas per pound on teas that are sold for internal consumption in India and an export duty of 4 annas per pound on teas that are exported out of India, Assam is denied even an anna of the sum which goes to the Central Government. On an average Assam produces 350 million pounds of tea per annum. Three-fourths of this, under the Indian Tea Control Act, is sold to outside, which brings in a four annas per pound duty to the Central coffers. The rest one-fourth is sold in the internal market and that brings in three annas per pound. Now out of this 350 million pounds, which is very nearly the requirements of Great Britain per annum, alone, 300 million pounds go from Assam alone. This is earning for the Central Government their much-needed sterling capital. Now on an average each tea garden has a labour force of one thousand to two thousand men. The communist agents are at work to seduce them from their legitimate duties and to force them to go up in revolt. Supposing the Assam Government think that as they are getting nothing they would give up the idea of preventing communists from tampering with the labour forces, where will the tea industry be and where will be the sterling capital of the Central Government? But even then the man-made laws have denied Assam anything out of these tea export and excise duties. Then again the sacrifice which Assam is making for this tea industry can be gauged from this fact alone that the largest amount of revenue that Assam gets is from land revenue; it is very nearly 1½ crores but the share of the tea gardens in this land revenue is only 17 lakhs. If concession rates had not been given in those early years perhaps the tea garden people would have to pay at least 7 to 8 lakhs as land revenue. But there is yet another dolorful and gruesome aspect about the tea industry. The Central Government has a most unjust, iniquitous and pernicious scheme of allocating the shares of different provinces from the income-tax pool. By what calculation, Sir Otto Niemeyer placed Assam's share of this pool at 2 per cent. only. I fail to gather, while Bengal and Bombay was given 20 per cent. and Madras and U.P. 15 per cent. and so on. Out of roughly one thousand tea estates in Assam as many as 750 have got their managing agencies outside Assam—some 600 of them in Calcutta and 150 in London, as these are all sterling companies, and income-tax on Assam produced tea is paid either in Calcutta or in London. The amount which is paid in Calcutta goes to the credit of Bengal and that is why they are getting 20 per cent. of the total divisible pool. If that point had been given due consideration the division of that pool should have been on the basis of, first, source of revenue and secondly, necessity of the area which grows that tea. I am again constrained to quote the Bengali proverb of "pouring oil on the oily head" or the Biblical saying, "To him that hath more shall be given." While poor Assam and Orissa have been crying hoarse over getting some substantial help, even when a large percentage in the pool was released after the division of India, Madras which has 50 crores of revenue got 10 per cent. or an increase of 3 per cent. more and Bombay got 22 per cent. but poor Orissa and Assam got an increase of 1 per cent. only. Even when there was a chance justice would not be meted out to these poor provinces. The same trouble is with Bihar. Bihar would have got a much higher percentage than 10 per cent. if the income derived from the Tata Iron Works at Jamshedpur were credited to the province of Bihar. But their headquarters being in Bombay the benefit of the

[Syed Muhammad Sa'adulla]

huge income-tax that is paid by Tata Iron Works goes to Bombay and not to Bihar.

Sir, I have tried to show from these facts and figures that Assam had and still has a very great claim on a share of the proceeds of the export and excise duties on tea and the export duty on jute as also the excise duty on petrol. And, as I said in the beginning, Assam is not the only province which was claiming this. I find on page 9 of this volume of Memoranda placed before the Expert Financial Committee that Madras recommended that all export and excise duties levied by the Centre should be shared with the provinces, that Bombay wants corporation-tax to be included with income-tax and divided among the provinces. She is not satisfied with 20 per cent. of the divisible pool of income-tax but claims 33 and one-third per cent. Then the U.P.—the largest province in India so far as population is concerned—says :

"That first essential is to enlarge the divisible pool of taxes at the Centre and make available to the provinces at least half of the surcharge on income-tax; corporation-tax and all allied taxes should be included in the divisible pool like half of income-tax Similarly all excise and export duties levied by the Centre should be included in the pool."

On page 18 of this Memorandum I find that Bengal made a similar claim. So it will be apparent that it was not merely a poor province like Assam which was crying hoarse for a share of these excise and export duties but the richer provinces also claimed it.

Now you should consider this problem of Assam from another point of view. Assam, though a part of India, is by force of circumstances practically cut off from the rest of India. Those of us who have to come to this Assembly have to travel through 180 miles of Pakistan territory before we reach the borders of the Indian dominion at a place called Ranaghat. The Central Government is therefore trying to have an approach road and a rail link through Indian territory to Assam by the northern foothills. I do not know how many crores of rupees will be spent and when it will be ready; but some action was taken by them to connect Assam with the rest of India through a small tract on the northern part of Bengal near Jalpaiguri which is Indian territory. But you will be surprised to know that this rail link takes us not to Bengal or Calcutta first but to Bihar; and if one has to come to Calcutta he will have an extra 200 miles of railway travel. What that will cost in freights and fares I need not say; the House can imagine it. But who will use this railway? I am perfectly sure that no trader or travellers will use it willingly. Then, Assam is now the frontier province. In the last war the vulnerability of India through the East was proved. Through the east, the Japanese were actually on Indian soil when they surrounded the Manipur State in Assam and captured three-fourth of the headquarters of the Naga Hills. The fact that Assam is now a frontier province of the Dominion of India makes Assam a question of all-India concern. For, if Assam is invaded by her neighbours and reinforcements were not promptly rushed there from the rest of India, she will very soon cease to be a part of India. Can you envisage such a contingency with complaisance ?

As I told you, at the time of the Niemeyer Award Assam was an undivided province with no high court of its own. Though it was a major province the people of Assam had to come to the Calcutta High Court which had appellate powers over Assam. Assam had no university and no technical or professional colleges. And yet she was given only Rs. 30 lakhs under the Award, whereas the Award gave the North-West Frontier Province Rs. 100 lakhs on the ground that it was an undeveloped province. Sind too got a sum of Rs. 110 lakhs under that Award. Though Assam was the most undeveloped of the major provinces

of India with no amenities of civil or civilized administration and though she had practically no social service, the Award gave her only a paltry sum of Rs. 30 lakhs.

Sir, I started by saying that the allocation of revenues between the Centre and the provinces has been made on a very unscientific principle. One of the arguments that I want to advance is that in making financial adjustments of this kind you should take into due account not only the needs of the backward units, but also considerations of equity. The consideration that Assam is contributing a very large share of federal revenues should not be given the go-by in the present set-up of things. Then again, due note must be taken of the special position of the frontier regions. This is a question of definite all-India national interest. It is in the interest of the Centre that efficient and good government obtains in Assam.

Assam has, in spite of her poverty, tried her utmost to help herself by such taxation as can be levied. As stated by Srijut Rohini Kumar Chaudhuri, Assam imposed taxes on agricultural income in 1938, tax on betting and amusements and heavier tax on motor vehicles, motor spirit and lubricants and levied tax on professions and trades and on the sale of goods. In spite of this she has not been able to get her budget balanced. As stated by our Prime Minister the other day, we are faced with a deficit of a crore of rupees in the current budget. I make bold to say that the one crore deficit is an under-estimate. For, during the general discussion of the budget in the Assam legislature I quoted facts and figures from the Budget estimates and the memorandum to prove that the deficit was in the neighbourhood of 2½ crores. The Finance Minister in his reply to the general discussion of the Budget did not dispute my statement.

Sir, Assam has a revenue of five crores including the thirty lakhs of subvention, the fourteen lakhs from jute duty and the forty lakhs from her share of the income-tax. She is going to have a deficit of two crores, if not two and a half crores. The present administration of Assam, hoping that the Government of India will implement their promises of continuing the grants from the Development Fund for about ten years, started building many necessary institutions such as a High Court, a medical college, a forest school and an agricultural school. Grants from this Development Fund are about to stop and, Assam is in addition faced with the miserable prospect of a deficit of three or four crores in a total income of five crores through the burden of recurring expenses of the new institutions. I request the honourable Members of the Constituent Assembly to lend their whole-hearted support to this request—I would not use the word 'claim'—of Assam or getting a fairer deal in the new set-up of things.

Shri Brajeshwar Prasad: I would like to know whether the demand is for larger grants for raising the level of the tribal people or whether it is for improving the amenities of the people of Assam and for having technical or vocational schools.

Syed Muhammad Sa'adulla: I am glad that my friend interrupted me I had lost the trend of my argument I intended to advance about the tribal areas. The interpretation he wants to put on article 255 is wrong. It starts thus: "Such sums as Parliament may by law provide shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States". The words are "for providing grants-in-aid to the States".

I have given a general picture of the topography and geography and the financial conditions of Assam. I think nowhere in India have we got the same different categories of political institutions or political areas inside the same

[Syed Muhammad Sa'adulla]

province, as in Assam. First, we have got the administered area or rather what we call the "included" area, *i.e.* that area which comes within the jurisdiction of the Legislative Assembly of the Province. Then we have got another area called the "partially excluded" area, three hill districts which have been given the right to send representatives to the local legislature, but the ordinary legislation of that legislature will not apply to them, unless the Governor assents to that. Then comes the third category, the "totally excluded" area. These excluded areas have no right of representation in the local legislature; yet the province of Assam has to bear the burden of these areas, whereas there is practically no income from them. Take for example the Naga Hills, an area of four thousand square miles, whose population in the administered area is about two lakhs and about one and a half lakhs in the non-administered area. From this area we have got about two lakhs of revenue because there is a British firm operating a coal mine in that area. This represents the entire income from the royalty of the coal mines. These hill people do not pay any land revenue. They say, "This land is ours". Not even their Chief has got any right to tax them. If you want to impose any land revenue, they will rise in revolt. Although the income from the area is only two lakhs, it costs the provincial exchequer about thirteen lakhs for administering the Naga Hills.

Shri Brajeshwar Prasad: How much?

Syed Muhammad Sa'adulla: About thirteen lakhs.

Shri Brajeshwar Prasad: What about their forest wealth?

Syed Muhammad Sa'adulla: There are hardly any communications there.

Shri Brajeshwar Prasad: Potato is also grown in that area.

Syed Muhammad Sa'adulla: No potato in that area but in Khasi Hills That shows the amount of money we have to spend on these excluded areas. Then the last category of areas in Assam formerly used to be called "Frontier tracts" but now called the "North-eastern frontier agency areas". These areas are being administered by the Governor as an agent of the Governor-General of India. Only recently they have undertaken to bear the entire costs.....

Shri M. Ananthasayanam Ayyangar (Madras: General): May I know if the honourable Member is supporting or opposing the amendment. We are unable to follow his arguments from here.

Syed Muhammad Sa'adulla: I have got to place all these facts before the House. Our income is only five crores of rupees whereas our area is one hundred thousand square miles. With this income we are unable to have good administration in this frontier Province on account of the conditions that I have given.

Shri M. Ananthasayanam Ayyangar: What are his concrete suggestions?

Syed Muhammad Sa'adulla: The position I have already explained. Therefore we cannot but come to the inevitable conclusion that the Centre must come to our aid by way of grants-in-aid and this section 255 speaks of such an aid. But even the little ray of hope that I had, in cursorily reading this article, has been shattered by the fact that the whole thing has been left to the Parliament to decide. Now we have heard twice on the floor of this House from the Chairman of the Drafting Committee that if we leave the question or the percentage of the jute export duty to be given to the provinces, to the Parliament, there will be such a wrangling among the different provinces that

it is better to leave it to the President. Unfortunately the amendment which was sent in by my Friend, the Rev. Nichols Roy from Assam only this morning has not been allowed by the President, because it came too late. Now, friends like Mr. Ananthasayanam Ayyangar say "help yourselves before you come to the Centre with the begging bowl." I have already shown that the Assamese people have already taxed themselves to the farthest extent possible, but even then that does not convey the real situation in the province. I have already stated that the total population of the province at present is 73 lakhs, out of which ten lakhs are labour population on the tea estates, people who have got no vested interest or any land in the province. They do not contribute a copper to the provincial exchequer, except for the fact that they go to the country liquor shops now and then, but these people are in the habit of brewing their own rice beer at home. Then till recently, we had two districts which were permanently settled zamindari areas. Only in the last session of the local Legislative Assembly, we passed an Act abolishing zamindari in Assam, but for any purpose it will be sufficient to say, that these two districts contain a population of fifteen lakhs. These people do not contribute directly to the provincial exchequer. Therefore all the taxation that we impose falls upon five or six districts of the province and the total population of these six districts is less than fifty lakhs, a heavy burden on them indeed.

Sir, it has been stated that there will be a Financial Commission which will go into all these matters and we should not be despondent or pessimistic of getting a just decision from that authority. But our previous experience makes one very doubtful whether the special position of Assam will be understood or appreciated by any such body unless some one connected or intimately acquainted with the conditions of Assam is in that Committee or Commission. I will give one little example. Two years ago in order to balance the Central Budget some bright officers of the Finance Department of the Central Government thought of taxing betel-nut and the decision was uniform throughout India; and without knowing the conditions poor Assam was taxed to the tune of 8 lakhs of rupees. Whereas throughout India dry betel-nut or "supari" is eaten and sold in the market, in Assam only, the supari is eaten in its *cutcha* form. It is sold in its shell, the thick covering outside and within the kernel inside is juicy and heavy. The tax levied was by the seer and while the dry supari per seer contained up to 115 to 120 nuts, the *kutcha* Assam supari called "tambul" weighed 20 to the seer. The result was that the poor Assam cultivators, who grow for their home consumption, a few trees of betel-nut had to pay this tax at a rate which is three times, if not four times higher than the rest of India. Such will be the fate of Assam again unless some one acquainted with Assam conditions or fully appreciating the position of Assam be included in the Financial Commission.

Shri Brajeshwar Prasad: You have not said how much grant you want. What are your substantial proposals?

Syed Muhammad Sa'adulla: In fact even the Drafting Committee cannot give you the percentage. All I can say is that I have placed the facts before you for your very sympathetic and just consideration and reasonable recommendation to the Central Government.

Mr. President: I just came to know from the speech of Mr. Sa'adulla that Mr. Nichols Roy had given notice of an amendment. It was received just when we were starting the proceedings and therefore it could not be copied and circulated. If Mr. Nichols Roy wants to move his amendment, I would give him permission at this stage to move it.

The Honourable Rev. J. J. M. Nichols Roy: Mr. President, Sir, as I studied the different articles regarding the financial provisions I felt that it is very important that I should move this amendment to article 255 :

That with reference to amendment No. 2917 of the List of Amendments, in article 255 after the words 'Parliament may by law provide", the words 'or until Parliament thus provides, as may be prescribed by the President" be inserted; and the following explanation be added at the end :—

"*Explanation.*—The word "prescribed" has the same meaning as in article 251 (1) (b)

The article as amended by me will read thus :—

'Such sums, as Parliament may by law provide or until Parliament thus provides, as may be prescribed by the President, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States."

The reasons for moving this amendment are very clear. According to this article 255 all the distributions to the provinces as grants-in-aid will have to pass through Parliament and Dr. Ambedkar himself has stated in this House that when such sums are placed before Parliament, it will take a long time and cause wrangling among Provinces for each Province will try to pull the strings as hard as possible to get as much share as possible for itself. I am sure it will take some time before the small provinces will be rendered immediate help, that is necessary to be rendered; and the provinces of Assam, Bihar and Orissa, I should say, require immediate help, and it will be impossible for the President or the Government of India to render such help now unless the power is given to the President to do this. Therefore, I have introduced the following words : "or, until Parliament thus provides, as may be prescribed by the President". The President, therefore shall have power by order to prescribe certain sums to be given to the provinces that are in need and also act on the recommendation of the Financial Commission. I think, Sir, this amendment is very necessary. I felt that this should be considered by the House and I think that unless it is left to the President, provinces like Assam will be in a great turmoil, a financial crisis will surely come about and we cannot go on in this way. It is sure, if there is turmoil in the Province of Assam, that the whole of India will be involved and that has been stressed by my honourable friend Syed Muhammad Sa'adulla and also by my honourable Friend Mr. Rohini Kumar Chaudhuri and by the Premier of Assam on Friday last and has been pressed by each and every speaker from Assam. It is very necessary that financial help should be immediately rendered to the Province of Assam and that cannot be done under Article 255 as it stands today. Therefore, the power must be given to the President to render immediate help to those provinces that are in need. This amendment is very, very necessary and I do not see how this House can pass the article 255 as it is now without considering this proposition. I hope, Sir, that this House will not commit suicide by allowing Assam to be in a turmoil and thus the whole of India will be involved and I hope this matter will be borne in mind when considering the amendment, which I have moved today.

Mr. President: The House will now stand adjourned till 9 A.M. tomorrow.

The Assembly then adjourned till Nine of the Clock on Tuesday, the 9th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 9th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 255—(Contd.)

The Honourable Rev. J. J. M. Nichols-Roy (Assam : General) : Mr. President, yesterday I spoke a little on my amendment. I have given now a correct version of my amendment. That would make the thing clear. May I speak on it, Sir ?

Mr. President : I will take this in the place of the one that you moved yesterday.

We shall continue discussion of the article which we were discussing last night.

The Honourable Rev. J. J. M. Nichols-Roy : May I read it, Sir ?

Mr. President : I shall read it out at the time of voting. Mr. B. Das.

Shri B. Das (Orissa : General) : Sir, we are discussing article 255 which deals with grants-in-aid to provinces generally, and also in certain reserved fields such as development of Scheduled and Tribal areas and helping the development of Scheduled tribes in some of the provinces.

Sir, I join my feeble voice to the "tales of woe", however disliked it may be by the richer provinces and by that great humanitarian, Dr. Ambedkar. Sir, if I am feeble, it is because my province has remained undeveloped throughout one hundred and fifty years of British rule. The colonial pattern of government that the Englishman introduced wanted complete centralised control and wanted expansion of the British rule not only in India but throughout Asia. That did not allow the Centre under the former British Raj to part with any finances for the development of those undeveloped provinces of which we heard so much yesterday. Sir, everything is not happy in the Drafting Committee. Yesterday my honourable Friend Dr. Ambedkar told us that the Drafting Committee came to the conclusion that it would adhere to the old system of financial redistribution. I had an idea that the Drafting Committee was there to draft the principles that are laid down by Expert Committees of this House or that are the intentions of this House. I congratulate my Friend Syed Muhammad Sa'adulla Saheb on that excellent speech which he delivered yesterday pleading for that benighted province of Assam. That reveals there was no unanimity of opinion in the Drafting Committee on that issue. Yet in the name of the Drafting Committee we are told that we have no alternative but to accept articles 254 or 255 or the subsequent articles that we will discuss today and tomorrow. I thought Dr. Ambedkar always felt for the under-dog as he had the spirit of humanity. This Constitution will remain a scrap of paper if the Centre follows the tradition of its foreign predecessors—the British Government—and monopolise all the sources of taxation and does not assist the Drafting Committee and this House to arrive at an equitable basis of distribution of resources so that

[Shri B. Das]

the provinces stand on an even keel. Even Lord Meston thought that to stand on an even keel Bihar, Orissa and Assam needed help. Even the Otto Niemeyer Award admitted at the time that certain provinces are undeveloped and they need resources but under the circumstances it excluded the grant of more money. But today we heard from the spokesman of the Government of India in Dr. Ambedkar, that the Government of India had no concrete scheme, no definite scheme to raise the basic standard of expenditure of those undeveloped provinces of Bihar, Orissa and Assam and, to which list West Bengal, by act of God and man having been partitioned, has been added.

Sir, I referred the other day to that bureaucratic document that the Government of India in Finance Department placed before the Sarker Expert Committee. The Government of India attained by then independence though it was only five months old. The Finance Department produced an autocratic, bureaucratic document which is colourless and heartless and without any conception of the sovereign duties that developed on the Finance Ministry, because it has conserved all sources of revenue in its own hands—not by its own efforts but through the system of centralised rule that it inherited from the former British Raj. My idea of independence is over and I do not dream of independence I do not breathe in the atmosphere of independence today. Sir, accidentally, circumstantially we have become part of a Commonwealth and one is ashamed to open daily papers—whether Indian or British papers—India is part of that Commonwealth Empire and India must follow the doctrine of the United Kingdom by handing over all its economic resources. Today our resources are subordinated to British economic policy and we do not find the spokesman of the Finance Ministry present here to explain his functions or to explain the attitude of the Government of India. Sir, the document I referred to is the memorandum which the Finance Department produced before the Sarker Committee and it gives an analysis of revenues and expenditures for ten years on page 4. It says that the revenues of the Government of India were 1968 crores, civil expenditure 1731 crores, defence expenditure 1887 crores. We know how the huge defence expenditure was met. It was met from the borrowings and it has added up to the unproductive size of the public debt but in para. 8 on page 3 they say, I mean the Finance Department—I will not say the Finance Ministry as it did not understand the functions of Finance Ministry then or even now—that in these ten years it helped the provinces to the extent of 196.7 crores, and it says in spite of its own heavy commitments the Centre released nearly 200 crores of rupees to the provinces during this period. It shows the bureaucratic mentality and spirit of the Finance Department and we see no change in it after one and a half years when that document was written; and yet let me analyse it. In 1937-38 the annual revenue of the Centre was 86 crores; in 1946-47 it was 336 crores; and in 1949-50 it is 325 crores. These revenues the Government of India did not manufacture themselves. They get it from the people of India and yet it grudges the 200 crores which means out of 1968 crores it is only 10 per cent. It gave 10 per cent of the revenues collected during these ten years to the provinces and it grudges it.

Here under article 255 we are discussing grants-in-aid to the provinces. Who made the Government of India, Finance Department, into a charitable institution that it gives occasional charities to undeveloped areas like Assam, Orissa, Bihar or Bengal? We stand on justice and equity, we stand here on our rights that every province must have social justice, must have a basic standard of income or revenue. If I am condemned to four or five rupees *per capita* income, if Assam is condemned almost to the same level, it is not my fault. It is a legacy that foreign rulers have left. Today the spokesman of the Government of India stands up and talks glibly that they do not want to accept any change

in the basic standard of revenue that must be allocated to the provinces. Sir, I said on Friday last that you will be pleased to examine, after these articles regarding re-distribution of finances between the Provinces and Centre are considered, whether the Centre has discharged its powers and duties so as to give a minimum standard of development, and to raise the standard of administration in those areas where better public health, better standard of education, better mode of living should come into being simultaneously with this Constitution. I do not claim that the Centre should so allocate the revenues as to give Rs. 25 *per capita* revenue expenditure to Orissa or Assam. I do not say that. But this august House, this sovereign House will nullify itself, will stultify itself if it does not determine before this Draft Constitution becomes an Act, what will be the basic standard of revenue placed at the disposal of the Provinces so that the Provinces might start on an even keel. Sir, article 255 talks of grants-in-aid of the revenues, of such States "as Parliament may determine to be in need of assistance...." My honourable Friend Rev. Nichols-Roy had tabled an amendment whereby he wants the introduction of the idea that what minimum assistance the provinces are getting, let them not be deprived of, till the so-called *ad hoc* committee of the Finance Commission comes into existence. There is a very deliberate suspicion on the part of my friends from the undeveloped provinces that the Government of India in the Finance Department may become more autocratic and may deprive the provinces of the small *grants-in-aid* that are now prevailing. My honourable Friend Dr. Ambedkar talked and waxed eloquent on the provision of article 256 over the development of Assam, and over the development of other tribal areas—he quoted article 255 proviso (a) that the average expenditure of revenues during the three years immediately preceding the commencement of this Constitution should be granted to these provinces. I must say, Sir, this is very bad logic on the part of that great humanitarian leader Dr. Ambedkar. Undeveloped provinces like Assam and Orissa had no resources to develop these tribal areas, these excluded areas although the Government of India Act, 1935, of which my honourable Friend Dr. Ambedkar is so fond, from which he quotes so often as if it is the *Magna Charta* on which all constitutions could be based—that Act provided that it was the duty of the Central Government to help the development of these tribal areas. But, Sir, it remained a dead letter. The 1935 Act was never promulgated at the Centre. It was a mistake, and I recognise that it was a mistake on our part not to have accepted the 1935 Act the Federal Constitution at the Centre. If we did, today we would have been much better of. What happened? Did the Central Government help in the development of the tribal areas in these undeveloped provinces? No. Sometimes it gave doles in charities, but it did not really help in the development of the tribal areas; the Nagas, the Khasis and other tribes in Assam remained where they stood. What it did, it did for the defence of the British Empire, on the eastern frontier, and we know in the last war, where the enemy came. The enemy came through those hills, on to the Kohima battle-fields. So today to talk here blithely that the undeveloped provinces will get the average of the last three years expenditure before the Constitution commences, shows the incapacity of the Government of India's Finance Department, to face the situation to solve those problems. It has not faced the situation. Sir, I am a man of principles too—I agree with my honourable Friends Pandit Kunzru and Dr. Ambedkar that there should be principles, financial principles which should guide the governance of India and the provinces. But what are the financial principles that must be laid down. My Friend Dr. Ambedkar, coming from the Rs. 25 *per capita* standard of Bombay presidency, does not like the export duty to be distributed iniquitously to certain provinces. He quoted from the Expert Committee's Report, and it was a pleasant surprise to find that the Government of India and Dr. Ambedkar have accepted at least one moiety of the recommendations of that Committee. My friend quoted from that report, but he forgot to quote the consequential lines, regarding the allocation of jute duty. Sir, though we

[Shri B. Das]

are not discussing specially the share of jute duty, we are still considering the grants-in-aid; and on page 9 of the Report, in para. 36, where the Sarker Committee allocates money for a period of ten years, they qualify it by saying.. "If at the end of ten years, which we think should be sufficient to enable the Provinces to develop their resources adequately, the Provinces still need assistance in order to make up for this loss of revenue, it should no doubt be open to them to seek grants-in-aid from the Centre, which would be considered on their merits in the usual course by the Finance Commission". Dr. Ambedkar did not qualify the Draft article which this House accepted yesterday —254— with this part of the recommendation, that the grants-in-aid must be given till provincial resources reach the right standard. Here the Centre denies us, the undeveloped provinces, a basic standard of expenditure. Then in one stroke, by article 254, they still keep these poor provinces on tenterhooks. Orissa gets only 3 lakhs. I am not very much pleading here the cause of Orissa. I am pleading the cause of justice and equity, that there should have been a proviso somewhere so that the wrong done so arbitrarily by the Centre in the Draft Constitution, by article 254, may be set right automatically. That is why I plead before you, you as the guardian of this sovereign Constituent Assembly You will see that there is some definite binding on the Government of India to give up its autocratic and bureaucratic codes and to pass round its resources to enable the Provinces to develop and not to be at the mercy of the Finance Commission or the Finance Minister of the time assisted and guided as he will always be by bureaucratic officials who continue in their set careering from 1924 onwards without any appreciation of new responsibilities devolved on them.

Sir, the Nalini Sarker Committee's recommendation must be taken as a whole, not in part, because it conceived the idea of a Finance Commission immediately appointed. We know it was postponed. The amendment tabled by Dr. Ambedkar refers to the appointment of a Finance Commission. That means that in ten years Bengal will be deprived of 100 lakhs whereas the consideration of Bengal's possible deficits or deficiencies will not be taken up for some four years from today. Is that justice? Is that fair? We talk here time in and time out of justiciable rights. What is justiciable when millions and millions are deprived of their basic standard of administration so that they cannot develop? If the richer Provinces like Madras, Bombay, and the U.P. are silent here today, if they think they have no obligatory duties to see that economic justice is rendered to the undeveloped Provinces. I think they are living in an Utopian paradise. If they think that their prosperity will add to the prosperity of India, they are entirely mistaken. If so many Provinces in the east of India starve, if they go on in utter poverty, if the standard of people is not developed, how can India be prosperous and how can Madras laugh at our demand of raising our basic standard of administration by securing a minimum basic standard of resources? The Government of India has not faced it, they are not facing it because it is a bankrupt Government. That is not the concern of this sovereign House. Let the spokesmen of the Finance Ministry come here and tell us their plans over redistribution of resources; they do not tell us their reactions—they want us to continue in that same sorry way as we did under the foreign administrators for years and years.

I plead before this august House that these financial provisions of the Draft Constitution are, if I may use the word, mere bunkum. They do not create a democratic sense in the Provinces. They do not help the provinces to live with hope and to reconstruct life with hope under this Constitution. My Friend Dr. Ambedkar spoke yesterday and acknowledged the existence of the Nalini Sarker Report and said he was prepared to accept a moiety of it. Sir, it lies in your hands to appoint a Committee of this House to examine the Nalini Sarker Report so that we incorporate such beneficient recommendations that are

there for the uplift of those underdeveloped Provinces. It is not to the advantage of the Centre, handicapped as it is today, to part with its resources. It may be the Parliament that will make the law, but the Parliament may not make any law. What was the attitude of the Finance Department in the Parliament in the last two years? I do not blame Dr. Matthai alone, I blame Dr. Matthai and his predecessor Sji Shanmukham Chetty, the two independent Ministers, I blame strongly the policy dictated by the Finance Department. Dr. Matthai may fancy he has the law today and he can give a moiety here and there when justice demands other rights—fuller distribution of resources to Provinces.

Sir, we heard the appointment of the Fiscal Commission. We know it has been appointed with our distinguished Friend Mr. V. T. Krishnamachari as the President. How many years will they take to assess the fiscal policy of India? Mr. Shanmukham Chetty, in the Parliament, announced that there will be a Taxation Inquiry Committee, that the Taxation Inquiry Committee will see what taxes should be levied, then the House and the country will determine what resources should go to the Provinces. But, Sir, a year afterwards Dr. Matthai stated in the House the unless we know the *per capita* basis of income, unless we know the national income of India, we are not going to appoint a Taxation Inquiry Committee.

Mr. President: May I point out to the honourable Member that we are not discussing the Government of India? We are discussing the Constitution and any remarks which he wishes to make should be confined to the Draft Constitution and the provisions contained therein.

Shri B. Das: Thank you, Sir, that is what I am trying to do. I am sorry I have to bring in the Government of India—it has become like King Charles' head in my speeches!

Mr. President: Yes, it seems to be so.

Shri B. Das: Yes, Sir, but how can the resources come to Provinces, how can the grants-in-aid come to Provinces unless the basic system of distribution of resources is set down in this Draft Constitution? That is the objective with which I speak, and I was illustrating and I still wish to illustrate that the Government of India are deliberately postponing this evil day when they will stop their extravagance and pass on the equitable share of the resources to the Provinces. That is all that I am aiming at. If I am wandering about in my speech I am not as brilliant a speaker as Dr. Ambedkar, so I have to go in a round-about way.

Mr. President: I have not interfered with the speakers when they have been discussing these financial provisions because I felt that any grievances which Members might feel might be mentioned here. But very often these speeches have gone much farther than the particular article under consideration, and the speeches become pointless when no amendments have been moved which would enable the House to decide in a way different from that proposed by the Drafting Committee. I would therefore suggest to Members that now that the grievances have been ventilated they should confine themselves to the articles and if there are any amendments they might speak on the amendments. But general discussion of the policy of the Government of India becomes pointless here because we are not here discussing the Government of India, nor have we got anyone here as representative of the Government of India present in this House. This is the Constituent Assembly charged with a particular duty, namely, the framing of the Constitution, and we are not concerned with what the Government of India has been doing or is doing at the present moment—we are concerned with what the Constitution should be. So, if Members have any grievances they may ventilate those grievances elsewhere and they should

[Mr. President]

confine their speeches here to the articles and to any amendments which they wish to move. It was open to Members to move amendments I find they have not moved them and still speeches are being made which go against the Draft Constitution as proposed by the Drafting Committee.

Shri B. Das: Sir, I am aware of my shortcomings. Even Dr Ambedkar yesterday admitted the shortcomings of the Drafting Committee. He could not face squarely and fairly the recommendations of the Drafting Committee If we had not moved any amendments it was because the Drafting Committee itself is confused and I find my Friend Janab Sa'adulla Saheb speaking quite differently in such a passionate manner. I do not know whether I am to lend my support to Dr. Ambedkar. I am not going to make any further speeches on this or on article 260. If the recommendations of a Committee of this House appointed by you is not given effect to, what hopes can provinces have? And the Finance Commission may come about five or six years hence. It is a well-known practice of British statesmen who have since left this country, that when they could not solve a problem they would appoint a committee. And if they could not solve it to appoint further sub-committees. The tradition of the Government of India or of the other House is not to remedy these difficulties....

Mr. President: It was open to the honourable Member to have moved amendments to every particular article that has been placed before the House and to every single sentence therein but he has not done so.

Shri B. Das: I feel guilty, but in one place I suggested that the Government of India within six months of this Constitution should announce in the House the basis of allocation of these resources. Somehow that could not be moved, because we have not a sympathetic atmosphere in the House. I therefore appeal to you. I have full confidence in you. I would request you to ask your experts to examine the Drafting Committee's report along with the Government of India Act, 1935, the provisions of which never came into operation. If that is the economic justice which we are going to do to the provinces, woe betide me, woe betide this House and woe betide this country. Every province will remain in an extremely backward condition, because the Government of India in the Finance Ministry will carry on its merry career. The caravan will move on even as it did in the days of Sir Basil Blackett and Sir James Grigg and thereafter. That is my sorrow and my misfortune.

Shri Brajeshwar Prasad (Bihar: General): Sir, I rise to offer a few comments on article 255. I am opposed to the provision made in the article that Parliament should determine the amount of the grants to deficit provinces. I do not see any reason why any difference should be made between the procedure adopted in articles 254 and 255. Under article 254 it was proposed that the President and not the Parliament be empowered because the prospect of the Members wrangling on the floor of the House was not considered to be proper and in consonance with the spirit of nationalism. Therefore the President was empowered and not Parliament. I do not see any reason why another procedure has been adopted in article 255 where Parliament has been empowered. If wrangling is not good under article 254, it is also not good under article 255. Therefore I am in favour of the procedure laid down in article 254.

Sir, I want to speak very frankly and without any reservation. There is another reason why I am in favour of the President and not the Parliament. The reason is that there is apprehension in our minds that the majority of the members belonging to one particular province may tilt the balance against the interests of the minority provinces or deficit provinces without paying any regard or having any consideration of the interests and the needs of the deficit provinces. Therefore I am in favour of the proposal that article 255 should be amended on the lines suggested by my honourable Friend, Rev. Nichols-Roy.

There has been much wrangling on the floor of the House that such and such province has been exploited and that proper attention has not been paid to the needs of the weaker provinces. I do not want to enter into any controversy on this point. I claim myself to be a nationa ist and as belonging to the whole of India and as such I would not support on the floor of the House any measure in favour of one province and against the interests of another province I feel that as long as men like your august self, Sir, are at the helm of affairs in the Government of India, as long as men like Rajaji, Sardar Patel, Pandit Nehru and Maulana Abul Kalam Azad are there, the interests of the provinces, which mean the interests of the people of India, are perfectly safe. Therefore, I entirely support the proposition laid down in article 255 that grants shall be made in accordance with the needs of the provinces to be determined not by Parliament but by the President.

There is another point to which I would like to draw the attention of the House. This article 255 ought to have come before the House after we had decided the constitution of the Government of the tribal areas. The implication of this article is that the tribal areas shall remain tagged on to the provinces and I am strongly opposed to this idea. I am in favour of the proposition that all tribal areas should form one centrally-administered area. I would like to refer here to the views of the Assam Government. On page 12 of the pamphlet that has been distributed to us the view of the Assam Government has been that :

> "The present artifi ial union should be ended. The backward tracts should be excluded from the province of Assam and administered by the Governor-in Council as agent of the Governor General-in-Council and at the cost of the cent al revenue. The time may soon come when that frontier will become no less, if not more, important for the defence of India than the North-West Frontier."

Coming to the views of the Simon Commission, they had expressed the view that :

> "The typical backward tract is a deficit area and no provincial legislature is likely to possess either the will or the means to devote spe ial attention to its particular requirements."

I am in favour of the idea that all tribal areas should be taken away from the boundaries of the different provinces. I do not know how far this is the proper time when I should go into the question of the constitution of the tribal areas but if you would permit me, Sir, I will give my reasons for the suggestions that I have made.

Reason No. 1 is that I am in favour of the separation of the tribal areas from the different provinces because the economic position of the provinces is deplorable. They will not be able to devote any money towards the development of the tribal people. The plight of Assam, its heart breaking tale of woe and suffering to which our attention was drawn in such a brilliant way by our honourable Friend Mr. Sa'adulla, has impressed me, and other Members who have listened to his speeches. It is a deficit province. It has not been able to raise the standard of living of the non-tribal section of the people. How can you expect it to pay attention to people coming from the Mongoloid races ?

Sir, it is not only in relation to the tribal areas of Assam but in relation to the other tribal areas as well that my remarks are equally applicable. I feel that there has been exploitation on a mass scale; we must hang down our heads in shame. The tribal people have been made a pawn on the chessboard of provincial politics, and humanity demands—I approach the problem purely from a humanist point of view—that these people must be taken away from the provinces and placed under a Commissioner General. I feel that there should be an independent and autonomous authority at the Centre under the superintendence, direction and control of a man like Thakkar Bapa who will be able to pay proper regard and attention to it and do his level best for the

[Shri Brajeshwar Prasad]

uplift of these people. I do not want that the Central Government itself should interfere in the affairs of the tribal areas. The problems are too delicate and we need the advice and help of experts, of anthropologists, of doctors and of scientists; politicians and legislators have no part to play as far as the development of tribal areas is concerned. I feel that if you separate these tribal tracts and integrate them into one whole it will give a sense of oneness to these tribal people,—a demand which has been made from time immemorial. They are the ancient sons of the soil; they must now find a place in the Government of India after the advent of Swaraj. Sir, I am quite clear in my own mind that if proper steps are not taken to bring about an improvement in the condition of this exploited mass of humanity, there will be an *unheaval*. There is already unrest. It is dangerous to be a prophet in politics but I am sure that the next general elections will reveal the nature of the problems that controls us. Let there be no complacence on that point. Sir, the proposal I have placed before the House is in perfect accord with the principles of self-determination....

Dr. P. S. Deshmukh (C.P. & Berar : General) : Sir, may I point out that this proposal is not before the House ?

Shri Brajeshwar Prasad : I asked the permission of the Chair to speak on this and I thought the silence of the Chair amounted to permission.

Mr. President : Only to this extent that the speech is confined to the financial provisions.

Shri Brajeshwar Prasad : This question is vitally linked up with the proviso that has been made. We are giving power to the provincial Governments but we have not yet decided the constitution of the tribal areas. If we pass this article we will be out of court in suggesting that the tribal areas should be separated from the provinces. I have already said that this article should have come after we decided the constitution of the tribal areas; but since this has come first I think this is the proper place where I can place my views regarding the tribal areas. Sir, the proposal I have placed before the House that all the tribal areas should be integrated into one whole and placed under an autonomous body under the Central Government is in perfect accord with the principles of self-determination.

Mr. President : We can consider that when we consider the Schedule.

Shri Brajeshwar Prasad : Very well, Sir.

An Honourable Member : I move that the question be now put.

Several Honourable Members : No. no.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I strongly protest against untimely demands being made for closure of the debate. We are now faced with extremely difficult problems which have to be solved now, which we had been postponing from time to time.

Shri Brajeshwar Prasad : Sir, I have also felt the injustice of demanding closure on vital questions.

Mr. President : I have not accepted any motion for closure that is not proper.

Mr. Naziruddin Ahmad : When there is a general desire for continuing a debate it should not be thought that Members desire to waste the time of the House. Some Members may be more fortunate than others in knowing the mind of the Drafting Committee which again appears to be a mouthpiece of some powerful body behind them. But we are not so fortunately placed.

We find that the House is frequently being faced with radical amendments absolutely unawares. And although we feel the justice of your remark that debates are sometimes pointless, I will submit that new ideas are often thrown out for the first time and Members have no time to consider and study them and send in amendments. The absence of amendments, therefore, does not mean that there are no objections. That is why Members are forced to some extent to air their grievances in a general manner and that inevitably leads to some pointless debate. The remedy is that Members should be given ample time in advance to consider new proposals and suggest amendments if they think proper.

My honourable Friend Shri Brajeshwar Prasad has raised a very important point, that articles which are related to one another logically should be put before the House in one lot. Instead of that we are being given things in a piecemeal fashion. The Drafting Committee treats us as if they are magicians and we are the spectators; they give one show at a time and keep other connected things up their sleeve. They thus commit the House to a certain view and then proceed to other things. This practice of doing things piecemeal is very inconvenient. Even the Government of India Act which was passed by experts in the British Houses of Parliament was not dealt with in this manner. I think it is better that the Drafting Committee should give us a complete picture of what they want. We can then suggest proper amendments and the debate would then be more to the point. Otherwise the Members feel helpless and stray away from the point under debate.

Sir, I submit that article 255 is connected with various other things of which one is the problem of the Tribal Areas. You cannot take a partial view of it, you have to take an over-all picture and then decide things. I think this article is a wholesome one but I desire that the hands of the President should be strengthened. I have given my view that the Centre is taking too much power to itself, but if they do take any power I should like it to be exercised by the President rather than by the Parliament which would be a body with fluctuating opinions. I agree with Dr. Ambedkar's remark yesterday that leaving the distribution of revenue among the Provinces in the hands of the Parliament would be a dangerous thing. Parliament acts according to the mood of the moment and is likely to arrive at combinations between the different Provinces to the detriment of a needy Province which may not have adequate representation in the House. I therefore agree with the amendment of Rev. Nichols Roy that, until Parliament makes any law, the President should have the power to give the necessary orders. I think there was a lacuna in article 255 which is sought to be removed by this amendment of Rev. Nichols-Roy. In fact there would be a gap between the passing of this Constitution and the enactment to be made by Parliament. There is bound to be a long interval; and Parliament again will take sufficient time to consider it, and there is also the Upper House. If there is difference of opinion between the two Houses there will be further delay. Parliament may quite reasonably take time to come to a decision on intricate matters of law and may not pass any law at all. I therefore submit that until Parliament enacts a law the President should be given power to intervene and act as he thinks just and proper. I would rather submit that the President should be allowed to act in his discretion and if his acts are satisfactory Parliament may pass the necessary law and empower the President to discharge his functions. So I submit that Rev. Nichols-Roy's amendment is extremely timely and proper and should be accepted by the House.

But how do we consider these things? Dr. Ambedkar, who is the mouthpiece of the Drafting Committee, which is again the mouthpiece of the powerful section of the House, is now and then absent. He is absent in body now. Even when he is bodily present in the House, he is absent in mind. In these circumstances this debate looks like.....

Mr. President: The honourable Member is not just in complaining about Dr. Ambedkar's absence. I think Dr. Ambedkar is present here most of the time. Even now I believe he is somewhere in the House.

Mr. Naziruddin Ahmad: Sir, he is absent in mind, at any rate. I say so with great respect. I quite sympathise with Dr. Ambedkar. He is a powerful man. He works very hard. But the pressure put upon him seems to be too much. He is now present in body but absent in mind, being engaged in conversation. It is this misfortune of ours that I was referring to.

The point is this. Unless he replies to the debate, which he does not usually do, the result will be, as it has been, that any refusal on his part to consider the amendment will be accepted by the House and amendment will be lost. So, in order to make the debate effective, I think Dr. Ambedkar should listen to it. There is of course no power in the House to compel him to do so. But some attention is due to our discussions.

Shri A. V. Thakkar (Saurashtra): Sir, I had no intention to take part in this debate, had it not been for the remarks made by the honourable Member from Bihar, Mr. Brajeshwar Prasad. The article as it stands with the modification suggested by Dr. Ambedkar is very good in its own way. Enough provision has been made in the article for supplying funds to the provinces which have large tribal populations and scheduled areas. Some provinces are rich enough and prosperous enough to take care of such groups of people and of their backward areas, while others are not. It is for this reason that the necessary provision has been made in the article. As far as it goes, it is very good. I am thankful to the House and to the Constitution-makers for making provision in the Constitution itself for that.

Now, speaking of the present welfare work, of course, it does not fall within the Constitution-making body's jurisdiction, but I may just drop a hint, as it is connected with this question, this vital question. In expectation of the provisions that are being made in the Constitution, people are expecting perhaps much. But the poor provinces which are in need of money and which are starving for money do expect something from the Central Government. Those poor provinces are Assam and Orissa. The question of Assam is a bit complicated. There are friends who have spoken on that and will yet speak on that subject. With regard to Orissa, our Friend, Shri B. Das, has spoken. But the real point about it is this: The tribal people of these areas form a very large proportion of the total population of the provinces. In Orissa they form 30 to 35 per cent of the population or I am sorry, 35 lakhs, while in Assam their population is about 24 lakhs. These provinces cannot provide any funds for the welfare of their backward people. The Constitution promises to look after their welfare. But the fulfilment of the promise will take not less than three years. I am not exaggerating the time that will be taken. For the whole thing to come into force not less than three years will be needed. Therefore, it is time that the Prime Minister and the Cabinet considered this question anxiously and very carefully and immediately provide some funds, if not for all the tribal areas in the different provinces, at least in Assam and Orissa.

My honourable Friend from Bihar proposed that all the tribal areas in India should be formed into a separate group of areas—I do not know whether it is possible to form them into one single area—and placed under the Government of India. To that proposition I may say that that is the best way of doing a disservice to these tribal people. Do you want to assimilate them or to dissimilate them? Do you want to keep them apart from the general population or do you want them to become a part of the nation? I am afraid my Friend Mr. Brajeshwar Prasad has not done the right thing in putting forth this proposition. Sir, it is our business to assimilate the tribal people. At present we have them

separated from us and residing on hill-tops and in valleys which are heavily malarial. Do you want to put them still further away from us? That is not the way for doing them a service, excuse me. The best way to serve them would be to provide enough funds for them from the Centre....

Shri Brajeshwar Prasad: May I interrupt the honourable Member to explain my view by means of an illustration? I am of opinion that the line of action that should be taken in the future should be left to their future leaders. They should be free to decide whether or not to keep these people as a separate entity.

Shri A. V. Thakkar: There is no question of separation or amalgamation. The areas are there and they will remain there. Therefore, I would request the Government of India to provide funds for the welfare of these people before this Constitution comes into force and not simply make a promise on paper in the Constitution Book.

Dr. P. S. Deshmukh: Sir, before I speak on the article, I would like to say that I endorse the remarks made by my Friend Mr. Naziruddin Ahmad so far as the consideration of the suggestions made by various Members are concerned. It is a fact which I hope it will be possible for you to take notice that very often the amendments moved and the remarks and observations made, which are not absolutely in keeping with the ideas and suggestions of the Drafting Committee, are very rarely attended to. I think he has rightly complained about the absence of Dr. Ambedkar from the House and his lack of attention to suggestions made for his consideration. We do not object to his absence, but there should be at least some arrangement.....

Shri Brajeshwar Prasad: He is now present and not absent.

Mr. President: Dr. Ambedkar has not been absent for any length of time. He has been present most of the time.

Dr. P. S. Deshmukh: I accept that, Sir. My suggestion was that if he is to be absent or occupied with certain other matters, there should be someone to pay some attention to what is urged by honourable Members of the House.

I think that the members of the Drafting Committee and the Chairman himself are so obsessed with the correctness of their own ideas that they as a rule do not think that there is anything useful in the suggestions made by the honourable Members of this House. I do not think this attitude is correct, and I can quote instances where sensible suggestions made by the honourable Members of this House and amendments urged by them have simply been brushed aside without being considered. I hope it will be possible to rectify this position because I think there are many Members of this House who wish to take this Constitution more seriously than probably many others.

Coming to the article, Sir, I support the amendment that has been moved by the honourable Rev. Nichols-Roy. Sir, my reasons for supporting this amendment are however entirely different from those advanced by many of the honourable Members who have spoken before me. Mr. Brajeshwar Prasad is going from bad to worse in expressing his lack of confidence in the future Parliament and Assemblies elected on adult franchise. (*Laughter*). He has also become increasingly autobiographical. I do not object to that, Sir. We are fortunate in having an opportunity to listen to the ideas that he holds and holds so strongly. But I support the amendment on different grounds altogether. In fact, on principle I am totally opposed to the powers, so far as the finances of the State are concerned, being given to the President individually. I agree fully with Prof. Shibban Lal Saksena in this that there should be no encroachment on the autonomy of the Parliament in all possible matters, and that was the reason

[Dr. P. S. Deshmukh]

why I contested even the embodiment of the Fundamental Rights because they take away to that extent the supremacy of the Parliament. Whenever any expenditure is charged on the revenues of India, there is an encroachment on the supremacy of the Parliament. Article 254 has been altered from what it was. If we look at the original draft of this article, we will find that the power which is now given to the President was intended to be given to the Parliament. This was how the article was intended to stand.

"Notwithstanding anything in article 253 of this Constitution, such proportion as Parliament may by law determine, of the net proceeds in each year of any export duty on jute or jute-products shall not form part of the revenues of India, etc."

Now, if Dr. Ambedkar found it necessary to alter this article and give the powers to the President, he should have logically taken care to bring about the same change so far as article 255 was concerned. I am certain, Sir, that this is merely due to lack of attention and lack of care. And what was the reason that was given by the honourable Dr. Ambedkar so far as this change in article 254 was concerned? I was not at all satisfied with it. He seems to have for the moment, any way, the prejudice which Mr. Brajeshwar Prasad is never tired of expressing *viz.*, lack of faith in the future Parliament. The only reason he gave was that he did not think it wise to leave it to the Parliament to decide these financial matters. I do not feel convinced by this only argument advanced by him.

Shri Brajeshwar Prasad: I gave two reasons. Probably my friend did not follow me.

Dr. P. S. Deshmukh: I do not propose to answer Mr. Brajeshwar Prasad to the extent he expects because that is unnecessary for my purpose. I am only referring to points which I think are relevant and should be answered. Just as I do not like the President being given any powers so far as the revenues of the State and their distribution is concerned, I also do not like any items to be charged on the revenues of India. This is a special and somewhat exceptional provision which should not be resorted to in such liberal manner, because there is a very special provision so far as charging of the revenues of India is concerned. That is governed by article 93 which we have already passed. That article lays down—

"So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament."

Whenever we have a provision whereby any expenditure is charged upon the Consolidated Fund, to that extent Parliament is deprived of any effective voice in it, and I do not think it is in the interests of the dignity or the supreme nature of the position of the Parliament to increase the items where expenditure is charged on the Consolidated Fund of India. In spite of all that, Sir, this is a provision which relates to the welfare and the proper governance of those areas where the unfortunate tribal people live. The areas are so big and the population so large that it is only right that the powers of any expenditure that we provide for in that regard should be given to the President. Even in the Act of 1935 the excluded areas and the welfare of the tribal people were in the discretion and were the special responsibility of the Governors and the Governor-General. If we agree that the condition of the tribal areas is such that they require some special assistance, then it is only proper that Dr. Ambedkar should change the provisions of article 255 so as to bring them in conformity with the provisions of article 254. He is yet to get up and say whether he accepts this amendment or not. I hope he will be in a position to say that he agrees with the contention that has been advanced. My interest in this provision for Assam is because Assam forms an important frontier of India and it has been suffering financially for a very large number of years. I am somewhat personally interested in the matter and this is because of the fact that in

my own province of the Central Provinces and Berar, we have also got tribal areas and a large tribal population. Their population in our province is 44,39,000 out of the total population of 1,96,00,000, or roughly 22.6 per cent. Sir, besides this I have always taken the utmost interest in the welfare of the backward and suppressed and oppressed communities in India and from that point of view also, I sincerely urge that the utmost possible help should be rendered to the province of Assam. I hope, therefore, that this sensible amendment which appears to have convinced the honourable Doctor long ago so far as article 254 is concerned will appeal to him now and the amendment would be accepted.

Shri Prabhu Dayal Himatsingka (West Bengal : General) : Mr. President, Sir, I beg to support the amendment moved by my honourable Friend, the honourable Rev. Nichols-Roy. That amendment, if accepted, will make this article a little more flexible. At the present moment, until Parliament by law provides, no amount can be given as grants-in-aid to any of the provinces. If the amendment suggested by him is accepted, if the Parliament does not by law provide, the President may prescribe by Order and then the provinces may be given such sums as they may be in need of. You will find, Sir, from the scheme of the provisions of this Chapter that except for income-tax, all the other collections made by the Centre are to the retained by them until under article 260 the Finance Commission makes a report and then the President can take action; but so long as that is not done, it is necessary that the President should be enabled to make some provisions for the provinces which are in need of such an aid. The other provision in this section is quite necessary and useful and in spite of the difficulties imagined by my Friend, Mr. Brajeshwar Prasad, I do not see how, even if any other provision is made for the tribal areas as suggested by him, the provision in this article can stand in the way. The two provisos make provision that if any amounts is spent by any of the Provinces for schemes of development that will be undertaken both in consultation or with the approval of the Government of India, such sums will be paid by the Government of India and similarly Assam will be paid out of the revenues of India as grants-in-aid such sums, capital and recurring, which they will be spending in excess of what they had spent in the last two years. Therefore, Sir, I do not see how these provisions here can in any way stand against or militate against any of the provisions that we may make hereafter. Therefore, I would appeal to the Drafting Committee to accept the amendment moved by the honourable Rev. Nichols-Roy as that will not in any way interfere with the scheme and at the same time will make this provision more flexible.

Shri Biswanath Das (Orissa : General) : Sir, a point has just now been made that the provisions made herein interfere with the powers of the Parliament. I join issue with my honourable Friend in this Statement. I do not see how the provision at all interferes with it, namely, with the powers of the Parliament. In the first place, an enquiry is being provided statutorily under the Constitution. The President undertakes an enquiry. In the second place, under article 255 a Bill is placed before the Parliament and the Parliament passes the Bill. Again Parliament under the statute places a self-denying ordinance upon its own self that such and such a State will be given such and such an amount. Therefore the assignment comes under the sanction accorded by the Parliament itself; and thirdly, it has also been laid down that that is for a period or term of years. All the necessary safeguards have been provided by the Drafting Committee. I therefore, plead with my honourable Friends who hold that the provision regarding grants in this article at all interferes with the powers of the Parliament. In fact I hold that the aid flows from the powers vested in Parliament and emanate with its own sanction. Therefore, there is little reason in attacking the article on that score.

[Shri Biswanath Das]

Sir, I have another complaint against this article against the use of the expressions "scheduled tribes" and "scheduled areas". Sir, special expressions have been coined and used for denoting and connoting certain ideas and certain difficulties. But experience has shown that with more connotations used, the difficulties increase. Sir, regarding the Depressed Classes, we have substituted a word "Harijan" and that has not solved either our or their difficulties. We have to move with the times. In the Draft Constitution, we have proclaimed and provided equality for all, and provisions have been made in more than one place to give effect to these declarations. That being the position, I do not see why these expressions "scheduled tribes, scheduled areas" and the rest be kept and perpetuated in the Constitution. Sir, in this connection, it may not be out of place to recall that the Imperialist Britain very cleverly put in the idea of separate electorate in 1898. Eleven years hardly passed and you find an insistence in the Minto-Morley Reforms for implementing this in the statute and hardly thirty seven years after that you get the partition of India. With this experience, I plead with my honourable Friends not to play with fire and go on coining expressions "scheduled tribes and scheduled areas". Why should we? They are all backward classes; we have got many backward classes and a special provision is being made and protection has been given in articles 28 to 40 and they are quite enough. As if these are not ample, you have made special provisions; but why not vest these powers in Parliament, and give confidence to the Parliament? People have devoted their life-long services—this country has given birth to persons like Thakkars and a galaxy of such workers who have made it a life-long devotion of theirs to serve these backward people. Why not have confidence in the good sense of the country, in the protection afforded in the Constitution and why perpetuate these expressions which I believe, Sir, lead into something deplorable as is our experience with regard to separate electorate?

Having stated so far about backward tribes and areas, I come to another portion of article 255.

I specially refer to the first clause in the proviso, which reads:

"The average excess of expenditure over the revenues during the three years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 19 of the Sixth Schedule;"

Sir, grants will have to be made on the basis of the excess expenditure incurred during the past three years. How and why? Where are the unfortunate Governments of Assam and Orissa to find excess money to be spent in these undeveloped areas? They are themselves running into deficits and their incapacity and the colossal want of these areas have been stressed by no less a person than Thakkar Bapa himself, who has devoted all his life and leasure to this great problem. Why should you rely on the past expenses when these administrations have to run without any surplus balance to be invested in these undeveloped areas? Sir, this portion of the provision seems to be unnecessary especially after provisions contained in sub-clause (b) of the proviso, namely, "the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose etc." Clear it is that nothing could be done without prior sanction.

Sir, I am thankful to the honourable House as also to the Drafting Committee and the Government for making special provision for these undeveloped areas, in this article. But, when are these benefits to commence? These benefits could accrue after five years. I understand certain amendments are coming limiting the period further down, which I welcome. They may come a little earlier. As has been stressed by the honourable and revered Thakkar Bapa,

their wants are urgent and immediate and the resources of the provinces are few and far between. Under these circumstances, I plead that certain specific provisions be made or a declaration be forthcoming from the powers-that-be that immediate provision in this regard is made.

With these words, Sir, I support the amendment of my honourable Friend, Rev. Nichols Roy because it eases the situation so far as it goes.

Shri P. S. Nataraja Pillai (Travancore State) : Sir, my only excuse for intervening in this debate at this late stage is that coming as I do from a Schedule III State, there are certain facts which I would like to place before this House.

Sir, perhaps the articles bearing on the distribution of revenues between the units and the Centre are the most important ones, perhaps the vital ones, in any Federal Constitution. As the Draft Constitution now stands, the distinction between States in Schedule I and the States in Schedule III has been done away with and we have accepted articles placing the Schedule III States on a par with the Schedule I States. So far, even on the question of financial distribution between the provinces and the Centre there have been complaints and though there have been awards, even their bickerings and friction still continue. I do quite well realise the onerous responsibility of the Centre and without adding to its financial resources the Centre will not be able to discharge it. But, at the same time, Sir, for the material and moral welfare of the people, the States have also to discharge their duties. Unless this question of division of finances is equitably settled and justice done, we cannot expect the peaceful progress of our people.

Sir, these new Unions of States created by the merger of Indian States have for a long time enjoyed a kind of right to tax the central sources of revenue, as income, excise and customs. Their financial system and their administrative structure have been developed on these sources of income. Now if all of a sudden, the central sphere is marked out, taken away and if the States are left with only the resources they can take along with other provinces, then the future of these States will be black indeed. For example, in the State from which I come, Travancore, forty per cent. of the revenue is derived from the central sources of revenue. Immediately this Constitution comes into force, that source of revenue will be lost to this unit. The administrative system of this State was developed during the course of the last one century and more, and the administration itself was modelled with these resources at their command. Now unless some provision is made for a transitional period to develop other sources of revenue to meet the exigencies of their administration, the lot of these States will be hard indeed.

This fact is not new to this House, as is evident from the Report of the Union Powers Committee, in paragraph 2 of their report dated 17th April 1947 where they say :

> "Some of the above taxes are now regulated by agreement between the Government of India and the States. We therefore think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We therefore recommend that uniformity of taxation throughout the Union may, for an agreed period of years after the establishment of the Union, not extending 15, be kept in abeyance and the incidence, levy and realisation and apportionment of the above taxes in the State units shall be subject to agreement between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation."

In pursuance of this recommendation, provision has been made in the Draft Constitution. But I feel, Sir, by the changes that have been effected and by the articles that we have adopted before, the revised Draft may not contain article 258 as drafted in the original Draft. As it is today, the States in

[Shri P. S. Nataraja Pillai]

Schedule III and Schedule I stand on a par. Unless some sources of revenue are set apart or some adjustments made for the transitional period, for ten years or so, to make the States capable of meeting their demands from their own resources, these States cannot function. Some provision must be made in the Constitution to give them adequate financial help. That help may be in the form of subventions or in the form of grants. If the Constitution is to take effect on a particular date, from that date onwards, these States will lose the right which they had been enjoying for a long time past.

I may, in this connection, beg leave to place before the House that in certain States, the administration has been steadily progressive and they have been catering to the growing needs of the people. In some States, for example, Travancore the State from which I come, compulsory education has been introduced prohibition has been enforced, and even land tax which is considered to be the principal source of taxation for provinces, a basic tax on land has been fixed and prohibitory assessment and taxation abolished. Unless some provision is made, the future of these States will be pitiable indeed. In a highly literate and politically conscious country, unless the State is able to provide for the natural and progressive development of the people and to satisfy their aspirations, there will be serious trouble, and that will not help the peaceful progress and prosperity of the whole of India. For, I feel that the strength of the chain will depend upon the strength of the links. Discontent and trouble in any area, will not be in the interests of the people of India. I earnestly submit to the House that this aspect of the question may also be considered.

Shri Rohini Kumar Chaudhuri (Assam : General) : Mr. President, Sir, honourable and responsible persons who were entrusted with the framing of the new Constitution should take into consideration the past experience so that the past defects may be remedied in the present Constitution. It is with this end in view that several Members of any province as well as from elsewhere spoke at length on the inequity and the injustice which was done under the past Constitution so far as provinces like Assam and Orissa were concerned; but Sir, I need not repeat or allude to those things in my present speech. I would only ask honourable Members of this House to remember that the justice which we had expected by an amendment of article 253 or 254—that expectation has gone in vain, and now we are left to this article 255. If 255 were worded in a different way, it might help provinces like Assam and Orissa. As it stands it even now rests with the Parliament whether any money would be allocated to any province in need of such money or not. Of course this article enables the Parliament to give sufficient grant to the provinces which are in need of it but it does not make it compulsory on the part of Parliament to make such grant. The Parliament is composed of members of different provinces, and each member is under some obligation or has given some sort of assurance that the concern of his province will be his first concern; and now therefore if in a tussle between different provinces the Parliament is not persuaded to give a grant to any particular province, or in an emergence the Parliament decides not to make any grant to any particular province and it confines the grants to richer provinces, what will be the fate of Bihar, Orissa and Assam that stand in absolute need of grant from the Centre? I would therefore ask honourable Members who are in charge of the framing of this Constitution to give special attention to this aspect of the question whether the provinces who are admittedly in need of grants can expect or would be entitled to expect that some grant should always be made to them in order to meet their needs. Under the old article 142 of the Government of India Act the Government at the Centre has always been giving some grant to the provinces, and so if it is treated as a matter of convention and if the words in 255 really mean 'shall', then I have nothing to say. But if this

article leaves the option to Parliament even not to grant a province which may be in need of that grant, then I would most respectfully protest against the present phraseology of this article.

I would also like to draw the attention of the House to the first proviso of article 225. This is the only silver lining in the *whole* chapter of finance in our Constitution. It compels the Government of India to finance certain grants for development and raising the level of administration of scheduled areas in a particular State. To that extent it is all right but when you say that it should be raised only to the level of the rest of the areas of that State, I think it practically means that you are giving nothing. In the poor state of finances in a provance like Assam where there is a large tribal area, if you only wish that it should be raised to the level of the rest of the areas of the province, it means you will do nothing because time is coming shortly, unless you do something in the matter, when the whole administration of the province of Assam shall have to collapse for want of finance and the condition in that province will deteriorate from day to day and by the time you have this article in force it will be very bad. If your ambition is only to raise the tribal areas in the province of Assam to the rest of the province, it means that your ambition is very small indeed and that you do not want to do anything. Therefore I would suggest that the ambition which you ought to have in this matter is that the areas—tribal areas—should be administered in such a way that it can be brought up not merely to the level of the rest of the province of Assam but also to the level of the areas of the Union itself. Therefore I have suggested in my amendment that these words 'of the areas of that State' should be converted to "areas of the Union". Although that amendment is not there, there is nothing to prevent us from working in that direction. Another point to which I would draw the attention of the House is as regards the sub-clause (a) of the second proviso which says :

"The average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution, etc."

I submit that the word 'average' should not be there. When the period is reduced from three to two years I think the question of average did not arise. The word 'average' might be dropped and we might say 'excess expenditure should be provided for'. The expenditure is rising every year and even the expenditure of one year will have no proportion to expenditure of next preceding year. Therefore in the interest of tribal areas, the word 'average' should have been dropped and 'any excess of expenditure found at the time this Constitution comes into force' should be substituted. If these two considerations are borne in mind *i.e.*, consideration of raising the level of the tribal areas to the ordinary level of the rest of the Union; and secondly, excess of expenditure found at the time of the Constitution coming into force, then something substantial, I am sure, will have been done in the cause of improvement of tribal areas.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, this article 25 is really one of the symbols of the solidarity of India. Those poor provinces who cannot meet their expenses and raise their level of administration to the level of the administration of other provinces stand in need of financing by the Centre, and whatever may have been the policy in the past, the policy of the present Constitution is to bring about a change in that policy and now the rule is confirmed by article 255 that these provinces will be helped by the Centre. It says :

"Such sums, as Parliament may by law provide, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States"

[Pandit Thakur Das Bhargava]

Unfortunately, I find there are three 'mays' in this article and only one 'shall' This article does not, as a matter of fact give any right to any province in need to insist and to get its rights declared by Parliament. It is in the discretion of the Parliament and the article is so worded that it leaves full discretion to Parliament to give such assistance or not.

I should have been more happy if a duty had been enjoined upon Parliament to give assistance to such of the Provinces as stood in need of it. In this connection I cannot but mention to you the case of East Punjab. The provisos to this article speak of the administration of scheduled tribes, etc., etc. But unfortunately there are some provinces, specially East Punjab, whose finances have been devastated and whose better income earning parts have been given over to Pakistan, and where, therefore, the income has now become comparatively much lower than before. In regard to such provinces, it is absolutely clear that unless the Centre goes to their aid, it will be difficult for them to arrange for an administration which will be on a level with those in other provinces. In regard to such provinces it is necessary that the President should be authorised to give such aid as the Cabinet thinks justifiable. To this end, and probably for other purposes also, the Rev. Nichols Roy has brought in his amendment and I support that amendment. Before such laws are made by Parliament, there is no reason why the President should not be empowered to do the right thing when the occasion demands it. I therefore, support this amendment, and request that it may be passed by the House.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President, Sir, first of all, I want to draw the attention of Dr. Ambedkar to one fact connected with this article. In this article, he has said "....Such sums, as Parliament may by law provide, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States". But, Sir, I had moved a similar amendment, in connection with articles 251 and 254 in which I had only desired that the allotment should be made by Parliament by law. But the argument raised against it was that there will be unnecessary wrangles in Parliament for allotments to the provinces. But I find that in the present case, he has stated "that Parliament may by law provide.... etc." May I know whether there will not be wrangles in Parliament for bigger allotments to the provinces? Either he is illogical, or he has other purposes which he wants to hide. Or it may be that he made a mistake then in connection with my amendment, when he objected to the words "Parliament by law may." Anyway, I am glad he has agreed to these words in the present article.

Sir, I support the amendment moved by the Rev. Nichols Roy, and I am thankful to Mr. Sa'adulla for his long and illuminating speech in which he gave us a very lucid idea of things in Assam. I personally also feel that this House has not shown its concerns for Assam to the extent that it deserves. Assam is our frontier province, and the last war has shown its importance. But we are literally starving it. Assam gives us at least Rs. 12 crores by way of export duty on tea and petroleum alone, leaving aside all the other things, and we take every pie of it and give them only 30 lakhs. And yet we expect that Assam, our eastern frontier should be the bulwark of our defence. I think that the case made out by our Assam friends is a steel case and it must be considered by the House. This amendment, in fact, only enables the President that this relief to Assam should be given immediately. Otherwise "Parliament by law" will take some time, and they want that as soon as this Constitution is passed, the President, can by order allot to them some share by which they will be able to meet the recurring deficits and

also carry out some of their development schemes. I have been to Assam on many occasions, in connection with labour organisation of railway workers, of coalmines and petrol workers there, and I know how important this area is. It is a vast expanse of probably 50,000 sq. miles with a population of only 75 lakhs. The tribal people form a third of the population. Here we have provided special sums for their development. But I feel that we must have a five-year plan to bring these tribal areas into line with the rest of the population. They have been neglected for many generations. Thakkar Bapa who has spent his whole life in serving these people drew our attention to the plight of these people, both in Orissa and in Assam, and he is happy that we are providing in Constitution special sums for them. I hope we shall not wait for law to be made by Parliament in this respect. Allotments should be made from the funds of the Union for development of these areas and these tribal people so that they may take their proper place in our free country and be a bulwark of our freedom and the guardians of the eastern frontiers of India.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I can at once say that I am prepared to accept the amendment moved by my friend Mr. Nichols Roy. The draft of this article does seem to give the impression that until Parliament determines each year what the grants are to be, the President will have no power to do so. That certainly is not the intention of the Drafting Committee. The Drafting Committee would like the President to exercise his powers of making grants under article 255 even before Parliament has made any determination of this matter. And in order to make this position quite clear, I am, as I said before, prepared to accept the amendment moved by Mr. Nichols Roy. I would, however, at this stage, like to say that I have not yet had sufficient time to examine the exact language he has put in his amendment; and therefore, subject to the reservation that the Drafting Committee would have the liberty to change the language in order to suit the text as it stands in article 255, I am prepared to accept his amendment.

Mr. President : I will now put the amendments to vote. The first is amendment No. 84 of Dr. Ambedkar.

The question is :

"That in article 255, for the words 'revenues of India', wherever they occur, the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : Then comes amendment No. 85, also of Dr. Ambedkar.

The question is :

"That in the first proviso to article 255, the words and figures 'for the time being specified in Part I of the First Schedule' be omitted."

The amendment was adopted.

Mr. President : Then I put amendment No. 86.

The question is :

"That in clause (a) of the second proviso to article 255, for the words 'three years' the words 'two years' be substituted."

The amendment was adopted.

Mr. President : And then I put Rev. Nichols Roy's amendment.

[Mr. President]

The question is:

"That in article 255,—

(a) after the words 'Parliament may by law provide' the word 'or until Parliament thus provides, as may be prescribed by the President' be inserted

(b) after the words 'Parliament may determine' the words 'or until Parliament determines as the President may determine' be inserted; and

(c) the following Explanation be added at the end of the article :—

"Explanation.—The word "prescribed" has the same meaning as in article 251 (4) (b)"

The amendment was adopted.

Mr. President: Then I put the article, as amended.

The question is:

"That article 255, as amended, stand part of the Constitution"

The motion was adopted.

Article 255, as amended, was added to the Constitution

Article 256

Mr. President: We now take up article 256. Amendment No 2925 by Dr. Ambedkar, in Vol. II, of the printed list.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for clause (1) of article 256 the following clause be substituted :—

'(1) Notwithstanding anything in article 217 of this Constitution, no law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein, in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income'"

Sir, it is proposed in a subsequent article to permit local authorities to levy certain taxes on professions, trades callings and employments up to a certain limit It is feared that such a tax, if levied by the State, might be called in question on the ground that it amounts to a tax on income and being within the exclusive authority of the Centre. It is to prevent any such challenge to any law made for the purposes mentioned in sub-clause (1) that this provision has been deemed by the Drafting Committee to be very necessary, and accordingly I move this amendment.

Mr. President: There is an amendment to this amendment of which notice has been given by Mr. Sidhva.

Shri R. K. Sidhva (C.P. & Berar : General) : I do not wish to move it.

Mr. President: Then there are amendments Nos. 2926 and 2927 on the Printed List, of Giani Gurmukh Singh Musafir. I see he is not moving them. Then No 2928 standing in the name of Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man (East Punjab : Sikh) : I am not moving it.

Mr. President: Then amendment No. 203, Mr. Sidhva.

Shri R. K. Sidhva: I do not wish to move it.

Mr. President: Then Nos. 89 and 90 in the name of Mr. P. D. Himatsingka. He is not moving them. No. 91 in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I do not wish to move it.

Mr. President: Amendment No. 92, Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That in clause (2) of article 256, for the words 'two hundred and fifty rupees' in the two places where they occur, the words 'one per cent. of their annual income' or 'one thousand rupees' be substituted."

If that is done, the clause will run as follows:—

'(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed one per cent. of their annual income or one thousand rupees per annum:

Provided that, if in the financial year immediately preceding the commencement of this Constitution there was in force in any State or any such municipality, board or authority, a tax on professions, trades, callings or employments, the rate or the maximum rate of which exceeded one per cent. of their annual income or one thousand rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.'

Sir, I only want an increase in the amount. In fact, the amendment which Dr. Ambedkar has moved makes it legal for local boards, district boards and municipalities to levy taxes on the income of the inhabitants in their areas. In fact I would have very much wished that this clause (2) had been deleted. This was an amendment which no less a person than the Premier of my Province, the Honourable Pandit Govind Ballabh Pant had also given notice of. What his amendment intended and what I also want to impress upon the House is that our local bodies are practically starved of finances. We have provided for finances for the Central Government, we are trying to allocate taxes between the Provinces and the Centre, but the municipalities, the local boards and all these local bodies have practically no finances. I come from the District of Gorakhpur which has recently been divided into two parts but still it has a population of about 22 lakhs. The annual income of the District Board there is only Rs. 11 lakhs which means about eight annas per individual of the population. Do you expect that any district board with such an income can do anything for the welfare of that large mass of population? I can quite understand the Centre being strong and having finances, the Provinces being strong and having finances, but ultimately all nation-building tasks will have to be done by local authorities. You may say you can lay out railways and roads, you can also provide Universities, but ultimately it is the municipalities and local boards which have to look to the sanitation of the areas, to the primary education in their areas and to roads. Do you imagine that with a sum of Rs. 11 lakhs the District Board of Gorakhpur can meet the needs of that big District? What has been my experience in my district must also be the experience of all of you in your districts. I therefore think that if you limit this source of income of taxation only up to a limit of Rs. 250, then you really close one important avenue to the District Board. In my district there are 23 sugar mills, and they pay huge dividends—in fact Rs. 30 crores was the annual profit of the sugar factories in United Provinces and Bihar last year. Cannot the District Board legitimately ask them to pay a few thousand rupees? But by this you make it impossible for the District Board to levy any tax on the sugar mills although the sugar mills use their roads and the Board have to spend money on those roads. Yet we cannot tax these factories beyond Rs. 250. I have only demanded one per cent. of their income or Rs. 1,000. I have taken care to put both the things because it is quite possible that in the case of individuals it would not be possible to find out their income. We would not have all the powers of the income-tax authorities to go and find out the incomes of individuals. In the case of factories and corporations like sugar mills, they publish their balance sheets and we can know their income and tax them to the extent of one per cent. In other cases, you can limit the amount to Rs. 1,000. This will increase the revenues of

[Prof. Shibban Lal Saksena]

the local bodies substantially. In fact at present because we cannot tax the rich properly we are forced to tax the poor people heavily. Even the man with a betel shop is taxed Rs. 5 or 10, which he cannot afford to pay. If we can tax the sugar mills and other factories as also other millowners to the extent of at least 1 per cent of their annual income, I am sure these poor people will be spared that tax, which is now very heavy on them. I therefore think that this limit of Rs. 250 is a proposition which should not be laid down in the Constitution. If necessary, it can be left to the Parliament, to which we have left many other things. Here you want to fix in the Constitution that no local board shall levy a tax over Rs. 250 on income. I would therefore request the Drafting Committee to alter it as I have suggested or omit it altogether, so that the local board may be free to tax on incomes according to the needs of their areas. While we are spending crores of rupees under the central budget, local boards are starved for very small sums. They are the bodies who really want the money so that they can give proper attention to the people in their areas, give them better roads and schools and other amenities which they very much need. All our schemes are ultimately calculated to provide amenities to the villagers but if we deny the revenue to the district and local boards who are responsible for satisfying the needs of these areas, the people of those areas will suffer. I think that the sources of revenue of the district boards, municipalities and local boards must not be limited in this manner in the Constitution. This is a very retrograde provision in the Constitution and must be amended.

Shri B. M. Gupte (Bombay : General) : Sir, I support this article as amended by the proposed amendment of Dr. Ambedkar and I congratulate the Drafting Committee on having redressed a legitimate grievance of the local bodies. The Government of India imposed a limit of a maximum of Rs. 50 only for profession tax and that practically rendered the source valueless. In the rural areas this source of revenue was not fruitful, as there agriculture is the predominant occupation and there are hardly any professions which can be taxed. The municipalities could have usefully imposed this tax but this maximum of Rs. 50 practically did not make it worthwhile for them to go into the expenses of collecting such petty sums. Naturally therefore this source was practically rendered useless for them and I therefore congratulate the Drafting Committee for having redressed this grievance of the local bodies.

The financial condition of the local bodies is already very parlous. Their financial resources are far too inadequate compared to the services that are expected from them. Their sources of taxation are already being encroached upon by the Central Government and the provincial Governments. In a democratic State the efficiency of the local bodies which cater to the day to day needs of the ordinary citizen is a matter of very great importance. Therefore anything calculated to improve the financial resources and hence the efficiency of the local bodies is certainly to be commended.

I sympathise with Prof. Shibban Lal Saksena's amendment but we cannot go so far. We must maintain a balance between the needs of the Centre and the local bodies and in that light I think Rs. 250 is a substantial increase over Rs. 50 and Rs. 1,000 would be quite disproportionate. Though anything calculated to improve the efficiency and financial resources of local bodies is commendable, still I think that Rs. 1,000 would be a very high limit. Therefore I support the article as amended by Dr. Ambedkar.

Shri R. K. Sidhva : Sir, I am reluctantly obliged to accept this article, although it is an improvement upon the previous one as suggested by the Drafting Committee. Why I say that I am reluctantly compelled to accept the article is

because I do feel that local bodies in this country have not been given that place which is due to them in the Constitution. The local bodies are an epitome of the national government and in this Constitution we have tried to build it from the top leaving the bottom to take care of itself. That attitude, I can assure you, will not bring happiness and prosperity to the masses of this country. Local bodies have till now been left at the mercy of the provinces and although in this clause and some others hereafter mention has been made about the finances of the local bodies, their relation and their adjustment are entirely to be left to the provincial governments, with the result that the local bodies are suffering immensely financially and the consequence is that the villages, small towns and even the big cities suffer today. These are the places where we really should begin if we really want to bring in any kind of amenities and prosperity to the people, to whom we have pledged to better their position. But in this Constitution I am sorry to say that kind of provision has not been made.

Under the 1935 Act a good deal of injustice was done by the British Government to the local bodies and I am glad that this limit of Rs. 50 has been raised to Rs. 250. I would have preferred that this limit had been graded and brought up to Rs. 2,500. That would have brought revenue to the local bodies from persons who can afford to pay and would have gone for the benefit of the needy and poor people. In October last year there was a conference called by the Health Ministry of all provincial Ministers of Local Self Government. They unanimously stated that the local bodies were suffering for want of funds and their finances should be improved if they are to do any good to the people. They appointed a Committee called the Local Finances Committee which met last month in Delhi and sent their interim recommendations to the Drafting Committee so that their case may not go by default. The Committee considers this limit of Rs. 250 as being very low and they would like to raise it to a thousand rupees per annum. I do not know what consideration was given to this recommendation. This was a unanimous decision of the Ministers of the provincial Governments but it is not considered at all, and the Drafting Committee imposes their own decision which will benefit no one. The U.P. Government also had a committee called the Local Bodies Grant-in-Aid, Committee who also sent an interim report to the Drafting Committee in which they say:

> "Clause (ii) mentions a special tax on trades and callings as compared with clause (iii) which is a general tax. In regard to the latter, the powers of our municipal boards were further curtailed by the Professions Tax Limitation Act, 1941, which provides that notwithstanding the provisions of any law for the time being in force, any taxes payable in respect of any one person to a province or any local authority by way of tax on professions, trades, callings or employments shall from and after April 1, 1942, cease to be levied to the extent to which such taxes exceed fifty rupees per annum. * * * Thus its exclusion from the restrictions of the Professions Tax Limitation Act has been of little practical utility or benefit. The tax under section 128(1) (iii) of the Municipalities Act was really a profitable source of income, and therefore its limitation to a low maximum of Rs. 50 per annum is not only objectionable in principle, as it violates against one of the chief canons of taxation requiring assessment on each individual in proportion to his ability to pay to ensure an equitable distribution between rich and poor, but has also affected adversely the financial position of several municipalities."

I, therefore, contend that this provision of the Drafting Committee will not meet the requirements of the local bodies. In the Calcutta Corporation they are levying a licence fee of Rs. 500 for certain professions which they are allowed to do under the Government of India Act, 1935. Under this provision they will be deprived of that income. The Administrative Officer of the Calcutta Corporation cites the instance of Joint Stock Companies which as managing agents control more than half a dozen large industrial concerns and may not yet be taxed more than Rs. 500 while the burden of taxation falls more heavily on the poorer sections of professional and business people. The

[Shri R. K. Sidhva]

Corporation wants the upper limit to be raised to Rs. 2,500 while the West Bengal Municipal Association suggests Rs. 1,500. I therefore feel that while the Drafting Committee has made very little improvement on their previous draft they were not correct in rejecting a graded scale so that local bodies get a large amount which can be used for constructive work. From my own experience I may say that they should not be treated in this way because the provincial Governments are always stingy in the matter of granting funds for these bodies and unless we in this Constitution make better provision for them the lot of people living in those areas will not improve. I do not know why the Drafting Committee were so stingy when the provincial Governments who have to administer these local bodies thought a larger amount was necessary.

Sir, I support this article subject to above remarks.

Shri Prabhudayal Himatsingka: Sir, I oppose the amendment of Prof Saksena. I had an amendment myself but I did not move it as it was not discussed in the party. This article is an exception to the general rule that taxes on income are to be imposed by the Centre only. It is an exception for the benefit of the local bodies. But if you see the article you will find that taxes can be imposed on professions, trades, callings and employment for the benefit of the State or a municipality, district board, local board, etc. So that provincial Governments can impose this tax and local bodies can also do it. Whether a man has an income or not from some trade, profession or calling; he must be made to pay Rs. 250 to the State and also taxed by the local body in whose jurisdiction the trade or profession is carried on. The man who has an income which is small or has no income at all should not be made to pay any tax. In the Government of India Act there was a limitation that the tax should not exceed Rs. 50 and the provincial Governments have passed Acts levying Rs. 30 on all persons making an income by any profession, trade or calling. The result is that a person who has to pay Rs. 30 as income-tax has to pay a like sum to the provincial Government. On the basis of this article he can be made to pay Rs. 250 to the municipality and Rs. 250 to the provincial Government apart from what he has to pay to the Centre in the shape of income-tax. Here, wherever any person is carrying on any trade or profession, whether he is making an income or not, he can be compelled to pay tax. Therefore the salutary provision of limiting it to Rs. 50 was very good. The present suggestion that it can be made 1 per cent. of the income or Rs. 1,000 is such that it cannot be supported under any circumstances. My friend forgets that simply because a man carries on a profession he may not be in a position to pay even Rs. 50 not to speak of Rs. 1,000. Therefore I wish that the Drafting Committee which had amendment No. 91 in its name had moved it limiting it to Rs. 100. But as they have not moved it, they should agree to Rs. 250.

Chaudhari Ranbir Singh (East Punjab: General): *[Mr. President, I am reluctant to support this article because I hold that the amendment moved by my Friend Mr. Shibban Lal Saksena to this article is based on a principle and its rejection would mean injustice to the general public. These days generally the people of meagre income have to pay Profession Tax. While the poor Harijans have to pay twenty to twenty-four rupees on account of Profession Tax, though their capacity does not permit them to pay even two or three rupees, the rich industrialists and factory owners, who are capable of paying far more than the Harijans, do not pay their full share. The maximum limit of Profession Tax prescribed under this article is Rs. 250. It would operate inequitably against the poor people. As an agriculturist I would like to state

*[ ] Translation of Hindustani speech.

before the House that apart from the Land Revenue, the other taxes that are realised from us in the Punjab by District Boards and other Local bodies come to six pies in the rupee. Now attempts are being made there to raise this rate further. Well, the income of rupees two thousand a year goes tax free but not even a bigha of land is exempt from Land Revenue. I am utterly unable to understand the logic behind this proposition. Certainly this operates very disadvantageously against the farmers. Irrespective of the fact whether they have economic holding or not, land revenue is charged from them, and in addition to that the Profession Tax at the rate of six pies a rupee is also realised from them. I fail to understand why this principle of additional taxation is not applied in respect of rich people. Limiting of Profession Tax to an amount of Rs. 250 a year would cause a considerable loss to the income of District Boards and other Local bodies and in that case they have either to impose further taxes on the poor section of the population or they have to curtail the undertakings beneficial to the poor. If we mean to do good to the poor and to establish hospitals and other institutions for their benefit we have to tax the rich people. You will be in a position to do so only when you accept the amendment moved by Prof. Shibban Lal Saksena. As compared to the taxes that agriculturists have to pay, this maximum limit of Profession Tax is not much. I may again add that keeping in view the principles on which the land revenue is charged, the limit for the Profession Tax is very negligible because the agriculturists have to pay far more than one per cent. on their incomes. I would, therefore submit that the amendment to this article moved by Mr. Shibban Lal Saksena should be adopted.]

Babu Ramnarayan Singh (Bihar : General) : Mr. President, I partly agree with you when you object to the speeches made in criticism of Government. But, Sir, it is very difficult to forget the experience specially when it is a bitter one. Sir, we are making the Constitution. I was under the impression that all the powers of the country will be directly transferred to the people in the villages. Now, what do I find ? All the powers are concentrated in the Centre and some powers are allowed to trickle down to the provinces. Now we have to see what the provinces have done and will do. Some amendments have been given notice of by Prof. Saksena. I do not understand why this limitation of Rs. 250 is imposed on the levy that can be made by a local body. There is no limitation on the taxes that may be levied by the Central and provincial Governments. They may levy lakhs and lakhs. This is most objectionable.

Sir, when I said that all the power should be given to the people in the villages I did not mean that there ought to be no provincial or Central Government. Let there be Central and provincial Governments. But let them not govern the people. Let them help and organise the people and advise the people. Why should even in matters of taxation the people in the villages and districts are not to have a hand ? If you go to the mofussil you will see the governmental activities there. If there is a very well-kept road it is a P.W.D. road of the Centre or of the Province. All roads constructed by local bodies are in a very bad condition. This is so because all the money is in the hands of the Central or provincial Government. It is all going the wrong way. All the money should belong to the local bodies. As it is they are getting some funds by way of mercy from the local Government which in turn gets something from the Central Government. I do not think this is right. This process should be reversed. Everything should belong to the villagers. The provincial Government should get contributions from the local bodies and the Central Government should get contribution from the provincial Governments. Sir, I am not going to say much on the subject. I would only say that the amendment of my Friend, Mr. Saksena, is a very reasonable one. With these words I strongly support and I appeal to the House to accept his amendment.

Srimati Purnima Banerji (United Provinces : General) : Mr. President, Sir, I am one and all of us are with the amendment moved by Dr. Ambedkar to empower local bodies to levy professional taxes. We have also with another amendment moved by Prof. Shibban Lal Saksena saying that the upper limit of the tax collected should not be fixed at Rs. 250 but should vary according to the income of the person concerned. As you know, in our province of the U.P., we have by a recent Act established about twenty-two thousand Panchayats all over the province. To these Panchayats such rights and functions have been given which, if properly exercised, would really bring Swaraj to the people. As you know, our country is big and wide and medical amenities and educational facilities are all very sadly lacking. If these Panchayats or local bodies are to function properly, they must have adequate finances at their command. We have given them enough powers and we hope that, as time passes on, they will lay down roads and will foster such industries as will add to the prosperity of the villages and the localities. We fear that all these nation-building activities which are now allotted to them will not be able to reach their fruition unless we have enough finances. Therefore we agree with the amendment now placed before the House that the finances of the local bodies should draw some profit from the trades and professions in the area concerned and this income should bear some proportion to the income of the persons paying the tax. As I said, we hope that these Panchayats and local bodies will lay down roads and will pay their fullest attention to the development of such industries as will add to the general prosperity of the villages. With these words, I support the amendment moved by Dr. Ambedkar and also the amendment moved by my Friend, Mr. Shibban Lal Saksena, saying that the limit of Rs. 250 should not be fixed but rather it should be stated in this way that it should be at least one per cent. of the income of the person taxed.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, those friends who want to increase the maximum limit from Rs. 250 to one per cent. of the income, I am afraid, have entirely misunderstood the needs of the Centre and the manner in which whatever the Centre collects by way of income-tax is distributed to the provinces. Let us first of all see what the Centre gets and what proportion is given away to the provinces. A large proportion of the income-tax is distributed to the provinces. Only a fraction is retained by the Centre. Another source of revenue to the Centre is excise and even there the Centre is only a collecting agency for purposes of uniformity. As in the case of income-tax a large proportion of it is to be given away to the provinces on principles hereafter to be laid down by the Finance Commission. The only thing that the Centre collects and retains for itself is the customs revenue. Therefore the Centre will be completely starved if we go on allocating various sources of revenues to the provinces. That is what our friends are attempting to do. The article which has now been moved by my honourable Friend, Dr. Ambedkar is a concession. Income-tax is a source of revenue to the Centre. The Profession Tax is an invasion of the income-tax field. There is already a provision in the present Government of India Act of 1935: Section 142-A fixes the maximum limit at fifty rupees. This profession tax is an invasion into a source of revenue for the Centre. From its collection of income-tax, the Centre gives grants-in-aid to the provinces and the provinces in turn give grants-in-aid to the municipalities, corporations and various other local bodies. This is not as if this professional tax is the only source of revenue to the local bodies and village panchayats. In the villages there is no professional tax. Agriculture is the only profession there. There is no justification for increasing the maximum from Rs. 250 to one per cent. of the income especially considering the rise in the cost of living index, which is now nearly three time the pre-war figure. The suggestion of my Friend, Mr. Shibban Lal Saksena, is that the maximum, instead of being Rs. 250, should be one per cent. If Rs. 250 is the maximum, then the income on the basis of

one per cent. should be Rs. 25,000. Is there a chance of any one having an income of more than Rs. 25,000 in an ordinary village? Therefore this suggestion is not going to be useful so far as the villages are concerned. So far as the municipalities are concerned, it is only from the provinces that money could flow into the municipalities as it would flow from the Centre to the provinces. This could only be from the allocations made from the income-tax collected by the Centre. Under these circumstances, Rs. 250 which is now the upper limit is sufficient and anything more than that would seriously interfere with the collection of income-tax by the Centre. I am therefore constrained to oppose the amendment of my Friend, Mr. Shibban Lal Saksena, and support the article as moved.

The Honourable Dr. B. R. Ambedkar: Sir, I do not think that any very detailed reply is called for. The position is simply this, that in every Constitution the taxing resources of a State are generally distributed between the Centre and the States. The question of distributing the resources between the States and the local authorities is left to be done by law made by the State, because the local authority is purely a creation of the State. It has no plenary jurisdiction; it is created for certain purposes; it can be wound up by the State if those purposes are not properly carried out. This article, which I am proposing, is really an exception to the general rule that there ought to be no provision in a Constitution dealing with the financial resources of what are called local authorities which are subordinate to the State. But having regard to the fact that there are at present certain local authorities and their administration is dependent upon certain taxes which they have been levying and although those taxes have been contrary to the spirit of the Income-tax law, the Drafting Committee, having taken into consideration the existing circumstances, is prepared to allow the existing state of affairs to continue. In fact exception was taken to the limit fixed by the Expert Committee which was Rs. 250. The proposal was that it ought to be brought down to Rs. 150. The Drafting Committee on reconsideration decided that that need not be done and under the present state of affairs may be continued up to the limit and within the scope that it occupies today. I therefore say that this is a pure exception, and on principle I am definitely opposed to it and I am therefore not prepared to accept any amendment that may have been moved by any honourable Friend.

Mr. President: The question is:

"That for amendment No 91 above, the following be substituted:—

"That in clause (2) of article 256, for the words 'two hundred and fifty rupees' in the two places where they occur, the words 'one per cent. of their annual income' or 'one thousand rupees' be substituted.'"

The amendment was negatived.

Mr. President: The question is:

"That for clause (1) of article 256, the following clause be substituted:—

'(1) Notwithstanding anything in article 217 of this Constitution, no law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district Board, local board or other local authority therein, in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.'"

The amendment was adopted.

Mr. President: The question is:

"That article 256, as amended, stand part of the Constitution."

The motion was adopted.

Article 256 as amended, was added to the Constitution.

Article 257

(Amendment No. 2929 was not moved)

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That the words 'by law' be added at the end of article 257."

It is a little inadvertent omission.

Mr. President : There are two other amendments which do not arise after the amendment of Dr. Ambedkar.

The question is :

"That the words 'by law' be added at the end of article 257."

The amendment was adopted.

Mr. President : The question is :

"That article 257, as amended, stand part of the Constitution."

The motion was adopted.

Article 257 as amended, was added to the Constitution.

New Article 258-A

Mr. President : We will leave out 258 for the present and we shall take up article 259. There is one new article 258-A of which notice has been given by Shri Himatsingka, Patil and Barman. Is it to be moved?

Shri Prabhu Dayal Himatsingka : No, Sir.

(Amendments Nos. 2938 and 2939 were not moved.)

Article 259

(Amendment No. 2940 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (1) of article 259, for the word 'Auditor-General' the words 'Comptroller and Auditor-General' be substituted."

This is done in order to bring the same nomenclature in article 259 which has been given to this officer in the previous article this Assembly has passed.

Mr. President : The question is :

"That in clause (1) of article 259, for the word 'Auditor-General' the words 'Comptroller and Auditor-General' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 259, as amended, stand part of the Constitution."

The motion was adopted.

Article 259, as amended, was added to the Constitution.

Article 260

Mr. President: Then we go to article 260.

The Honourable Dr. B. R. Ambedkar: Sir, I move.

"That for amendment No. 2943 of the List of Amendments, the following be substituted:—

That for clause (1) of article 260, the following clause be substituted :—

'(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.' "

Sir, the point of this amendment is this. Originally, as the article stood, it stated that the Commission shall be appointed at the end of five years. It is felt that it is necessary to permit the President to appoint the Commission much earlier and consequently we are now providing that it should be appointed within two years from the commencement of the Constitution.

Mr. President: You may move amendment No. 96 also.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That in sub-clause (b) of clause (3) of article 260, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

This is a formal one.

Mr. President: There are amendments to this article, which have been printed in the Book.

(Amendments Nos. 2941, 2942, 2944, 2945, 2946, 2947, 2948, 204, 205, 97 and 98 were not moved.)

Mr. President: Amendment No. 115. Pandit Kunzru.

(Pandit Hirday Nath Kunzru was not in the House.)

He told me that he would like to move this amendment. I would allow any other Member if he wishes to move it.

(At this stage Pandit Hirday Nath Kunzru came in.)

Pandit Hirday Nath Kunzru: (United Provinces : General) : Mr. President I beg to move :

"That with reference to amendment No. 95 of List I (Third Week) of Amendments to Amendments, for sub-clause (a) of clause (3) of article 260, the following sub-clauses be substituted :—

'(a) the distribution between the Union and the States of the net proceeds of taxes on income which are to be divided initially between them under this Chapter;

(aa) the allocation between the States of the respective shares of the net proceeds of taxes which are to be, or may be, divided between the Union and the States under this Chapter;' "

Sir, the sub-clause to which I have moved the amendment runs as follows :

"(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;".

This sub-clause which is sub-clause (a) of clause (3) of article 260 provides that it will be the duty of the Finance Commission not merely to distribute that part of the taxes divisible between the Central Government and the provinces which belongs to the provinces among the provinces themselves, but also that the Commission should lay down how these proceeds are to be distributed, that is the proceeds of what I may call the divisible taxes, between the Centre and the provinces. My amendment, if accepted, will leave the position as it is so far as

[Pandit Hirday Nath Kunzru]

the taxes on income are concerned, but it will change the position with regard to the other divisible taxes which, I suppose, will be excise duties. I have left the position with regard to taxes on income as it is because article 251 lays down that after the Finance Commission has been appointed, the President will prescribe the percentage of the net proceeds of the taxes on income to be assigned to the provinces after consultation with the Finance Commission when it is appointed. I confess that I did not fully realise when this article was under discussion what the effect of the definition of the word 'prescribed' laid down there would be on article 260. I discovered this only when I drafted with the help of the Draftsman and Joint Secretary of the Constituent Assembly the amendment that I have just moved. I have however sought to impose one limitation even in that respect, and that limitation is this. While the President may consult the Finance Commission initially with regard to the respective shares of the net proceeds of the taxes on income calculated in the manner laid down in article 251, to be assigned to the Centre and the provinces, the Commission should not have the power to review these percentages later on its own initiative. If we leave sub-clause (3) of article 260 as it is, then, it will be the duty of the Commission to make recommendations to the President as regards the distribution of the proceeds of the divisible taxes between the Centre and the provinces and it will be able to review any percentages that may be initially fixed. The purpose of my amendment is to limit the power of the Finance Commission in this respect to the initial fixation of the percentage. Once the shares of the Centre and the provinces have been fixed, I suggest that the Finance Commission should have nothing more to do with that matter unless the matter is referred to it by the President. Should the provinces stand in need of more money later on, should their recurring expenditure increase to such an extent as to need, on prudent financial and economic grounds, not large grants but a definite share in the proceeds of certain taxes, then the matter ought to be considered by the Government of India in consultation with the provinces. I shall not discuss this question at length because I dealt with the principle underlying this yesterday; but I venture to repeat that my opinion on this subject has not been altered in the slightest degree by the observations made by Dr. Ambedkar yesterday.

Now I come to the second part of my amendment. If sub-clause (a) of clause (3) of article 260 is left as it is, then the Finance Commission will be able to say how much of the net proceeds of the Union duties of excise should be kept by the Government of India and how much should be assigned to the provinces. Now the article that relates to the imposition of Union duties of excise and the distribution of their proceeds between the Centre and the provinces is article 253. There is nothing in the language of that article to compel the President to consult the Finance Commission before coming to a decision on this subject. If the second part of my amendment is accepted, then the power of the President to consult the Commission in this respect will remain absolutely untrammelled. Honourable Members will thus see that if my amendment is accepted, while the provinces will lose nothing, the Centre which will have to bear the ultimate responsibility for the protection of the highest interests of the country and for its defence will be in a position to discharge those responsibilities adequately even in emergencies. The framers of the Constitution realised that the position as contemplated here might be found to be unsatisfactory later on when the Central Government was confronted with an exceptional situation and for this reason, I suppose, included article 277 in the Draft Constitution which empowers the Government of India in an emergency to suspend all or any of the provisions of articles 249 and 259 of this Constitution. This is obviously a very sweeping provision. The representatives of the provinces will easily see how dangerous this article is. They will be completely at the mercy of the Government of India

when, say, a war breaks out. This article shows that the framers of the Constitution feel that under the provisions of article.....

The Honourable Dr. B. R. Ambedkar : It has not been passed yet.

Pandit Hirday Nath Kunzru : That is why I am referring to it now otherwise there would have been no point in referring to it

The Honourable Dr. B. R. Ambedkar : I have a right to withdraw it.

Pandit Hirday Nath Kunzru : Dr. Ambedkar says he has a right to withdraw it. I hope he will be wise enough to withdraw it.

The Honourable Dr. B. R. Ambedkar : No, it might be modified.

Pandit Hirday Nath Kunzru : But I understand that its purpose is to enable the Central Government to resume the whole or a part of that portion of the money that might generously have been made over to the provinces. Now the Government of India Act, 1935, also envisaged a position when the Central Government might be unable to make over to the provinces the prescribed share of the taxes on income and authorised the Governor-General to delay the process of transferring to the provinces their share of the net proceeds of these taxes. But this article 277 goes far beyond that. I suggest, that in order to remove the possibility in view of which article 277 has been inserted in the Constitution, the Finance Commission should have nothing to do with the allocation of the shares of the Central Government and the Provincial Governments in the proceeds of any tax. This is a matter that should be decided by the Central Government, as I have already said, in consultation with the provinces. If this is done I am sure that the Central Government will be able to discharge their supreme responsibility and also to justify their position to the provinces. No situation will in that case arise which will compel the Central Government practically to annul the provisions of all the financial articles that we have so far discussed.

Sir, there is a Finance Commission in Australia. It has been functioning for sixteen years, but its duty is to examine the demands of the provinces and scrutinise their budgets and then recommend how much money should be given to them either in order to make up for their dificits or for any other purpose. It has, so far as I know, not been authorised to say to the Commonwealth Government that it should give a certain proportion of the proceeds of a certain tax to the States. In Canada very recently an attempt was made to induce the provinces to agree to an arrangement like that prevailing in Australia During the war the Central Government persuaded the provinces to vacate the income-tax field and occupied its completely itself. Under the Canadian Constitution the provinces can levy taxes on income for purely provincial purposes. But the Dominion Government has levied such high taxes that there is hardly any possibility of the provincial Governments re-entering the field of income-tax The Dominion Government suggested that the Provinces should agree to the appointment of a Finance Commission which would recommend periodical grants to the Provinces, in consideration of their needs. But it was never suggested during the course of the discussion, either by the Dominion Government or by the Provinces that the proposed Finance Commission should have the power to say to the Dominion Government that a certain proportion of the net proceeds of the income-tax should be made over to the Provinces. All that was suggested was that the Finance Commission should, after considering what the legitimate needs of the Provinces were, make such recommendation as would satisfy their requirements. In Canada no agreement was arrived at, let me add, between the Centre and the Provinces. But this does not in any way vitiate the argument that I have been using.

[Pandit Hirday Nath Kunzru]

Sir, I do not think that I need dwell any further on this subject. I think that I have said enough to show that it is not desirable that apart from the income-tax in respect of which we are committed under article 281, we should go further and allow the Finance Commission to decide how the proceeds of the Union Excise Duties should be divided between the Centre and the Provinces. Nor is it desirable, in my opinion, that the Finance Commission, after initially having decided what percentage of the net proceeds of the taxes on income should be retained by the Centre, and assigned to the Provinces, should have the power to review this percentage later. The needs of the provinces can be adequately met in other and sounder ways.

Shri B. Das: Sir, very reluctantly I accept the amendment moved by my Friend Dr. Ambedkar. Sir, there is a Sanskrit adage:

सर्वनाशे समुत्पन्ने अर्धम् त्यजति पण्डितः

Sarvanāshe samutpanne ardhaṁ tyajati paṇḍitaḥ

Mr. Kamath will correct my Sanskrit, if it is wrong, but it means that "wise men part with half of their just demands when there is prospect of annihilation". The Government of India, in their mad career from 1924 onwards up to now, in their self-centred financial policy, have annihilated the growth and development of the provinces. It is now said that within two years of the coming into effect of the Constitution, the Finance Commission should function. But this is also a departure from the recommendation of the Sarker Committee's Report where they recommend that the Finance Commission should be appointed immediately. Of course, Dr. Ambedkar has told us that an *ad hoc* committee, or some special officer is going to review the position of the Provinces and the Centre, as regards the resources and may, allocate something to the undeveloped provinces for their immediate development. Sir, apart from incidental expressions on the floor of the House, no declaration on this *ad hoc* committee has been made. I, therefore, hope that before we close the debate on these dealings with the distribution of finance between the Centre and the Provinces, some sort of definite declaration would be made.

Sir, I whole-heartedly support the amendment moved by my Friend Pandit Kunzru, to the amendment of Dr. Ambedkar. Sir, this morning I observed Pandit Hirday Nath Kunzru is a man of principles. He has pointed out the existence of a lacuna. These principles have to be put into practice. His speech definitely pointed out how the lacuna exists, and also how those principles must be given effect to. Of course something is better than nothing. Pandit Kunzru wants clause (3) (a) to be sub-divided into (a) and (aa), and I hope the House will accept this in the interest of those undeveloped provinces about which the House has heard so much the other day and today.

What we have been trying to assert incidentally places before the House the fact that there is no initial distribution of the resources. We may have failed to emphasise and to convince others that an initial division of income-tax and other resources is necessary, for the development of the undeveloped provinces, such as Orissa, Assam, Bihar and to a certain extent Bengal. And I suppose Pandit Thakur Das Bhargava wants that East Punjab also should be included in the list of provinces of low resources, which want initial allocation of resources for development. Sir, I do very respectfully differ from my respected Friend Pandit Kunzru, that the President or the Cabinet or the Government of India in the Finance Department should not think of apportioning initially all resources simultaneously with the promulgation of this Constitution. In other aspects, such as

Excise Duties and other duties, they have been recommended in the Sarker Report. I have occasionally differed from the recommendations of that Committee, especially that the distribution of income-tax should be on the collection basis. My objection still stands and I hope Pandit Kunzru has already advocated my stand, that the distribution of Income-taxes should be on a population basis.

My honourable Friend Pandit Hirday Nath Kunzru referred to the system envisaged by the Grants Commission in Australia We have got some inkling of it in the Nehru Adarkar Report. The thing is that though Australia was not a sovereign Government, and it had a dominion system of Government, it could utilise its resources for the uplift of the undeveloped provinces. Unfortunately in India for 150 years, up to 1947, we were a subordinate Government run under the colonial pattern of British system, whereby all the resources were concentrated at the Centre and were spent at the behest of the British Finance Member for good of Britain and not of India. Today we want to hear something to soothe our heart that the Finance Department of the Government of India is not following that colonial pattern of finance administration in India. That is the crux of the situation. I do not mind my honourable Friend Dr. Ambedkar postponing the appointment of a Grants Commission or the Finance Commission for another two and a half years—perhaps it will be three years because if on 26th January, 1950 we accept this Constitution, in another place we will compel the Cabinet and the President to appoint the Finance Commission within two years of that date which means it will be four years after the Nalini Sarker Committee reported.

But, Sir, how are we to determine the principles of the distribution of revenues? I plead guilty I have given no amendment because we were left in a haze. The House at no stage; discussed the principles of finance allocation and today we authorise the President to appoint a Finance Commission and to lay down certain principles.

Sir, I am grateful to Pandit Hirday Nath Kunzru who referred to article 277. That the President of India should interfere in provincial resources in time of emergency shows a mentality which the Britishers had in 1937. Knowing that the war was coming, in 1937 they amended Section 126 of the Government of India Act in the House of Commons and called it Section 126-A, whereby all resources were placed in the hands of the Central Government. Not only all our leaders were placed in jail, but provinces worked under Section 93 to serve U.K. What happened was that India was bled white during the 2nd War, nearly Rs. 4,000 to 5,000 crores were mulcted out of us by the Allied Powers in which the U.S A. equally benefited along with the U.K. Everything was purchased at controlled prices, at pre-war level of prices, and if there is inflation today, if there are financial difficulties, poverty and starvation, inflation and high prices, it is due to that Section 126-A. I would have thought, Sir, a national Government, a democratic Government framing an independent Constitution would not think of acquiring financial powers under article 277 in time of emergency. This is an evolution of mind of those of us who fought for the freedom of India. I cannot fathom why this power should be handed over to the President.

Whenever I examine any article of these financial provisions, I feel baffled. Sir, we have postponed article 258, but what does it aim at? It aims at centralization of all sales tax so that there will be uniformity of basis in collection of sales tax. Sales-tax today is on a lower trend because our Finance Minister has agreed to spend less dollars and less sterling during his recent London visit. If we accept lower expenditure, how can Provinces like Madras who live on luxurious goods of foreign import, live when there is less sales-tax. There will

[Shri B. Das]

perhaps be another debate on article 258 but I am looking at the picture as a whole. The Finance Commission would be faced with bigger problems than was originally visualised by the Drafting Committee.

Mr. President: Article 258 does not refer to sales-tax?

Shri B. Das: Yes, Sir, it will refer to sales-tax.

Mr. President: It refers to agreement with States.

Shri B. Das: Yes, Sir, and there the Government of India comes in.....

Mr. President: It has nothing to do with sales-tax.

Shri B. Das: Let me then give the information to the House that the Government of India is in close correspondence with the Provincial Finance Ministers and others. They want uniformity of sales-tax in all the provinces and yet they are decided on reducing the volume of trade in the Provinces whereby the revenue of the provinces will be reduced. I am not an advocate of the use of foreign goods, I do not use them if I can help it, but everywhere the Centre is using its arbitrary power to reduce the income of the provinces and yet it does not settle the fundamental issue that the initial basis of distribution of resources should be revised. I do not wish to harp on points on which I have spoken on so many occasions during the last three or four days, but I am baffled at the trend of events as regards the distribution of finances between the Centre and Provinces. I am not very happy that three years hence a Finance Commission will be appointed, but I see a ray of hope, I see a streak of light. If the principle advocated in Pandit Hirday Nath Kunzru's amendment is accepted wisdom may dawn on those who are in control of the Government of India today that the initial basis of allocation of resources should be revised. I do hope that Pandit Kunzru will not object if undeveloped provinces like Orissa, Assam and Bihar get a little more money than they would otherwise be given by the Finance Commission later.

Prof. Shibban Lal Saksena: Sir, this is a very important article in the Constitution. I am glad that Dr. Ambedkar has provided that a Finance Commission shall be appointed within the first two years of the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary. Dr. Kunzru has given notice of two amendments to clause 3(a) of this article. I personally feel that the amendments will make the position worse. In fact he proceeds on certain assumptions. I feel that this Commission shall be only a body to recommend to the President and not a body whose decision is binding. He wants a convention that whatever this Commission recommends should be binding on the President. He says that the President of course has the power but he should not exercise it; that he should impose on himself a sort of voluntary self-denying ordinance. We have recently had the report of the Experts Committee on Finance and the other day Dr. Kunzru himself told us that it was wise that the report was not accepted. He must realise that there can be a Finance Commission which can make reports similar to the one which was made by the Sarker Committee and which the Central Government and the Drafting Committee thought fit to scrap. I, therefore, say that the Finance Commission shall be a body of experts who shall examine the position of the Republic so far as finance is concerned and shall make their recommendations. They shall adduce their reasons for their viewpoint, but I do not think it could be a body which can take away the admitted responsibility of the Parliament to make final decisions in regard to finance. I am therefore opposed to any conventions being established that the Finance Commission's report shall be accepted.

In the previous article I opposed the powers of the President to make allocations on the ground that I wanted the Parliament to do it by law. If Dr. Kunzru's assertion were accepted that there shall be a convention by which the recommendations of this Commission shall be accepted, I personally feel that this convention would be very unhealthy and harmful. It will detract from the authority of the Parliament to make allocations. In fact this Commission has been given power to make recommendations about distribution of the proceeds of the taxes, about grants-in-aid, about the continuance or modification of the terms of any agreement, etc., in fact on anything which is referred to it, so that if the Commission's recommendations have to be accepted by convention it becomes more powerful than the Cabinet itself. The Cabinet will not be able to touch any of the recommendations of the Commission. I do not want to take away these powers of the Parliament and give them over to the Finance Commission, howsoever wise a body it may be. Dr. Kunzru's objection to the Parliament interfering with the recommendations of the Commission is this. Suppose the Finance Commission makes a recommendation giving a larger proportion of the taxes to a particular State and the President or the Parliament reduces the amount to be given to that particular State or province, then the province will accuse the Centre of depriving it of the sum which the Finance Commission thought fit to allot to it. I personally feel that the Parliament will be a parliament of the whole nation and every State will be represented on it. If Parliament after consideration of all the pros and cons of every proposal and after taking into consideration all the arguments of the Finance Commission, thinks in its supreme wisdom that a State should have a particular allocation, I think Parliament will be within its rights and nobody will make any accusation against it, because the members representing the particular State will also be there to give their opinion about the allocation. I therefore think that it will be a very dangerous principle to give authority to any outside body like the Finance Commission to dictate to the Parliament and to the Government that "this shall be the distribution of the finances of the country." I therefore feel that the fundamental assumption on which the two amendments of Dr. Kunzru are based is wrong. This Finance Commission as has been defined in the Constitution will be a Commission which will recommend to the President as to how the distribution of the finances will take place between the Centre and the States. That should be its function. It should not have the authority to have the last word on the distribution. Dr. Kunzru gave the example of Australia where he said such a convention was prevalent. I think except for Australia no such convention exists anywhere else. I am not fully familiar with conditions in Australia to be able to say why they have adopted this convention. But so far as my own country is concerned I feel that Parliament should be the ultimate authority and nobody shall have the right to criticize Parliament in its allocations, since every part of the country sends its representatives to it. I therefore think that the recommendations of the Commission shall be only recommendatory as contemplated by this Constitution and according to the clause as framed by Dr. Ambedkar. If that goes, these two amendments become superfluous. Dr. Kunzru wants the distribution between the Union and the States of the net proceeds of the taxes on income which should be divided initially between them and that this allocation should be the function of the Finance Commission. Article 251 says .

"Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax.....shall be distributed."

Further it says that the word "prescribed" means "until a Finance Commission has been constituted prescribed by the President by order and after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission." Dr. Kunzru wants

[Prof. Shibban Lal Saksena]

that this Finance Commission should not have the power to make a recommendation about the distribution of income-tax proceeds on each occasion on which the matter is referred to it but only wants that initially on the first occasion it should be permitted to do so. It may be that according to conditions today the proceeds of income-tax may be distributed in a certain manner, but tomorrow the finances of the Centre may get worse and they may not be able to spare those allocations, while the finances of provinces may be better and they may not need that amount. So if the amendment is accepted, the Finance Commission cannot change the allocation. I think it is better that the Commission should be able to report to the President every time how the taxes should be divided, according to conditions then existing. Laying down a fixed percentage for all time will defeat the very purpose of this Commission. I therefore do not think this first amendment of Dr. Kunzru is at all proper. He wants that the power of the Government and the President should not be taken away by this Commission so far as any change in the distribution of percentage is concerned. He wants that the recommendation of the Commission should be sacrosanct, but I want them to be recommendatory. They should not be binding and on every occasion the Finance Commission's advice should be sought as to the distribution between the provinces and the Centre. If the recommendations are not to be treated as binding on the President, the first clause becomes meaningless and the amendment therefore has no significance.

The second clause of the amendment refers to allocation between the States, but article 260 refers to distribution between the Union and the States. Therefore this amendment would deny to the Commission the power to say that so much of the proceeds of an excise duty should go to the Union and so much to the States; he wants the President to be the final authority to determine the allocation between the States and the Centre. That is to say, the President will say that 20 per cent. will go to the provinces and then the Finance Commission will say how it will be distributed. This means that the Finance Commission will be useless, if it has no power to determine the percentage of allocation as between the Union and the States. Therefore I think this second amendment is even more dangerous. What I am really afraid of is the devolution of responsibility from Parliament to an outside authority, whether it be the President or the Finance Commission. I want Parliament to be the ultimate authority, in which case these amendments are out of place. Parliament must know the financial state of the country. The Finance Commission must have full authority to go into every aspect of every duty and the condition of provinces as well as the Centre, so that its report may enlighten Parliament. The second amendment is more dangerous because it makes the Finance Commission a useless body. In fact during discussions on articles 253 and 254, each province wanted a share of the duties that are raised in that particular province. So the President here should not be given the power to make allocations; Parliament must be the authority to allocate the shares. But this amendment of Dr. Ambedkar really wants that the allocation shall not be made by the Commission or by Parliament but by the President in his discretion, who will decide the percentage to be distributed and the Commission will report as to the manner of distribution. I think these two amendments are based on the supposition that the recommendations of the Finance Commission are to be binding. I do not think these recommendations should be sacrosanct. In the next article I will move an amendment that whatever decision is taken will have to be approved by Parliament which will decide whether the allocations made by the President are proper. The ultimate authority must be the Parliament which will decide according to the state of the country. Sir, I hope my points will be borne in mind and considered.

The Honourable Dr. B. R. Ambedkar : Sir, the House must have realised that my honourable Friend Dr. Kunzru's amendment referred to clause (3) of article 260 where the functions of the Finance Commission are laid down. But, in order to understand the exact significance of the amendments he has moved, I personally feel that it is desirable to know the method of allocation of revenues already provided for in the two articles we have already passed, namely, 251 and 253. It will be realised that the Draft Constitution separates the distribution and allocation of the income-tax from the distribution and allocation of central duties of excise. With regard to income-tax the distribution and allocation of the proceeds is a matter which is left to the President to decide. That will follow from reading article 251(2) with clause (4) (b) (i) and (ii). On the other hand with regard to the distribution and allocation of the proceeds of the central duties of excise the matter is left entirely to be determined by law made by Parliament, which you will find set out clearly in article 253.

As it is one o'clock I will continue my speech tomorrow.

The Assembly then adjourned till 9 of the clock on Wednesday, the 10th August, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 10th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 260- (*Contd.*)

Mr. President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): At the close of yesterday's sitting, Sir, I was dealing with the argument advanced by my Friend Pandit Kunzru in support of his amendment. I began by saying that it was desirable to remind the House of the provision contained in article 251(2) and article 253 as a sort of background to enable honourable Members to follow what exactly Pandit Kunzru wanted by his amendment.

Now I would briefly summarise what I said yesterday. The position is that so far as income-tax is concerned, the distribution and allocation of the proceeds are left to the President to determine, while the distribution and allocation of the Central duties of excise are left to be determined by law made by Parliament.

The next point to bear in mind are the provisions contained in article 260 which deals with the Finance Commission. Under clause (3) of article 260, it is provided that the Finance Commission is to advise and make recommendations with regard to the distribution and allocation, not merely of the taxes which are made distributable by law made by Parliament, but also with regard to the distribution and allocation of the income-tax. Now, what my Friend, Pandit Kunzru, wants to do, if I have understood him correctly, is that he wants to take out the collection, allocation and distribution of income-tax from the purview, so to say of the Finance Commission. His point was this that while the President may well take the advice of the Finance Commission in making the allocations of Central duties of excise, he should be, so to say, made independent of the Finance Commission with regard to the income-tax. The only qualification that he wants to urge is this that so far as the initial distribution of the income-tax is concerned, the President may well consult the Finance Commission and act in accordance with or after taking into consideration the recommendations made by the Finance Commission, but any subsequent variation of the income-tax allocation may be left to be done by the President independently of any recommendations that may be made by the Finance Commission. I think I am right in interpreting what he intends to do by his own amendment. The question, therefore, is a very simple and small one. Should the President be left altogether independent of any recommendations of the Finance Commission in varying the distribution of the income-tax between the provinces and the Centre and the allocation of the proceeds of the income-tax so set apart between the different provinces? The draft amendment as I have moved provides that the President shall take into consideration the recommendations of the Finance Commission in making any variations that he may want to do with regard to the distribution and allocation of the income-tax. I quite appreciate his

[The Honourable Dr B R Ambedkar]

point of view that, if this was left to be decided by the President on the recommendations of the Finance Commission, the hands of the President may be so tied that he may have to yield to the recommendations of the Finance Commission or to the clamour that may be made by the provinces with the result that he may be forced to do injury to the Central finances. I share his feelings that the Centre should be made as independent as one can make it so far as finance is concerned, because in my mind there can be no doubt that we must not do anything in the Constitution which would jeopardise either the political or the financial existence of the Central Government, but there is also the other side to the matter, *viz.*, supposing there was a clamour made by all the provinces, which is perfectly possible to imagine because it is their common interest, urging the President to allocate more revenue to the provinces, would it not be placing the President at the mercy of the provinces? If, on the other hand, there was a report of the Commission containing recommendations taht the Centre should not give more revenue under the income-tax to the provinces, it would, in my judgment, strengthen the hands of the President in refusing to accede to such a clamour from the provinces. If I may use the language with which we are now familiar under the Government of India Act, the difference between the draft article as it stands now and the amendment proposed is that according to Pandit Kunzru, the President should be free to act in his discretion, while the draft as proposed by me says that he should act in his individual judgment which means.....

Pandit Hirday Nath Kunzru (United Provinces: General): Will the honourable Member permit me to make my point clear, because I feel that he has probably not completely understood what I said? May I make clear what I said in one or two sentences. Under clause (3) of article 260 the President may refer any matter he likes to the Finance Commission for its opinion. I do not, therefore, want to debar the President from consulting the Commission in any matter that he likes. All that I am objecting to is that the Finance Commission without any reference from the President, should have the power to say that the allocation of the net proceeds of the income-tax between the Centre and the provinces is not what it should be and that new percentages recommended by it should be fixed. This is all that I said yesterday.

The Honourable Dr. B. R. Ambedkar: That rather makes the situation far more complicated because I cannot see how the Finance Commission can make any recommendation unless the point has been specifically referred to it or included in the terms of reference.

Pandit Hirday Nath Kunzru: Under sub-clause (a) of clause (3) of article 260 the Commission may on its own initiative make recommendations on that subject. Let my Friend read the sub-clause to understand the meaning.

The Honourable Dr. B. R. Ambedkar: "any other matter referred to the Commission by the President in the interest of sound finance."

Pandit Hirday Nath Kunzru: That is (d). Will the honourable Member refer to article 260, the article which we are discussing, with particular reference to the clause that I dealt with yesterday? Sub-clause (a) of clause (3) of article 260 says—

"It shall be the duty of the Commission to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them....."

That is the thing that I am objecting to. The power of the President under sub-clause (d) of clause (3) to refer any other matter that he likes to the Finance Commission will not be disturbed if my amendment is accepted.

The Honourable Dr. B. R. Ambedkar: I do not know. The position is quite clear whether the President is to be left in his complete discretion to make any allocation he likes with regard to the income-tax or whether he should be guided by the recommendations made by the Commission. It seems to me that the position of the President will be considerably strengthened if he could refer as a justifying cause to the recommendations made by the Finance Commission. It seems to me that the Finance Commission will be acting as a bumper between the President and the provinces which may be clamouring for more revenue from income-tax. I therefore do not think there is any reason for accepting the amendment moved by my Friend, Mr. Kunzru.

Mr. President: I have now to put the two amendments to the vote. First, amendment No. 95 moved by Dr. Ambedkar. The question is:

"That for clause (1) of article 260, the following clause be substituted:—

(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President."

The amendment was adopted.

Mr. President: The question is:

"That with reference to amendment No. 95 of List I (Third Week) of Amendments to Amendments, for sub-clause (a) of clause (3) of article 260, the following sub-clause be substituted:—

'(a) the distribution between the Union and the States of the net proceeds of taxes on income which are to be divided initially between them under this Chapter:

(aa) the allocation between the States of the respective shares of the net proceeds of taxes which are to be, or may be, divided between the Union and the States under this Chapter;'"

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (b) of clause (3) of article 260, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President: The question is:

That article 260, as amended, stand part of the Constitution

The motion was adopted.

Article 260, as amended, was added to the Constitution.

Article 261

(Amendment No. 2949 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in article 261, for the word 'Parliament' the words 'each House of Parliament' be substituted."

[Amendment No. 99 (List I, Third Week) was not moved.]

Shri H. V. Kamath (C.P. & Berar : General): Sir, I move:

that with reference to amendment No. 2950 of the List of Amendments, in article 261 for the words 'together with an explanatory memorandum as to the action taken thereon' the words 'together with such explanatory memorandum as he may think fit to be substituted'.

I move also, Sir, by your leave the next amendment that stands in my name, namely amendment No. 139 of List IV, Third Week, to the effect:

"That in amendment No. 2950 of the List of Amendments, for the words 'each House of Parliament' proposed to be substituted, the words 'each House of Parliament for such action thereon as Parliament may deem necessary' may be substituted".

This amendment No. 139 incorporates the amendment proposed by Dr. Ambedkar, amendment No. 2950 in our List of Amendments, so that if these two amendments of mine were accepted by the House, the article will read as follows:—

"The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with such explanatory memorandum as he may think fit to be laid before each House of Parliament for such action thereon as Parliament may deem necessary".

To my mind, Sir, this article 261 coming as it does after article 260 and relating as it does to an important Commission, namely the Finance Commission, presents an unfortunate anomaly. This article is one of those numerous articles in our Draft Constitution which seek to centralize more and more power in the President, that is to say, the Executive; the President, of course acting upon the advice of his Council of Ministers as we have been repeatedly told here. I see no reason why the action to be taken on the recommendations of the Finance Commission should be left to the judgment solely of the President and his Cabinet. In article 260 which has been already adopted by the House, we have clothed Parliament with certain powers regarding this Finance Commission; Clauses (2) and (4) of article 260 vest in Parliament powers regarding the determination of qualifications for membership of the Commission and determination of the powers of the Commission. The Finance Commission, as has been made clear by Dr. Ambedkar and also by Pandit Kunzru, is going to be a very important piece of machinery of the State. We have clothed the Finance Commission with vital powers. Though of course in law and in the Constitution, it is merely advisory and recommendatory, yet I have no doubt in my own mind that this Commission will play a vital part in the decisions that the President or his Cabinet or Parliament might arrive at so far as financial matters are concerned. Sub-clause (d) of clause (3) gives powers with respect to general matters, that is to say, matters relating to federal finance in general. Besides this, the Commission has been invested with advisory powers regarding allocation of revenues between the Centre and the units and also as between the various units of our Union. Considering all these various aspects of this vital matter, I feel that we shall be failing in our duty if we do not provide in the Constitution that the last word as to the action to be taken on the recommendations of the Finance Commission shall rest with Parliament and not with the President.

I raised a similar point in connection with another Commission, the article regarding which has already been adopted by the House, namely article 301, the Commission to investigate the conditions of backward classes. I then raised the issue that Parliament and not the President or the Executive should be clothed with powers regarding the action to be taken on the recommendations of that Commission. My Friend, Prof. Shibban Lal Saksena, I am glad to find, has now got a similar amendment to mine. I hope, Sir, that this

matter, important as it is, will receive the earnest and serious consideration of this House and that we shall see to it that where it is derogatory to the dignity of our Constitution and the sovereignty of our Parliament, the Executive is not clothed with these powers which are absolutely uncalled for. Parliament passes the law laying down the qualifications of the Commissioners; Parliament gives them certain powers; however, it has not the power to take action, but the President has been clothed with the power to take action on the recommendations of the Commission. Parliament will be presented, unfortunately, with a *fait accompli*.

Shri Brajeshwar Prasad (Bihar: General): For purposes of elucidation, Sir, I would like to know from Mr. Kamath whether the position and powers of Parliament under the Draft is that of a sovereign body or it has got only limited powers.

Shri H. V. Kamath: I am glad my honourable Friend Mr. Brajeshwar Prasad has thought fit to raise this question by way of an interruption. If he scans the article carefully, he will find that memorandum referred to in this article is a memorandum as to the action taken thereon. That is to say, it does not say "proposed to be taken thereon". The President will take action on the recommendation and then it will be laid before Parliament.

Shri Brajeshwar Prasad: You said that Parliament is a sovereign body; I say Parliament is not a sovereign body.

Shri H. V. Kamath: If Parliament is not going to be sovereign, if my Friend wants to make the President sovereign in relation to Parliament, I have no quarrel with him.

Shri Brajeshwar Prasad: Read the Draft and say whether it is a sovereign Parliament or a limited Parliament.

Shri H. V. Kamath: I do not want to enter into any academic discussion. I am concerned only with the particular article before the House. The article deals with the powers of the President *vis-a-vis* Parliament as regards the Finance Commission's recommendations. If we turn to articles 275 and others, there at least we have got this provision that Parliament should approve of a certain action taken by the President; otherwise, that action ceases to have validity. Here, there is no such provision at all. The President will submit a memorandum to Parliament describing the action taken on the recommendations of the Commission and it will be laid before Parliament. For what purpose, God alone knows. For what purpose this would be laid before Parliament, for approval, disapproval rejection or consideration, nothing is stated.

Pandit Thakur Das Bhargava (East Punjab: General): Merely for information.

Shri H. V. Kamath: Pandit Thakur Das Bhargava says, merely for information. If that is the intention of the article, it is a most pernicious measure. Parliament will be treated with scant regard and with, I may even say, contempt, if this article is passed as it is. We must certainly provide whether Parliament will have power to reject, or what powers will be given to it, with regard to the action taken by the President on the recommendations of the Finance Commission. If Parliament is going to have no powers at all in this matter, not last word in this matter, I am constrained to say that we are clothing the President with more and more powers which are absolutely uncalled for, absolutely unnecessary in this respect. The Finance Commission being a very important body, I would once more plead, before I conclude, it must be subordinate to Parliament which is going to be a sovereign legislature. It is no use the President presenting Parliament

[Shri H V Kamath]

with a *fait accompli* telling them "this is the action I have taken" I think this will be a very humiliating position for the sovereign Parliament and derogatory to its dignity. I hope Dr. Ambedkar an dhis wise team will look into the matter very closely and just as the other day, after a full dress debate upon article 280, we find a new amendment will shortly be moved by Dr. Ambedkar, seeking to give some authority to Parliament with regard to the suspension of fundamental rights,—that has been included in th. agenda, so also I hope Dr. Ambedkar, the Drafting Committee and the House look into the matter very closely and see to it that Parliament retains ultimate control over the action to be taken on the recommendations of the Finance Commission and not leave it to the sweet will and pleasure of the President and the executive. Sir, I move amendments 138 and 139, of List IV, Third Week, and commend them for the earnest consideration of the House

Prof. Shibban Lal Saksena (United Provinces: General). Sir, I beg to move :

"That with reference to amendment No 2950 of the List of Amendments, in article 261 for the words 'action taken thereon to be laid before Parliament', the following words be substituted :—

'containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right, to amend the proposals made by the President by a resolution passed by the House of the People. The proposals of the President in their original form or in the form in which they emerge after they are amended by the House of the People shall thereafter become law.'"

After the amendment is adopted, the article will read as follows :—

"The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum containing his proposals for action that should be taken thereon to be laid etc .....law."

As I said while discussing the last article, I feel that in this Chapter the ultimate authority of Parliament in regard to financial matters has been made secondary to the authority of the President. I regard this to be against the principles of democracy. Here we are appointing a Finance Commission which shall be charged with powers to make recommendations for allotments between the Union and the various States, for making grants-in-aid to various States, for even modifying terms of any agreement entered into by the Union, and in respect to any other matter which may be referred to it by the President. Such are the wide powers which have been given to this Commission. Now this Commission will make a report after touring the country, after investigating the entire financial position and will submit its report to the President. I want to know whether the Parliament is the final authority to accept or reject any of the recommendations made by the Commission or the President is the final authority. I feel that it is a matter of deep consequence and cuts at the root of democracy if Parliament does not have the final say on this important question. I have therefore in this amendment suggested htat after the report of the Commission is received the President shall lay a memorandum containing his advice to the legislature as to how far these recommendations should be accepted but the ultimate authority for accepting those proposals or rejecting them must be vested in the House of People. Mr. Kamath said that both the Houses of Parliament should vote upon such a Bill. Any Bill containing recommendations of the Finance Commission will be a financial Bill which can only be subject to the vote of the House of the People and not to the vote of the Upper House. Therefore I have here omitted the Upper House. I have said that the House of the People shall have

the right to amend the proposals made by the President by a Resolution passed by the House of the people. It is the House of the People that will determine whether the recommendations made by the Finance Commission on the proposals made by the President should be amended in some form or not. Normally when there is Parliamentary Democracy the Prime Minister will have a majority in the House of the People, and therefore whatever proposals the President will submit will surely be on the advice of the Prime Minister and therefore they will have the support of the majority of the House. There should therefore be no difficulty in getting them through, but the discussion in the Parliament will give the Opposition an opportunity to examine the proposals, to suggest amendments, to bring to the notice of Government another point of view which probably the Government may accept. If we deny the Opposition the right to bring forward amendments or criticise the proposals, I do not think we are carrying on the form of democracy which we have accepted. I do not see how Dr. Ambedkar can get this article passed as it is. He is trying to give the power to the President, all along, of course with two or three exceptions which make him all the more inconsistent. I have said that the authority of Parliament should be supreme in financial matters because on the proper control of finances depends the prosperity of the country. I therefore think that my amendment is a simple one and I hope the House will accept it.

Dr. P. S. Deshmukh (C.P. & Berar : General): Mr. President, I regret to say that both my Friends Mr. Kamath and Professor Saksena are labouring under certain misconceptions. The first thing about this article 261 is that it does not give any additional power to President. There is no clause in this which seeks to give any additional power to President than what has already been decided by this House and is embodied in articles 254 and 255. Prof. Saksena was not also correct when he said that the Finance Commission has wide powers. Its powers are defined in 260 clause (3) and as would be quite clear, the powers are merely to make recommendations to the President. They have no final power to take any action whatsoever unless they act under clause (4), but those powers can be only those that are delegated to them by Parliament. Since it is only recommendations that they are competent to make, I do not think it is correct to say that the Finance Commission has wide powers. Nor can this article be said to enlarge the powers of President in any way. Whatever damage was to be done to the authority of the Parliament as the supreme body has already been done by articles 254 and 255 and no amendment whatever to 261 can rectify that position. I would however like to point out that it would have been better had the words 'by him' would have been added after the words 'thereon' so as to make it clear that the Parliament will have placed before it the President's action on the recommendations that have been made by the Commission and the recommendations themselves. Otherwise the article is quite satisfactory because when these papers are laid before Parliament, the Parliament would be competent to pass on it such resolutions or turn down any recommendations or to set aside any action taken so long as it has powers to do so. Those powers that have been expressly taken away from it by articles 254 and 255 cannot be exercised by Parliament even if we accept the amendments proposed by Prof. Saksena and Mr. Kamath. The Parliament will be incompetent to interfere with them. But the rest of the powers which it enjoys, as long as they have not been specified as taken away from Parliament, it cannot be said to be not able to exercise. So I think the amendments suggested are not at all necessary, but the wording of the article as it stand is not as satisfactory as I would wish. It should have been made clear that excepting these cases governed by 254 the Parliament would be competent to take such action as it pleased on the recommendations of the Commission which are not specifically excluded from its pur-

[Dr. P. S. Deshmukh]

view. Otherwise I do not think there is likely to be any difficulty in retaining this clause as it stands.

The recommendations as well as the action of the President, I believe, are intended to be placed before Parliament and even after debate such distribution of finances which is withi nthe discretion of the President and such charges on the consolidated funds of India which have been provided for under article 255, Parliament will not be in a position to interfere. So I think there is not much point in saying that Parliament will exercise those powers which are already there and which are not taken away. I therefore do not agree that there is any need to amend this article.

Pandit Thakur Das Bhargava: Sir, I support the principle of the amendment of Mr. Kamath and the amendment of Mr. Saksena. In regard to article 261, it is said the explanatory memorandum shall be laid before Parliament, and if you kindly persue the wording of the article, you will see that the explanatory memorandum does not contain the proposal of the Finance Commission, but it refers to the action taken thereon. Action taken thereon can only mean that the President shall be the final judge of those proposals and he alone has the discretion to accept or reject any of the recommendations made by the Finance Commission. This is very unsatisfactory. As a matter of fact, article 261 is the hope of all the provinces. At present, when we refer to article 255, as we discussed it yesterday, the need of the poor provinces will be looked into by Parliament, and in regard to article 254, it is a transitory provision. All these matters will be placed before the Finance Commission which will be appointed within two years, in the first instance, and subsequently after every five years. The proposals which the Finance Commission will make will be not of the nature of day to day affairs, but considered proposals regarding the fate of the provinces. All the progress in the provinces will depend upon the recommendations of the Finance Commission. The provinces do hope that the Finance Commission will be above board and will take their needs into consideration, so much so that we have intended under 262 (2) that Parliament shall determine the qualifications of those five members too. Therefore, my submission is that the report of the Finance Commission shall be a historic record and shall furnish the basis for those proposals which will affect the provinces vitally. The provinces, therefore, should have the say in the matter, through their representatives in Parliament. If the Cabinet or the President be the sole judges of such recommendations as the Finance Commission will make, I do not think it will inspire the confidence of the provinces. It is therefore, necessary that a matter of this importance, the Finance Commission which will come into being and which will make enquiries after every five or six years—because one year may be taken by the Commission to report—that a matter of this importance be placed before Parliament and Parliament should have the last word on it.

In regard to Parliament, I understand that the principle contained in the amendment of Professor Saksena is a very salutary one. According to the other provisions of this Constitution, it is the House of the People which has got the final voice in all matters relating to finance, and it is but meet that both Houses of Parliament be able to discuss the proposals of the Finance Commission, but the House of the People should have the final say in regard to financial matters. Therefore it is necessary that the proposals are laid before the House of Parliament and then discussed and any proposals that emerge out of these discussions should ultimately be recommended by the House of the People, and the law emerging therefrom should have the effect of Money Bills. All provisions that we have so far enacted in regard to Money Bill should apply to these also.

I am not impressed by the arguments of Dr. Deshmukh who thinks that in article 261 no power has been taken away from Paliament. My humble opinion is that in regard to 261, if the President has the power to take action, then the only purpose of the memorandum will give information to the Members. It is clear that the powers of Parliament as such are taken away. My Friend is of the view that after the action has been taken, then after it is placed before Parliament, the House will then be in a position to take action. This evidently cannot be correct. Even if it is correct, I think if the proposals are not in the first instance put before the House of the People, then a great deal of harm will be done. It will be difficult to reject or do away with the recommendations already made. It is but fair that the report of the Finance Commission and the entire matter should be within the purview of the House of the People to debate upon and take action. My own apprehension is that after action has been taken by the President, this memorandum will only be placed for information and not for the purpose of taking action. I feel that this provision takes away the inherent power of Parliament to deal with financial matters, and therefore, I would like that the amendments of Mr. Kamath and Professor Saksena be accepted.

Prof. K. T. Shah (Bihar: General): Mr. President, Sir, I also support the amendments moved by Messrs. Kamath and Saksena. I confess I am not very happy over this entire chapter relating to the appointment, powers, and activities of the Finance Commission. The Finance Commission is so much more additional patronage in the hands of the executive, and will act, in so far as it is empowered under this article to act, against the inherent rights of a sovereign Parliament. It is impossible to agree that by this provision no power that normally vests in a sovereign Parliament is taken away, because, even according to article 261, the right to consider the memorandum, or the right to submit the memorandum to Paliament, will result only in a kind of post-mortem examination of the action taken, which, if I may say so, will encourage only fruitless discussion, where the opposition may for opposition's sake, only find fault and where constructive suggestions would not be in order, because it will be only a debate on action actually taken, which cannot be remedied and which, therefore, can give occasion only to venting, as it were some past spite.

I do not think a provision of this kind will help either the requirements of economy, or, what is still more important, the requirements of popular sovereignty, as embodied in the Power of the Purse, as it is called, under the model we are copying—I mean the British Constitution. If, as these amendments propose, there is some chance given to Parliament to say the last word on the action to be taken, then there may be some hope that the rights of Parliament over matters financial will be kept intact. But if Parliament is only to review the action taken, and indicate its general dissatisfaction with the action taken, I do not think that it would be at all worthwhile making even such a submission. The Commissioners are presumably experts, well-versed in their lines. It may, therefore, well be presumed that the recommendations they make are based on very strong considerations, and will not be lightly disregarded by the President or any other power. To that extent, therefore, the Commissioners may be said to be taking away the powers of Paliament. It is only to make it quite clear, as these amendments try to do, that the last word will rest with Parliament that I support these amendments. The sovereignty of the House of the People in matters financial ought to be left in no doubt. I therefore support these amendments.

Mr. President: May I just say one word? I did not like to mention it, but I think I should. I find there are too many conferences going on inside the

House with the result that even those Members who are desirous of listening to the speeches find it difficult to follow them. There is a tendency, I find to gravitate, against the law of gravity, from the benches in the front to benches in the back, and I find that benches on the back afford opportunities of discussion which probably has nothing to do with the discussion that is going on in the House. I would therefore suggest to the Members that if any other question has to be discussed than that which is being actually discussed in the House, that might be discussed elsewhere.

Shri Mahavir Tyagi (United Provinces: General): Sir, will you also kindly ask the speakers to bring their points in such a way as to attract attention?

Mr. President: That is beyond me.

Shri Biswanath Dass (Orissa: General): Sir, I stand to record my protest against the aspersions made by so scholarly a gentleman as Professor Shah. He finds unfortunately ghosts where there are none. He has made reference to patronage. I would request him to show anything in the article wherein comes patronage. The appointment of a Finance Commission is a necessity. It is not peculiar to India. It is a necessity and has been accepted and adopted in India to suit the peculiar conditions of a federal structure that has been devised for her on the lines of similar other States. All that the Constitution has done is to lay down specific powers for Parliament to make law by which a Finance Commission is to be appointed. And it has gone a little further. It has laid down also the conditions and qualifications of persons to be appointed. May I refer you to article 260(2) in this connection, which lays down that "Parliament by law shall determine the qualifications etc. of the Finance Commission". I would request Professor Shah not to proceed with unjustifiable suspicion. If by the appointment of any Member of any Commission you mean patronage will come in, certainly you have to stop all State activities. That will be something like burning a house in a fight against flies. I hope therefore that Professor Shah will not play the role of an unnecessary opposition in a case where there is no scope for opposition.

Having stated so much about the unnecessary allegation made by our learned Professor, let me come to the vital issue that faces us in the discussion. I am sorry I have to differ from my esteemed colleagues Professor Saksena and Mr. Kamath. Both of them, I am sure, have erred grievously. They feel that powers of the Parliament are interfered with and that no discussion of a full and frank nature is possible under the circumstances. These two allegations seem to be the basis of their opposition.

Let me take the first, namely, that there will be no possibility of discussion. Parliament is to enact a law by which a Finance Commission is to be appointed. The impartiality of the Finance Commission is a matter beyond doubt, because the whole thing is left to Parliament itself. They have to devise the law, they have to lay down qualifications, and the choice of the personnel depends upon the Cabinet, I believe, in the name of the Governor-General. They represent the people. Under these circumstances I have no hesitation in believing that there will be an impartial Tribunal. The Finance Commission is thus a baby of the Parliament—it is an institution created by the Parliament under its own statute.

On appointment, the Commission makes a thorough, deep and searching enquiry, also if required sit in examination over the budgets and administration of provinces, and submit a report to the executive. Whose executive? The executive of the Parliament. Thereupon the Cabinet in the name of the

Governor General take decisions and they practically accept the recommendations of the Finance Commission, just as in the case of the findings of the Election Tribunal where the Governor or the Governor-General has the power to interfere. But can you point out a case wherein a Governor or Governor-General has ever interfered? No, never. Therefore, precedents have been created and have been in existence wherein the recommendations of statutory bodies judicial or quasi judicial bodies are accepted *in toto*.

Then the other hope comes in, namely, of their being placed before both Houses of Parliament. That again gives an occasion for discussion. Any member of the House, under its Rules of Procedure, can raise a debate. Political parties may also move Parliament for a debate and discussion. Therefore there is scope for discussion immediately after the sitting of Parliament.

The grant again comes before Parliament in the shape of a Money Bill. Then again Parliament has got the power to discuss the whole question on its merits. Is it possible for a responsible Ministry and a Cabinet to go beyond the wishes of the Parliament? It is impossible unless we visualise that we are not to have a parliamentary system of democracy having a Cabinet which is absolutely representative of the wishes, aims and aspirations of this honourable House.

One question more remains for me to discuss here and that is about the charged items. Charged items in our country are many. They have become a part of the Constitution. Charged items are inevitable and charged items are the creations of the Legislative Assemblies themselves, because they pass legislation and they agree to charge their own items of revenue and expenditure as a charged amount in their budget. Therefore it is one of their own creation. It is only a question whether you should have a prior sanction or a post-sanction. That is all the difference. Therefore in this regard I do not agree with my honourable friend that any injustice or wrong, serious, great or constitutional, has been done in this regard. Sir, it will not be conducive to the advantage of the nation if a fraternal duel is undertaken in this House by politicians from provinces and States. Each member is anxious to see that his province gets more. True it is that when a member is elected, he represents, after the election, India and not his province. That is true, but the fact remains that we are men and we are average men, not rising so high as few people have done, like our leaders Sardar Patel or Pandit Jawaharlal Nehru. So within these limitations, I claim that a decision, after a judicial and thorough enquiry of a non-Political Body, of the nature required to be undertaken by the Finance Commission in regard to the aids to be given to provinces, is necessary. The power is also vested under the statute in the Governor-General to revise these grants whenever he likes after a certain period of years. With these words, I strongly support the article and oppose the amendment.

Shri B. N. Munavalli (Bombay States): Mr. President, Sir, article 261 as it stands now empowers, as I understand, the President to place the recommendations of the Finance Commission together with the action taken thereon before the Parliament. This clearly shows that the Parliament will not be in a position to discuss the various recommendations that are going to be approved by the Executive and upon which action has already been taken. The amendments moved by my Friends Messrs. Kamath and Shibban Lal Saksena, as I understand them, require that the Finance Commission's recommendations should be placed before the House of Parliament before any action is taken, so that the House of Parliament may approve or disapprove or reject some of the recommendations made by the Finance Commission.

[Shri B. N. Munavalli]

Some of my Friends, for example, my honourable Friend Dr P S Deshmukh, said that this article does not clothe the President with any more powers That is true, but the Parliament will lose the opportunity of discussing and approving the recommendations if they were placed by the President after action has been taken by the executive. The whole difference between the article as it is and the amendments now put forth is that the power of discussion of the Parliament over the recommendations, before any action is taken, should not be removed. If the recommendations together with the action taken thereon by the executive are placed, the Parliament will be only in a position to approve and not to disapprove. Under these circumstances, I think that if these amendments are not accepted, the House of Parliament will lose much of its power. I therefore support the amendments and I commend that they be accepted by the House.

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, neither the amendment of Mr. Kamath nor that of Mr. Shibban Lal Saksena for substitution is good. I am requesting them to consider how substitution is not proper. These may be in addition to the power given under article 261 It is admitted, and there is no dispute regarding the fact, that the Finance Commission's recommendations are only recommendatory and not obligatory Some person, whether the President or the Parliament, should take action on them With respect to certain matters, the President can take action. Under article 251 which we have already passed, so far as income-tax is concerned, it is collected by the Centre. A percentage of the income-tax is divisible among the provinces or States. The allocation is also to be recommended by the Finance Commission. Now, until the Finance Commission goes into the matter as to what percentage ought to be shared and how that income-tax is to be distributed among the States according to their needs, the President has the exclusive power to prescribe the percentage. The Parliament does not interfere as far as income-tax is concerned. "Prescribed" means until the Finance Commission has been constituted, "prescribed by the President by order", and after the Finance Commission has been constituted, "prescribed by the President by order after considering the recommendations of the Finance Commission." Nowhere in this article does the Parliament come in. Before the appointment of a Finance Commission, the President by order can direct that such and such a percentage of the income-tax has to be distributed among the provinces and States and in what percentage. After the Commission is appointed, the President may, after looking into the Commission's recommendations, take action. He may change the allocation and the percentage. As article 261 now stands, he has to report to the Parliament what action he has taken regarding those recommendations where action has already been taken. Therefore, there is no good deleting that portion relating to the action. Therefore, instead of substitution, I would suggest the addition of the following words in article 261 :

"With an explanatory memorandum of the action taken or to be taken thereon to be laid before the Parliament."

I will give my reasons as to why there cannot be subtitution but addition. The principle of the amendments suggested has also to be accepted, because it is not in every case that the President takes action. There are certain matters where it is the Parliament that has to take action. Take excise duties in article 253. Under article 253, excise duties in the first instance have to be levied and collected by the Centre. The portion of the excise duties that may be distributed among the provinces and the principles have to be laid down by Parliament. Now, with respect to those excise duties also, whatever duties are collected by the Centre which can be shared by the States, with respect to them also the Finance Commission has jurisdiction to recommend the

allocation under article 261. Article 260 clause (3), sub-clause (a) relates to distribution between the Union and the States of the net proceeds of taxes which may be levied. Taxes are general. Taxes include not only income-tax, but also other taxes collected by the Centre, as for instance, the excise. But unlike income tax which can be distributed by the President himself by order, excise duties have to be distributed by law made by Parliament. Parliament will do so, make allocations, after looking into the recommendations of the Finance Commission. Therefore, there are two aspects- one, the action taken by President, the other, the action taken by Parliament. Therefore, if article 261 as it stands at present, refers only to action taken by the President, it does not include action to be taken by Parliament. Under these circumstances, my respectful suggestion is that instead of these amendments as they stand, these principles may be incorporated, and to effectuate this I would suggest after the words "action taken" the words "and to be taken" may be included

Sir, I have not tabled an amendment. After these amendments have come in and after this discussion, I find these amendments ought not to be in substitution, but in addition. I find that there is a lacuna and if you have no objection, and if honourable Friend the Chairman of the Committee also agrees, I can move an amendment in the following terms :

"As to the action taken or to be taken thereon to be laid before Parliament."

I shall move this amendment if it is acceptable to the House and the Drafting Committee

Mr. President : I am not taking that amendment at this stage, unless the Drafting Committee is prepared to accept it.

Shri T. T. Krishnamachari (Madras : General): Mr. President, Sir, I do not want to appear to be very wise, but I do feel that there has been considerable misapprehension in this House in regard to the scope of the work of the Finance Commission and I feel that the discussion that has taken place both on article 260, which the House has passed, and on this article arises out of that misapprehension

I would ask the Members of this House to consider the origin of the scheme envisaged by this particular clause. There is an expedient that is being followed in Australia for the purpose of distribution of amounts set apart by the Centre either statutorily or otherwise to the States. The machinery in Australia, called the Australian Grants Commission, is the result of an Act passed by the Australian Federal Parliament in 1933. It is only a piece of administrative machinery similar to the *ad hoc* machinery that has been devised by the Government of India on various occasions, namely, Conference of Premiers of various States, Conference of Finance Ministers, Conference of Finance Secretaries and so on. The creation of a body of this nature though it is put in the Constitution as an assurance to the States that an impartial machinery will be created for the purpose of distribution of grants, has no more sanctity about it than it would have under a Parliamentary Act. I would also ask the Members of this House to realise this particular fact. Parliament undoubtedly can make legislation in regard to what portion of the Central finances, subject to the provisions contained in this chapter, could be distributed to the provinces. My honourable Friend Mr. Shibban Lal Saksena twitted the Drafting Committee yesterday that, while they have given the President powers to determine the allocation in certain articles, in one article they failed to do so and, therefore, he suggested acceptance of the amendment moved by my honourable Friend Mr. Nichols-Roy to that end. The explanation is that it would not be proper that a mere matter of administrative detail should be discussed at length by Parliament and decided on.

[Shri T. T. Krishnamachari]

The idea of the Finance Commission is a very restrictive one. If the idea of the Finance Commission is something like what I had at one time envisaged and tabled amendment which I did not move, namely, that in the first instance it ought to be a sort of Tax Investigating Commission, then I quite agree to all the propositions contained in the amendment moved by my honourable Friend Mr. Saksena. If it is going to be a matter in which the Finance Commission is going to be entrusted with reviewing the tax structure of this country and proposing amendments thereon, certainly Parliament must consider the report and Parliament must decide what steps the Central Government should take to implement its recommendations and how it can be incorporated either in the Constitution, or by means of a statute which will be applicable to the Central Government and also to the States. But that is not the position before us today. The position envisaged is a very limited one. In order to assure the States that they will have a fair deal the Drafting Committee has put in the body of the Constitution a provision which is not so wholly necessary to be put in the Constitution for the purpose of execution of that idea, namely, the creation of a Finance Commission. That is a limited objective. That objective—I think the House will forgive my repeating it—would be equally well-served by a Parliamentary Act. This article therefore has no more sanction than a Parliamentary act will have. That being so, Parliament must leave it to the executive to undertake the very onerous duty of distributing between the various provinces, on certain principles to be laid down by Parliament, the proceeds of certain taxes levied and collected by the Centre. I want the House to refer to article 253, clause (2), which says that Parliament will determine whether the whole or part of the duty will be distributed to the States, the principles on which they should be distributed, the actual quantum, etc. The application of the principle of distribution is not a matter for Parliament; it is a matter for the executive. If the executive misbehaves in any manner, it is then the obvious duty of Parliament to call the executive to order. But the House will have to recognise that while the Australian Grants Commission is a piece of administrative machinery, our Finance Commission will also only be an aid to the administrative machinery even though created by an article in the Constitution and their recommendations must be decided on by the executive, in consultation with the various Ministers of the States. Naturally the Commission is to be a permanent body or a semi-permanent body. But if Parliament is going to take upon itself the duty of adjudicating the claims of the various provinces, then instead of having a Finance Commission we may well have a sort of conference of the finance and other ministers of the States which will report to Parliament and Parliament can discuss the report and take necessary action thereon. But what will be the result? I will ask the House to remember what happened here yesterday and the day before when individual claims of provinces, absolutely without any reference to the claims of other provinces were pressed and pressed hard for any length of time. Individual members spoke for about 75 minutes on the subject. And to what purpose? The speeches had no relation to the total amount of revenue that is likely to be distributable or to the claims of provinces other than their own. It is in order to prevent Members of Parliament making claims on an individual or provincial basis and each group insisting on the rights of particular provinces that we have proposed to leave the thing in the hands of an administrative machinery, an arbitral body to decide. The executive can accept their recommendations if they are feasible and desirable.

I think my honourable Friend Mr. Saksena, himself a very diligent student of public finance, will realise that he is really throwing an apple of discord into the midst of members of Parliament when he wants Parliament to undertake this onerous responsibility. The farther we remove this responsibility from

Parliament and entrust it to an independent body like the Finance Commission, the better it will be for the future of this country. I think the point that has been made by members who spoke in support of the amendment is without any substantial merit.

In regard to the particular amendment suggested by Shri M. Ananthasayanam Ayyangar, I do see that it has a point. But the words here "as to the action taken thereon to be laid before Parliament" also mean that if anything is left over, a discussion may be raised in Parliament and what has been done or has not done will all be explained by those who are in charge of the finances of the country. Such a discussion will probably be useful for the purpose of future guidance rather than for determining what was to be done at the moment. I therefore think that the House will do well to reject the amendment, not because it is pointless, but because it arises from a total lack of understanding of the very limited field envisaged by articles 260 and 261.

Shri Brajeshwar Prasad: Mr. President, Sir, I rise to support the article moved by Dr. Ambedkar. I differ those who oppose this article on the ground that it is not in consonance with the sovereignty of Parliament. It is only in unitary States like England that Parliament is a sovereign body. There is no legal sovereignty in a federal constitution. Political sovereignty rests with the people. We have distributed powers between the Centre and the provinces. Even in those spheres that have been left to the Union Government, powers have been divided between three organs of the State, the Judiciary in the form of the Supreme Court, the Parliament and the President. Sometime last year I had occasion to raise the question at a different place that the President under the Constitution has got absolute powers and that his powers are not circumscribed by ministerial advice. Sir, having due regard to the fact that there is no legal sovereign in our Constitution, all talk of sovereignty of this House is entirely misplaced.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, I have come here to protest very strongly against the two amendments which have been moved by my friends Mr. Kamath and Mr. Saksena. I submit, Sir, that the amended article 260 is being hailed by people who suffer under a sense of injustice being done to them in the past and who hail this amended article 260 because it has reduced the period from five years to two years and also in the subsequent stages to a period shorter than five years. Sir, it follows therefore that if you have really a desire to do justice to the more unfortunate provinces, you should do so as early as possible and as quickly as possible. Therefore the provision in article 260 which enables the President to deal with the recommendations made by the Finance Commission is a very welcome one. If you leave it to be decided by Parliament it will necessarily mean that both Houses of Parliament would have to consider it. If the amendment which has been put forward by Mr. Saksena is accepted, then it will be enough if the Lower House puts its seal to it; but then it would mean delay and it would mean also that if the matter entirely rests on the vote of the House of Parliament, then the question of each province fighting for its own share or more than its own share will arise, and those provinces that have a more potent voice will get more than they deserve in some and will deprive other provinces which deserve more. Therefore, both on the ground of quick meeting out of justice and also on the ground of having better justice, I think it is certainly very welcome that a decision will be made by the President as early as possible and communicate the same to the Legislature. I do not mind if the decision is accompanied, as my friend Mr. Kamath desires, by an explanatory note or not. But, since it is the desire of Mr. Kamath that an explanatory note may be given so that he may find scope for criticism, that note may be furnished. That will not harm us in any way. But what I would like to say on behalf

of the poorer provinces that are labouring under a sense of injustice so far as finances are concerned—that injustice was not done by the present regime, but by the previous one—is that we all welcome article 261 remaining as it is.

Shrimati G. Durgabai (Madras: General): I move that the question be now put.

Shri Jagat Narain Lal (Bihar: General): Sir, the question before us is not entirely free from difficulty. It is true that the Finance Commission is an expert body consisting of a few select experts to judge as to what should be allocated to the different provinces. If the Parliament is to be made a cock-pit by the different provinces combining to get things done as they like, it will be very difficult for the Central Government. On the other hand the difficulty of the poorer provinces is there. The Finance Commission will be a small body. In case the Finance Commission does not see its way to do justice to some of the provinces which cannot carry on without a proper allocation, the position will be difficult indeed. I would have liked to support the amendment which makes the decision appealable from the decision of the Finance Commission in certain cases. The article as it stands does not make the decision appealable. If, however, some provision could be made whereby the recommendations of the Finance Commission could be reviewed in special cases by somebody, by the Cabinet or the Parliament, I would like to welcome such an amendment or such a provision. These are the difficulties and I would, instead of supporting the amendment which says that the Lower House should sit in judgment in every case, urge that some provision may be made whereby the recommendations of the Finance Commission in special cases, if any province wants it, may be reviewed by somebody who might sit in judgment on them. These are the few suggestions that I wanted to make.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I am sorry I cannot accept the amendments moved to this article. It seems to me that the amendment are based upon a complete misunderstanding of the provisions contained in article 261, and I feel that no amendment is necessary at all. In order to understand exactly what article 261 means, you have to go back to the previous articles which deal with the distribution of the income-tax and the distribution of the net proceeds of the Centrally collected excise duties. Obviously, with regard to the distribution of the income-tax, the article which we have passed so far leave the matter entirely with the President acting on the recommendations of the Finance Commission. That being so, it would not now be possible to say by an amendment that so far as the reommendations with regard to the distribution of the income-tax are concerned, the matter may be left to Parliament. My submission is that that issue is now closed, we having passed an article leaving to the President the allocation and the distribution of the income-tax either in the initial stage or in the subsequent variations.

Now, the other matter which is covered by article 261 relates to the distribution of the revenue collected from Centrally levied excise duties. It is also clear from the article that we have passed that this matter shall be governed by the law made by Parliament. The President cannot do it himself. Therefore the words "shall put before Parliament a memorandum stating the action that has been taken" merely means this that the President shall say, as he is bound to say, that a Bill shall be introduced before Parliament to regularise or sanction the proceeds of the excise duties and the manner in which they are to be allocated. Consequently, if my Friend, Prof. Shibban Lal Saksena, will read article 261 in relation to the other articles that we have passed, he

will realise that so far as the distribution of the excise duties is concerned, the result will be the same as what he proposes to bring about by his amendment. That being so, I think that his amendment is quite unnecessary.

Mr. President: I will now put the amendments to the vote.

The question is:

"That with reference to amendment No. 2950 of the List of Amendments, in article 261 for the word 'to' where it occurs for the second time, the words 'with an explanatory memorandum as to the action taken thereon by the Government to the extent to which such explanatory memorandum as he may think fit' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 2950 of the List of Amendments, for the words 'each House of Parliament' proposed to be substituted, the words 'each House of Parliament for such action thereon as Parliament may deem necessary' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words 'action taken thereon to be laid before Parliament' the following words be substituted:—

'containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right to amend the proposals made by the President by a resolution passed by the House of the People. The proposals of the President in their original form or in the form in which they emerge after they are amended by the House of the People shall thereafter become law.'"

The amendment was negatived.

Mr. President: The question is:

"That in article 261, for the word 'Parliament' the words 'each House of Parliament' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That article 261, as amended, stand part of the Constitution."

The motion was adopted.

Article 261, as amended, was added to the Constitution.

Article 262

Mr. President: Amendment No. 141 is verbal. I take it that we should not have these formal amendments moved in every case.

Shri H. V. Kamath: This amendment relates to amendment No. 2951. If that amendment is not moved, this will not arise.

Mr. President: I am suggesting that verbal amendments like the substitution of "Consolidated Fund of India" for "the revenues of India" should be left to the Drafting Committee. Whenever such phrases occur, the Drafting Committee will put them aright.

Shri H. V. Kamath: Amendment No. 2951 seeks the substitution of the words "the revenues of India" by the words "Indian revenues". If that amendment is not moved, my amendment will not arise.

Mr. President: That was given notice of, before we accepted the term "Consolidated Fund of India".

Does anyone wish to say anything on this article?

The question is:

"That article 262 stand part of the Constitution."

The motion was adopted.

Article 262 was added to the Constitution.

Article 263

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 263 the following be subtituted:—

Custody of Consolidated Funds, the payment of moneys in to and withdrawal of moneys from such funds.

'263 (1) The custody of the Consolidated Fund of India, the payments of moneys into such Fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by Parliament, and until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President

(2) The custody of the Consolidated Fund of a State, the payments of moneys into such Fund and the withdrawal of moneys therefrom, and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made by the Legislature of the State shall be regulated by rules made by the Governor of the State.'"

I do not think any explanation is necessary.

Pandit Hirday Nath Kunzru: Mr. President, I move:

"That in the amendment just moved by Dr. Ambedkar, after the words 'Consolidated Fund', wherever they occur, the words 'and the Contingency Fund' be inserted and for the words 'such Fund', wherever they occur, the words 'such Funds' be substituted."

The House has already agreed to the establishment of a Contingency Fund. It is therefore necessary to provide for the manner in which money may be put into the Contingency Fund and may be withdrawn from it. This is a purely formal amendment and I trust that the House will accept it.

Mr. President: I take it that Dr. Ambedkar will accept Pandit Kunzru's amendment.

The Honourable Dr. B. R. Ambedkar: I accept the amendment.

Mr. President: The question is:

"That in amendment No. 206 above, in the proposed article 263, after the words 'Consolidated Fund', wherever they occur, the words 'and the Contingency Fund' be inserted, and for the words 'such Fund', wherever they occur, the words 'such Funds' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That proposed article 263, as amended, stand part of the Constitution."

The motion was adopted.

Article 263, as amended, was added to the Constitution.

Article 263-A

Mr. President: There is an additional article to be moved by Dr. Ambedkar

Shri T. T. Krishnamachari: May I suggest that it should be held over?

Mr. President: Very well. Then we go to article 267. Articles 246, 265 and 266 are not on to-day's list.

Article 267

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in article 267—

(i) after the words 'Crown in India' the words 'or after such commencement in connection with the affairs of the Union or of a State' be inserted;

(ii) for the words 'revenues of India' wherever they occur, the words 'Consolidated Fund of India' be substituted;

(iii) for the words 'revenues of a State' wherever they occur, the words 'Consolidated Fund of the State' be substituted,

(iv) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted; and

(v) for the words 'revenues of the State', the words 'Consolidated Fund of the State' be substituted."

It is just consequential.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That for part (i) of amendment No. 102 above, the following be substituted:—

'(i) for the words "Crown in India", the words "Government of India prior to 15th August 1947 or after such commencement in connection with the affairs of the Union or the Government of a State" be substituted;'"

Sir, I have suggested this amendment, because I do not want the words "Crown in India" to appear in our Constitution and to be a reminder of the period of our slavery for ever in future. I do not think that the word is so essential and it can be very easily avoided by converting it into "Government of India prior to 15th August 1947". I think this is a very simple amendment and the sentiment of the House, I am sure, will be in favour of it. The other portion of the amendment is merely the incorporation of Dr. Ambedkar's amendment and that I think will be acceptable to him. I therefore think that these words "Crown in India" should be changed into "Government of India prior to 15th August 1947".

Shri H. V. Kamath: Mr. President, I move, Sir, amendments 142, 143, 144, and 145 of List IV, Third week. Amendment No. 142 runs thus:

"That in part (i) of amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'in connection with the affairs of the Union or of a State' (in the words proposed to be inserted), the words 'under the Government of the Union or of a State' be substituted."

The next amendment, 143, reads as follows:—

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words 'in connection with the affairs of such a State' the words 'under the Government of such a State' be substituted."

Amendment No. 144 reads to the following effect:—

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments in clause (b) of article 267, for the words 'in connection with the affairs of the Union or another such State' the words 'under the Government of the Union or another such State' be substituted."

The last amendment, Sir, of mine, No. 145 of the same List, is to the following effect:—

"That with reference to amendment No. 102, of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'an arbitrator' the words 'a tribunal' be substituted."

All these amendments are germane to the amendment just now moved by Dr. Ambedkar before the House, number 102 of list I (Third Week). These four amendment of mine fall into two categories. The first three are similar in nature and the last one is in another class. The first three seek to substitute certain expressions used in this article and thereby eliminate what I consider unnecessary and cumbrous verbiage. I do not know exactly whether in using

[Shri. H. V. Kamath]

expression "affairs of the Union or of a State", the Drafting Committee has got something else in mind than service rendered by a person under the Government of the Union or of a State. The article refers to pensions payable to or in respect of a person who has served in connection with the affairs of the Union or of a State. Naturally, if a person is entitled to some pension in connection with services rendered by him, I believe it must be under the aegis of the Government of the Union or of a State which is liable to pay the pension to him Therefore, I feel that it is somewhat vague to use this expression "affairs of the Union". What kind of affairs? The Union or a State may have all kinds of affairs. I suppose the article contemplates governmental affairs, and not any other affairs that may arise in connection with the Union or as between the Union and the constituent units. Therefore, this article must be clear; that is to say, it must specify, clarify and make it absolutely crystal clear that the services rendered by a person on account of which he will get a pension will be in relation to the Government of the Union or under the Government of a particular State.

If, of course, this expression in the proposed draft means the very same thing, then mine will be a formal or verbal amendment; by plea will be that it is far less cumbrous, and far more clear. English is a notoriously cumbrous language. Some of us tend to make it more so. I am reminded of one of Bernard Shaw's witticisms. Bernard Shaw once said that the Engilsh language is a very cumbrous instrument of expression and when we want to say, we cannot do a particular thing, we go on elaborating and say, "I am very sorry, I regret very much I cannot do this." The Chairman says, "no can", and expresses himself as clearly and effectively. I do not want the Drafting Committee or this House to be, like the Chinaman, so brief, terse or concise as to sacrifice the meaning of the article. Therefore, the first point that I want to make out is that this expression 'in connection with the affairs of the Union' must be clarified so as to mean, and to say what it means, that the services rendered by a person under the Government of the Union and the Government of the State and no other affairs of any kind are contemplated under this article. That disposes of three amendments 142, 143 and 144 that I have just now moved before the House.

Coming to amendment No. 145, which seeks to substitute a tribunal for an arbitrator, I must at the very outset confess my partial if not total ignorance of civil law and ancillary legislation. Whether in constitutional law or in civil law there is an essential distinction between an arbitrator and a tribunal, I am not competent to have the last word on. But, from the meagre tit-bits that I have gathered during my experience in several fields, I feel that a tribunal has got a greater constitutional importance or sanctity than an *ad hoc* arbitrator that may be appointed for a particular case. According to this article, if adopted as moved before the House by Dr. Ambedkar, it is conceivable that it is very likely that several cases may arise where under the provisions of this article there may not be agreement between the parties concerned. There may not be just one or two cases; it is very probable that we may be inundated with scores if not hundreds of cases, because not merely the Union is involved, but various other States are also involved. Do we, by adopting this article, contemplate the appointment of an *ad hoc* arbitrator whenever a case arises? That will mean that we will have several arbitrators appointed on several occasions. Or is it our intention that to dispose of all cases of this type, where agreement is not secured, to have a body of men, competent men, experts in their own line, to examine and decide all these cases and when they may arise? If that be our intention, then in my humble judgment, not an arbitrator, but a tribunal is called for. The wording of this

article also, I believe is not quite happy. It is said here that there will be an arbitrator.....that means to say one; I am sure we do not want to quarrel on the point that 'an' means one; I am happy that the Chief Justice of India has been empowered in this regard. But to say that he will appoint 'an arbitrator' and no more or no less—I am sorry, no less cannot arise because less than one is zero——no more than one, is to fetter the judgment of the Chief Justice unduly. He may think that a particular case before him is either so complicated or the cases are so numerous or so varied that one man cannot dispose of all these cases, and he might think that a tribunal will be more competent to decide these cases than arbitrator. I believe so far as an arbitrator is concerned, both the parties have to signify beforehand their agreement to abide by the decision of the arbitrator. But if a tribunal is appointed and if we provide in the Constitution that the decisions of the tribunal will not be subject to any appeal and they will be final, we will be following a far wiser course than approving of this provision for a mere arbitrator. When this Constitution comes into force and this article comes into effect several cases of this type may arise and one arbitrator will not then be able to dispose of the cases with promptitude and alacrity; and I make bold to say, with sufficient impartiality and justice. A tribunal or a high order is called for to dispose of these matters and so I move that instead of 'arbitrator' proposed in this article the Chief Justice of India should be vested with prowers to appoint a full-fledged tribunal to dispose of these cases as and when they arise. I therefore move Nos. 142, 143, 144 and 145 and commend them for the consideration of the House.

Dr. P. S. Deshmukh: Mr. President, this a very simple article and I do not think the House need take long to pass it. It refers only to adjustments in respect of certain expenses and pensions. Mr. Kamath has moved an amendment to substitute 'arbitrator' by 'tribunal'. I would suggest to him that it is wholly unnecessary to transform a mere arbitrator into a tribunal with all the expenditure that it will involve. These are likely to be small cases and one person appointed by the Chief Justice to give an award so as to adjust the expenditure between the Union and the States would be quite enough. They are not likely to be very complicated cases nor is there likely to be great feeling on either side in fighting these cases. But I would ask one question from Dr. Ambedkar, *viz.*, whether there would not be cases between the Union and more than one State on the one hand, and on the other hand between one and more than one State so as to require adjustment and arbitration. In 267 there is a provision for arbitration between Union and one State only. Nowhere the word State has been used in plural and there is no provision also for adjudication as between two States. I do not think it is possible to interpret this article so as to mean that the singular includes the plural and I therefore think it is either deliberately or has been inattentively omitted. I would like myself to be satisfied whether it is impossible that cases are likely to arise of distribution of expenditure between two individual States. I cannot conceive that it is unimaginable because they refer to a variety of cases. In this first para, it is stated as follows :—

> "Where under the provisions of this Constitution the expenses of any court or Commission, or pensions payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India, are charged on the revenues of India or the revenues of a State etc."

I can say that this can very well refer to more than one State, and if that is the position whether it is not intended that such cases should be referred to an arbitrator? If that is so, the article would have to be suitable amended. Perhaps we have to say the word 'States' should be substituted for 'State' wherever the word occurs. But I merely ask this for clarification and, if Dr. Ambedkar is convinced that there is no likelihood of such cases arising

[Dr. P. S. Deshmukh]

between two individual States or the Union and two other States, then of course my point would not arise. But if it is conceivable that they will arise then a proviso will also be equally necessary.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept any amendment.

Mr. President: I put the amendments to vote.

The question is :

"That for part (i) of amendment No. 102 the following be substituted

'(i) for the words 'Crown in India', the words 'Government of India prior to 15th August 1949 or after such commencement in connection with the affairs of the Union or the Government of a State' be substituted'

The amendment was negatived.

Mr. President: The question is :

"That in part (i) of amendment No. 102 of List I (Third Week) of amendment to Amendments, in article 267, for the words 'in connection with affairs of the Union or of a State' (in the words proposed to be inserted), the words 'under the Government of the Union or of a State' be substituted.'"

The amendment was negatived.

Mr. President: The question is :

"That with reference to amendment No 102 of List I (Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words 'in connection with the affairs of such a State' the words 'under the Government of such a State' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (b) of article 267, for the words 'in connection with the affairs of the Union or another such State' the words 'under the Government of the Union or another State' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'an arbitrator' the words 'a tribunal' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in article 267.—

(i) after the words 'Crown in India' the words 'or after such commencement in connection with the affairs of the Union or of a State' be inserted;

(ii) for the words 'revenues of India', wherever they occur, the words 'Consolidated Fund of India' be substituted;

(iii) for the words 'revenues of a State' wherever they occur the words 'Consolidated Fund of a State' be substituted;

(iv) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted; and

(v) for the words 'revenues of the State', the words 'Consolidated Fund of the State' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That article 267, as amended, stand part of the Constitution."

The motion was adopted.

Article 267, as amended, was added to the Constitution.

Article 268

Mr. President: We go to article 268. There is a formal amendment in the name of Dr. Ambedkar. I take it the House accepts it.

The amendment is:

"That in article 268, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Shri M. Ananthasayanam Ayyangar: Mr. President, I wish to draw the attention of the House to what an important matter this Chapter relates—borrowing. Though the entire borrowing both of the Centre as well as of the provinces and loans may be granted by the Union Government to States are put compendiously in two articles 268 and 269, they are more important and require greater scrutiny than the powers to impose taxation, with respect to which and for the distribution of which—the revenues of both the Union and the States—we have devoted a long Chapter. My intention in speaking on this matter is to draw the attention of the House now, and later on to make sure that the Parliament will devote greater attention to this matter. We have been seeing from time to time that the revenues are being collected for the year by Finance Bills. So far as borrowing is concerned—they may be short or long-term, imposing heavy obligations upon not only the present generation but future generation also—sufficient attention is not being given to the manner in which borrowing can take place. Many of the loans which have been raised recently by provincial Governments have not been fully subscribed, some had to be withdrawn, and even we have been very chary of borrowing in the open market. I would suggest that a Commission of the kind of Finance Commission might be constituted for all time.

We do not want any other Commission. The Reserve Bank in the State Bank and it is competent to give us advice as to what ought or ought not to be done in this matter. Development schemes generally are to be undertaken by borrowings. They ought not to be legitimately borne on the current revenues because the benefits of these schemes will be shared not only by the existing people, by the mass of the people now present, but also all the succeeding generations. From our recent budgets, it will be clear that the borrowing programmes are as wide as are the programmes for the revenues of the year. Under these circumstances, the matter of borrowing, the question of what loans are to be floated, is not being placed before Parliament. There is a similar provision in the existing Government of India Act. It is open to the Dominion Parliament to give directions as to the methods of borrowing, the amount of borrowing and so on. But all the same, all these matters have not been placed before us except as an appendix, as the tail-end of the budget, indicating what the capital outlay will be, and how in very brief outline, that money is to be made up. Parliament, when it makes provisions, should be very chary in granting permission to all and sundry loans being floated, irrespective of the capacity of the people to subscribe, etc. These and the purposes for which the borrowings take place will all be regulated by Parliament under article 268.

I find that both in articles 268 and 269, as regards loans that have to be borrowed by provinces, the consent of the Central Government is necessary in certain cases. In the present Government of India Act, there is a clause

[Shri Ananthasayanam Ayyangar]

that this consent ought not to be delayed or unreasonably delayed. There is no such provision in this article, because it is thought such a provision is not necessary. Under the Government of India Act, it was thought there will be a different agency who will not be a national of this country, in charge of the administration. But now with national governments in the provinces and a national government at the Centre, it is felt that such a provision is not necessary. I hope articles 268 and 269 will meet the situation. They will be taken full advantage of and will help to keep even a closer scrutiny upon the revenues of the Union and of the Provinces. I support the articles as they stand. But in the matter of working, the matter will be placed before Parliament and the Executive will not take the entire responsibility on itself of raising loans before coming to Parliament, in the future.

Prof. Shibban Lal Saksena: Mr. President, Sir, in this article I again want to voice my feeling against arming the executive with powers to borrow upon the security of the revenues of India etc. Of course, the limits are to be prescribed by Parliament by law. But beyond that, Parliament does nothing. Sir, I think in such important matters where the entire security of the State may be pawned, there must be some voice for Parliament. It must not merely be that Parliament shall fix the limit, but that in other matters the Executive shall have all the power. At least, after taking a decision, the executive must take the Parliament into confidence. After all the Ministry will have always the majority in the Legislature and whatever they may do they will be able to carry through the House. That being so, I do not know why they should feel shy to bring these things to Parliament. I therefore think that such sweeping powers as are proposed in this article, should not be given to the Executive. Sir, this is my only objection and I hope the House will consider it. I am sorry I did not give notice of any amendment.

Shri H. V. Kamath: Mr. President, I earnestly hope that the House will bestow very serious consideration upon this chapter, Chapter II, which refers to borrowing by the Union, or giving guarantees to loans made by other units of the union. Borrowings can easily be one of those rocks upon which the ship of State may founder; and in modern times, and in the modern world when economics has assumed such tremendous importance, and when loans are floated and subscribed very frequently by every State, by every country in the world, I feel that the executive of the Indian Union-to-be, should not be vested with the power to decide upon borrowing, within the limits, of course, fixed by Parliament, no matter what the purpose of the borrowing may be I feel that the purpose for which the loan is raised, under this article must be laid before Parliament and the approval of Parliament must be sought and obtained for the purpose of that loan. But under this article 268, Parliament is empowered merely to fix the limits—I suppose it means the pecuniary limits, the monetary limits, within the limits of so many crores, and that sort of thing. Also the second part of the article relates to similar safeguards—not very important, in my estimation—regarding monetary limits of the guarantees to be given by the Union for loans. Nowhere does the article envisage the purpose for which the loan is raised or borrowed or guarantee given. In recent months, as the House is very well aware, various proposals have been made for loans from the World Bank or loans from America or from some other country as is willing to finance and promote our economic and industrial development. The House will also recollect that this House sitting as Parliament, during the last budget session and even in earlier sessions, pointedly asked the Prime Minister and perhaps the Finance Minister too whether loans borrowed from foreign countries, from America, or may be from U.S.S.R. if Government will consider such a proposal, will be subject to any political, economic or military strings. After all, I am sure that Parliament

will ultimately decide our international relations. It is neither the executive nor the President but Parliament which will have the final word on what our foreign relations are going to be, what our international policy is going to be. But the executive may be at variance with Parliament in certain matters and if the executive takes it into its head to pursue a foreign policy which Parliament later on may not approve or which may not be quite in consonance with the decisions of Parliament in this regard, then a very unfortunate situation pregnant with dire consequences may arise when a commitment will have been made by the government of the day—by the President and the executive—with regard to borrowing or the raising of loans from foreign countries. Of course they will not transgress the limits prescribed by Parliament. They will not borrow more than one, ten or twenty crores—whatever the limit may be. But the real purpose of that loan may be kept a guarded secret, and the purpose of the loan is an essential matter which will ultimately help or hinder us, and save or destroy us. I hope the House will consider this aspect of the matter which is far more vital in my judgment than the financial limits to be fixed by Parliament. The purpose of the loan goes to the root of the matter. If the President or the executive borrows a loan from America and either in a secret pact or in some secret terms of the agreement there is some military commitment or a political commitment, to be effective in future if there be war, that we will assist it against certain other countries,—do we wish to face such a dangerous situation as that? I therefore want that this article should be so amended as to enable Parliament not merely to fix the limits of borrowing and the giving of guarantees but also to see on every occasion that the purpose of the loan or the purpose of giving a guarantee is justified by circumstances and that it is in absolute and complete consonance with the policy adopted by Parliament in our internal as well as international relations—the more so in our foreign and international relations. If the executive raises a loan on terms contrary to the policy which has been approved of by Parliament or which may be subsequently enunciated by Parliament, a conflict may arise between Parliament and the executive and it will be too late in the day to undo the disastrous effect of a loan that might have been borrowed by the executive with certain commitments made without reference to Parliament. We must be on our guard against this situation arising in future. I plead with the House that this is no small matter at all, to be dismissed with just a flippant consideration or just because Dr. Ambedkar or the Drafting Committee is not going to consider the matter. I plead in the name of the future of India, of the peace, liberty and progress that we all have at heart—of the peace of India as well as of the world—that this article, and this Chapter as a whole, should receive more consideration than most articles usually do at the hands of this House. I hope that not merely the financial limits but also the purpose of every loan will come before Parliament for its approval, and action is taken by the President in accordance with the policy laid down by Parliament with particular regard to our international relations or our internal policies.

Prof. K. T. Shah: Mr. President, Sir, I agree that every act of borrowing is an executive act. But the *power to borrow* need not necessarily be regarded as an Executive power exclusively, subject to such limits, if any, as Parliament may from time to time place. From this point of view I would like to suggest that the borrowing power, or the use of the national credit, is a very delicate matter. Under the conditions under which we are now living, it cannot be treated too scrupulously or too carefully if we would bear in mind the interests not only of the present generation, but of generations to come. As we know, the security of the revenues of India—as the clause speaks here—is, at the present time any rate, and judged strictly from purely economic considerations, a very thin security That is to say, we have been, in the last ten years or

[Prof. K. T. Shaw]

so, habitually living in a deficit economy, and that deficit, considered in its budget aspect as well as in the aspect of the aggregate national economy, shows so far no sign of abatement. The various projects we have undertaken promise to remedy these deficits within ten or fifteen years. At the present moment, at any rate, and for some years to come it seems to me that our economy being a deficit economy, borrowing would be a necessity for years to come, and, as such, we cannot too carefully regulate, limit or restrict this power.

Taking this view I think that if the Constitution categorically assigns this power to the Executive, the Constitution would be doing injustice, not only to the Legislature, but also to the interests of, as I said before, generations to come. And for this reason. Parliament should not only regulate the borrowing by the Executive in the sense of fixing limits up to which borrowing can take place or lay down conditions for offering securities or guarantee, but Parliament should in my opinion say every year, in what may be called the Ways and Means Act, or the Finance Act, how much, shall be borrowed, so that from time to time—from year to year—the Parliament is aware of the state of the national credit and husbands it accordingly. The question is still more fearful as I conceive it, because it is very likely that borrowing within the home market may not suffice, and that you may have to resort to borrowing outside the limits of the country. At that point, the danger would be much more acute than perhaps we are inclined to envisage it today. It has been the unfortunate experience of many countries which have been chronically indebted that the lender has time and again exercised influence, demanded security or guarantee, which is beyond the capacity of the country to afford. I will not quote, any remote examples, but even that country which was once regarded as the banker of the world—I mean Britain—whose credit is now being questioned is in a similar position, and the principal lender today is suggesting or inclined to interfere even in its domestic affairs. It is being alleged that the course which the present Government in England is following of all-round nationalisation bit by bit, makes the lender very nervous about the stability or security of that country. Suggestions, therefore, are not wanting that the accord between England and America may suffer.

I mention this illustration just to point out the danger inherent in a provision like this, wherein the power to borrow is left almost unconditionally to the executive, the only condition being that Parliament may impose limits as to the amount and nature of guarantees from time to time that may be given. The wording of the article suggests that even the imposition of such limits is a very doubtful proposition. The limits, "if any"—that means limits may not be there at all, and the Executive may be entitled to borrow without limit, either of the charge it may create upon the consolidated fund which will be then outside the annual votes of Parliament, or which may be so excessive that the country's entire future may be mortgaged to the lender.

Now, that is a consideration which fills me, for one, with great apprehension for the future. I am not prepared to say that there should be an utterly unconditional or unlimited power even under the Constitution to the executive to borrow up to what limits and in what manner it likes whether at home or abroad. As you know, in the past I have pleaded for more power to the Parliament as against the executive. In this instance, I am even prepared to go so far as to say that, by express provision of the Constitution, even the power of the Parliament should be restricted in the matter of the use of the national credit. Not only should the power of the executive be restricted; the executive should only confine itself to administering the law,—the Act,—under which borrowing should be authorised every year, so that every year

Parliament is in a position to take stock. I go further and say that even the power of Parliament should be restricted in the nature of assurances and guarantees that it is in a position to give. Parliament should not, for instance, I suggest—be able to guarantee or mortgage the primary productive resources, nor mineral wealth nor rivers nor any of the primary sources of production on which the future happiness of the country may depend. And if such a thing as this can be done the people as a whole, I would suggest, should be in a position to know it, and a revision of the Constitution may be necessary before even Parliament could mortgage the resources of the country.

As I have said before, while I have always suggested that the supreme power should be vested in Parliament here is an instance in which, by the Constitution, I would limit the power even of Parliament to allow any borrowing within and much more so outside the country. This article, therefore, cannot be viewed too seriously, and I would appeal to the Draftsman to reconsider this matter if he takes into account, as I hope he will take, the seriousness of the stakes involved in this article.

The Honourable Dr. B. R. Ambedkar : Sir, except for the last oration of my Friend Prof. K. T. Shah in which he suggested that we should introduce a clause putting limitation upon the authority of Parliament to sanction loans, I was really quite unable to understand the dissent which has been expressed by other speakers with regard to the provision contained in article 268. It is admitted that it is the executive alone which can pledge the credit of the country for borrowing purposes, for borrowing is an executive act in one aspect of the case, but in this article it is not proposed that the power of the executive to borrow is to be unfettered by any law that is to be made by Parliament. This article specifically says that the borrowing power of the executive shall be subject to such limitations as Parliament may by law prescribe. If Parliament does not make a law, it is certainly the fault of Parliament and I should have thought it very difficult to imagine any future Parliament which will not pay sufficient or serious attention to this matter and enact a law. Under the article 268, I even concede that there might be an Annual Debt Act made by Parliament prescribing or limiting the power of the executive as to how much they can borrow within that year. I therefore do not see what more is wanted by those who expressed their dissent from the provisions of article 268. It is of course a different matter for consideration whether we should have a further provision limiting the power of the Parliament to pledge the credit of the country. It seems to me that even that matter may be left to Parliament because it will be free for Parliament to say that borrowing shall not be done on the pledging of certain resources of the country. I do not see how this article prevents Parliament from putting upon itself the limitations with regard to the guarantees that may be given by Parliament for the ensurement of these loans or borrowings. I therefore think that from all points of view this article 268 as it stands is sufficient to cover all contingencies and I have no doubt about it that, as my friend Mr. Ananthasayanam Ayyangar said, we hope that Parliament will take this matter seriously and keep on enacting laws so as to limit the borrowing authority of the Union,—I go further and say that I not only hope but I expect that Parliament will discharge its duties under this article.

Shri H. V. Kamath : Would not Dr. Ambedkar agree to the deletion of the words "if any"?

The Honourable Dr. B. R. Ambedkar : I have been considering that, but I do not think that will improve matters, because the words are "as may from time to time".

Mr. President: I take it the amendment to substitute the words 'Consolidated Fund of India" is accepted.

The question is:

"That in article 268, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That article 268, as amended, stand part of the Constitution"

The motion was adopted.

Article 268, as amended, was added to the Constitution.

Article 269

Mr. President: There are some amendments which are printed in the II Volume of the printed amendments on page 313.

(Amendments Nos. 2971 and 2972 were not moved.)

Then we shall take up amendment No. 107 by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (1) of article 269, the words and figures 'for the time being specified in Part I of the First Schedule, be omitted."

"That in clause (1) of article 269, for the words 'revenues of the State' the words 'Consolidated Fund of the State, be substituted."

"That with reference to amendment No. 2972 of the List of Amendments, for clause (2) of article 269, the following clause be substituted:—

'(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 268 of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.'"

The important change by my amendment No. 107 is that originally the Government of India was given a free hand in this matter; now the action of the Government of India is subject to such conditions as may be laid down by or under any law made by Parliament.

Sir, I move:

"That in clause (3) of article 269, the words and figures 'for the time being specified in Part I or Part III of the First Schedule' be omitted."

Shri Brajeshwar Prasad: I am not moving amendment No. 108.

Shri H. V. Kamath: No. 146, I believe, is a verbal amendment and I leave it to the wisdom of the Drafting Committee.

Shri B. Das: (Orissa: General): Sir, article 268 empowers Parliament to fix by law the amount that could be borrowed by Provincial Governments. Article 269 was originally drafted differently. Now, the amendments that have been moved by Dr. Ambedkar shows that article 269, as sought to be amended by him, imposes further burden on the Finance Minister of Union Government. It also imposes additional burden on the Auditor-General of the Government of India without whose advice the Parliament will not be able to decide.

Today the Union Government is charged with additional responsibility of the borrowings of the States. Of course, it is qualified that such loans, such borrowings will be within the territory of India and also will be upon the

security of the revenues of the State. Sir, if we examine the finances of the various Provincial Governments we will find that except a few crores of loans that were raised when the Congress assumed responsibility for the administration of provinces in 1936, all loans have been borrowed on the credit of the Government of India, which task in future devolves on the Union Government. We have recently heard a controversy that certain provinces thought that they have the power to borrow any money. Certain provinces revolted and they thought that they can float any loans and issue any bonds or securities whether negotiable or non-negotiable. Those of us who think that all borrowings should be done through the Union Government felt at that time at the national credit of the Union Government would suffer if provinces were given the freedom in the matter of borrowing. I do not understand what is the security of the revenues of the Provincial Governments. Who is to fix them? Will the Auditor-General fix at the time of the promulgation of this Constitution that such and such States and such and such provinces will have so much power of borrowing?

Unfortunately, I do not like the wording of article 268. How will Parliament fix by law the amount of borrowing every year for the Union and for the different provinces. Sir, as my memory goes over the past twenty-five years, I do not remember a single occasion when the alien Government which ruled over us, consulted Parliament over their borrowing policy. It always came in through the backdoor of explanatory memorandum. Never has the Government of India introduced the practice of raising a debate on their borrowing policy. The borrowing is sanctioned when the Budget is passed, Then we have article 269 under which the finance ministers of the States can claim sums of money for the development of their States. Whatever money they claim, article 269 is going to provide. It will be a charge on the revenues of the State. But who will be the judge as to whether a certain province has got the paying capacity? Already the Government of India is committed to large development schemes on behalf of the provinces. We have the Bhakra Dam in East Punjab, the Hirakund Dam in Orissa, the Damodar Valley Corporation in Bengal and the Kosi Dam in Bihar about which my friends from Bihar are so very anxious. Who is to judge that these development projects will stand the national credit of the particular provinces for which the money is borrowed? I wish there is someone to do this. I think, Sir, whatever be enacted in articles 268 and 269, we must not throw this responsibility on Parliament alone. Parliament, as I know it for the last twenty-five years, pays very little attention to the question of borrowing. If I remember aright, there have been only half a dozen debates in all during the last twenty-five years on the policy of borrowing. Will we improve our financial knowledge in the next few years when we will be discussing the national credit of the Union and of the provinces and who will say boldly that such and such provinces will only have so many crores of loan and nothing more? Unfortunately, when provincial feelings come into play in the discussion over such matters, members simply fight for the benefit of their own provinces. I think articles 268 and 269 envisage giving more powers to the Auditor-General. The Auditor-General must review and submit the papers to the Members of parliament every year about the credit of each province, apart from the Union Government. The Auditor-General is not now doing that. I am discussing the handicaps that surrounds us in considering questions of this kind. Unfortunately the Finance Department of the Government of India is still following the old tradition and treating the Auditor-General as a mere auditor of a company, where the directors tell him to overlook certain errors and malpractices. But if the House accepts article 269 as it is, the House should somehow incorporate some provision whereby the Auditor-General must report to Parliament the credit conditions of the provinces. Most of us are laymen and politicians. Very few members of Parliament will be financiers. Financiers do not belong to the class of democracy from which we

[Shri B. Das]

come. The future legislatures will not contain businessmen or men who understand stock exchanges or the financial credit of our country. Therefore there is a double duty imposed by article 269 and I would ask my honourable Friend Dr. Ambedkar to explain how he thinks that Parliament will understand and appreciate the national credit of each of the States and of the Union and how it will limit the amount of borrowing of the Union Government and the States. The Parliament is empowered under article 268 and is going to be further empowered by article 269 to maintain the national credit of India. But then how will the national credit of India be maintained? I view with grave concern article 269. If any province rebels against the Centre and against the unification of the national economy of India, the national credit will not be a settled fact. Some other method must be thought of.

The Honourable Shri K. Santhanam (Madras: General): Sir, I wish to say a few words with reference to one point which struck me when Prof. Shah was speaking on article 268. Prof. Shah suggested that the Government of India and even Parliament should not be entitled to pledge the primary resources of the country in order to borrow. I entirely agree. But, according to my reading of articles 268 and 269, there is no question of either the Government of India or any State pledging any particular resources for any particular borrowing. They give power to borrow only on the security of the Consolidated Fund of India or of the States. It will not be open to the Government of India to say that they pledge the railways for a particular loan, say from America. Only the entire Consolidated Fund of India will be the security. It means that it will only be a general security of the credit of the people of India. There can be no question of particular general resources or the railways being pledged for any loan either from abroad or internally. The same will be the case with every State. Therefore there should be no apprehensions on the point. I think the plain meaning of articles 268 and 269 makes it certain in this respect. I would, however, like to suggest to Dr. Ambedkar that, if there is the slightest doubt in the wording, the Drafting Committee should look into it and remove the doubt. It should be made clear that the only security should be the general credit of the whole of India or of a State and not particular resources.

The Honourable Dr. B. R. Ambedkar: I do not think, Sir, any reply is called for.

Mr. President: I will now put the amendments to the vote.

The question is :

"That in clause (3) of article 269, the words and figures 'for the time being specified in Part I of the First Schedule' be omitted."

The amendment was adopted.

Mr. President: The question is :

"That in clause (1) of article 269, for the words 'revenues of the State' the words 'Consolidated Fund of the State' be substituted."

The amendment was adopted.

Mr. President: The question is :

"That with reference to amendment No. 2972 of the List of Amendments, for clause (2) of article 269, the following clause be substituted :—

'(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 268 of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.'"

The amendment was adopted.

Mr. President: The question is:

"That in clause (3) of article 269, the words and figures 'for the time being specified in Part I or Part III of the First Schedule' be omitted."

The amendment was adopted.

Mr. President: The question is:

"That article 269, as amended, stand part of the Constitution"

The motion was adopted.

Article 269, as amended, was added to the Constitution

Articles 5 and 6

Mr. President: We have now to take up articles 5 and 6 of the original draft. I find there is a veritable jungle of amendments, something like 130 or 140 amendments, to these two articles. I suggest that the best course will be for Dr. Ambedkar to move the articles in the form in which he has finally framed them and I shall then take up the amendments to this amended draft. Both 5 and 6 go together I think. Dr. Ambedkar.

Prof. K. T. Shah: May I know what happens to the amendments in the Printed List? They have all been tabled as amendments to the original draft I do not quite understand your suggestion as to the process in which the amendments would now be taken up.

Mr. President: If there is any amendment which is of a substantial nature, which touches any of the amended drafts as proposed by the Drafting Committee, I shall certainly take it up, but I leave it to the Members to point out to me which particular amendment they wish to move.

Dr. P. S. Deshmukh: If the original draft is not moved, all the amendments tabled to that draft go by the wind.

Mr. President: We do not move the original draft, but it will be taken as moved and then the other amendments come in.

Members will find that Dr. Ambedkar has given notice of certain amendments which have been circulated to Members. The first is No. 1 in List I.

The Honourable Dr. B. R. Ambedkar: Sir, May I give the references? The amendments of which notice has been given about the citizenship clause are spread over various lists, and I propose to give in the beginning to Members the references to the various lists. The first amendment is No. 1 of List I. Then come amendments Nos. 128, 129, 130, 131, 132 and 133 of List IV. These are the various proposals of the Drafting Committee with regard to this article. I feel that the House may not be in a position to get a clear and complete idea if these amendments were moved bit by bit, separately. Therefore what I propose to do is this that I will move a consolidated amendment, so to say, which I have prepared, consisting of amendments Nos. 1, 128, 129, 130 and 133. My Friend, Mr. T. T. Krishnamachari, will subsequently move the other two amendments which are Nos. 131 and 132 in List IV. In amendment No. 129, it should read "of the proposed article 5A" instead of "of the proposed article 5". It is a printing error. With these preliminary observations, so to say, I move my amendment:

"That for articles 5 and 6, the following articles be substituted:—

Citizenship at the date of Commencement of this Constitution

"5 At the date of commencement of this Constitution, every person who has his domicile in the territory in India and—

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement,

[The Honourable Dr. B. R. Ambedkar]

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

Rights of citizenship of certain persons who have migrated to India from Pakistan.

5-A. Notwithstanding anything contained in article 5 of the Constitution a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution if

(a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and

(b) (i) in the case where such person has so migrated before the nineteenth day of July 1948, he has ordinarily resided within the territory of India since the date of his migration, and

(ii) in the case where such person has so migrated on or after the nineteenth day of July 1948 he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by the Government :

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

Rights of citizenship of certain migrants to Pakistan.

5-AA. Notwithstanding anything contained in articles 5 and 5-A of this Constitution a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July, 1948

Shri Jaspat Roy Kapoor (United Provinces : General) This, you had said, would be moved by Mr. T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar : I have been considering that, but I ted article as I am proposing to accept the amendment which will be moved by him.

Right of citizenship of certain persons of India origin residing outside India.

5-B. Notwithstanding anything contained in article 5 and 5-A of this Constitution, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing in any territory outside India as to defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

Continuance of the rights of citizenship.

5-C. Every person who is a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen

Parliament to regulate the right of citizenship by law.

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

Sir, I would reserve my remarks after the amendments to my draft are moved by Mr. T. T. Krishnamachari and that will complete the thing.

Mr. Naziruddin **Ahmad** (West Bengal: Muslim): Sir, the amendment that has been moved is a last-minute consolidated amendment taken from several

amendments in the printed amendments. Though in the profession of law for a very long time, I find it a bit confusing to follow how the scattered amendments have been consolidated and whether any departure has been made in the process. In trying to consolidate a large number of amendments and re-drafting them, unconscious departures often happen. It is again extremely difficult for us to consider our own amendments as to whether they are accepted or whether they are rejected in the consolidated draft or if they are to be moved, if they are to be moved in an altered form just as a consequential measure.

I submit that substantially in amendment No. 1 in List I and in some other amendments in other Lists which are now consolidated there has been a great deal of departure from the Draft Constitution and the point that I took the other day is more applicable today than at any other time. There are absolutely new clauses, which purport to be amendments of articles 5 and 6, for instance proposed new articles 5A, 5B, 5C; then there are other articles like 5AA; then there is a new proviso in amendment No. 131 and amendment No. 130 is entirely new. Then in amendment No. 133 there is a new re-draft of article 6. I submit, Sir, these amendments or this consolidated amendment amounts largely to an amendment in the Constitution itself or rather a large number of new amendments to the Constitution itself. As I submitted the other day there was a time fixed by you for submitting regular amendments and then it was ruled by you, and it was applied in many cases, that amendments to amendments alone would be submitted; but then this present amendment or a consolidated amendment, consisting of a large number of amendments, consists of amendments of the Constitution itself and that is creating a considerable amount of difficulty. We are departing from the Draft Constitution every day and today the departure is still more complete. I hope that there will be some limit to this migration from the original Draft Constitution. I ask you, Sir, to consider whether these amendments introducing absolutely new clauses which amount to amending of the Constitution itself should be allowed at this stage, and if they are to be allowed whether it would not be proper to give us a consolidated amended draft which could be considered by the Members in order to see whether their own amendments really fit in into it or they require readjustment or fresh amendments. Sir, I ask you to consider the practical difficulties of the procedure. Clause 5 has been before the House for some time and amendments to amendments alone would now be regular, but every day new amendments and new ideas are coming in. Articles 5A, 5B and 5C are new. Article 5AA has been brought today and its proviso has come in by a different amendment. The explanation to article 5 is deleted today. These have been all put together in one *ex tempore* amendment. I do wish that the Constitution should be finished as quickly as possible; otherwise this taste for new changes would go on unabated. I ask you, Sir, to give us a ruling and to suggest a convenient method by which we can deal with the situation.

Mr. President: I have considerable sympathy with the honourable Member's objection that in this amendment new ideas have been brought in, but Members will remember that when this Constitution was taken up for discussion during the winter Session, these articles were over for further consideration and I suppose it was accepted that fresh amendments would be brought in. All those articles and those which were reached but not considered were held over to enable the Drafting Committee to reconsider the original draft and propose new drafts where necessary.

In that view, the Drafting Committee has considered that draft and has proposed new drafts, and they have suggested certain amendments to their

[Mr President]

own draft. What Dr. Ambedkar has done is to put together all the amendments which they have proposed and he has read out a consolidated amendment But I can fully appreciate the difficulties of Members when these various amendments are spread over a number of pages and a number of lists, and I would ask the Office to circulate to Members the consolidated amendment as proposed by Dr. Ambedkar. We can take up the discussion of the consolidated amendment which has been moved by Dr. Ambedkar tomorrow morning, and the Members will have time by then to study the amendments in the consolidated form. In the meantime, I do not like to waste even the half hour that we have, and if Members have any other amendments to move, they might move them today so that we might take up the consideration of the amendments as well as the draft as moved by Dr Ambedkar tomorrow morning.

Prof. Shibban Lal Saksena: May we have Dr. Ambedkar's speech today?

Mr. President: Yes, I would ask Dr. Ambedkar to explain his amendment.

Mr. Naziruddin Ahmad: Amendments Nos. 130 and 131 have been circulated only this morning and we have had no opportunity of considering them. Then if we are to get the consolidated amendment today, there will be no time to suggest amendments which will be in time before the House.

Mr. President: If there is any reasonable grievance on that account, I will take that into consideration.

Shri T. T. Krishnamachari: I move amendment No. 131 of List IV. I move :

"That in amendment No. 130 above, to the proposed article 5-AA the following proviso be added :—

'Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.'"

There is one other formal amendment which I have to move. It is No. 132

I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5-B, the words 'and subject to the provisions of any law made by Parliament' be omitted."

Sir, I shall not explain these amendments. If necessary, Dr. Ambedkar will explain them.

Shri Jaspat Roy Kapoor: May I suggest that all the amendments which are on the list may also be formally moved today.

Mr. President: First, let Dr. Ambedkar explain his viewpoint and then the other amendments may be moved.

Shri Jaspat Roy Kapoor: I venture to make that suggestion because if all the other amendments are also moved, Dr. Ambedkar will have an opportunity of saying something with reference to those amendments also. The other amendments may simply be moved but no speeches may be made on them, so that the House may be in possession of all the amendments.

Mr. President: If we take up all the other amendments, I think there will not be any end to them. First, let Dr. Ambedkar explain his proposition and then the other amendments may be moved.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, except one other article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved, because I feel that this is the draft which satisfies most people, if not all.

An Honourable Member: Question.

The Honourable Dr. B. R. Ambedkar: Now, Sir, this article refers to citizenship not in any general sense but to citizenship on the date of the commencement of this Constitution. It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6 as I have moved, the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit. The article reads--

"Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of article 5 and those that follow, but Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind by those who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable All that we are doing is to decide *ad hoc* for the time being.

Having said that, I would like to draw the attention of the Members to the fact that in conferring citizenship on the date of the commencement of this Constitution, the Drafting Committee has provided for five different classes of people who can, provided they satisfy the terms and conditions which are laid down in this article, become citizens on the date on which the Constitution commences.

These five categories are :

(1) Persons domiciled in India and born in India : In other words, who form the bulk of the population of India as defined by this Constitution;

(2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore, Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long time and undoubtedly have the intention of becoming the citizens of India.

The three other categories of people whom the Drafting Committee proposes to bring within the ambit of this article are :

(3) Persons who are residents in India but who have migrated to Pakistan;

(4) Persons resident in Pakistan and who have migrated to India; and

(5) Persons who or whose parents are born in India but are residing outside India.

These are the five categories of people who are covered by the provisions of this article. Now the first category of people *viz.*, persons who are domiciled in the territory of India and who are born in the territory of India or whose parents were born in the territory of India are dealt with in article 5 clauses (a) and (b). They will be citizens under those provisions if they satisfy the conditions laid down there.

[The Honourable Dr. B. R. Ambedkar]

The second class of people to whom I referred, *viz.*, persons who have resided in India but who are not born in India are covered by clause (c) of article 5 who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be a resident of India for five years. All these classes are subject to a general limitation, *viz.*, that they have not voluntary acquired the citizenship of any foreign State.

With regard to the last class, *viz.*, persons who are residing abroad but who or whose parents were born in India, they are covered by my article 5 B which refers to persons who or whose parents or whose grand parents were born in India as defined in the Government of India Act, 1935, who are ordinarily residing in any territory outside India—they are called Indians abroad. The only limitation that has been imposed upon them is that they shall make an application if they want to be citizens of India before the commencement of the Constitution to the Consular Officer or to the Diplomatic Representative of the Government of India in the form which is prescribed for the purpose by the Government of India and they must be registered as citizens. Two conditions are laid down for them—one is an application and secondly, registration of such an applicant by the Consular or the Diplomatic representative of India in the country in which he is staying. These are as I said very simple matters.

We now come to the two categories of persons who were residents in India who have migrated to Pakistan and those who were resident in Pakistan but have migrated to India. The case of those who have migrated to India from Pakistan is dealt with in my article 5-A. The provisions of article 5-A are these—

Those persons who have come to India from Pakistan are divided into two categories—

(a) those who have come before the 19th day of July 1948, and

(b) those who have come from Pakistan to India after the 19th July 1948

Those who have come before 19th July 1948, will automatically become the citizenes of India.

With regard to those who have come after the 19th July 1948, they will also be entitled to citizenship on the date of the commencement of the Constitution, provided a certain procedure is followed, *viz.*, he again will be required to make an application to an Officer appointed by the Government of the Dominion of India and if that person is registered by that Officer on an application so made.

The persons coming from Pakistan to India in the matter of their aquisition of citizenship on the date commencement of the Constitution are put into two categories—those who have come before 19th July 1948, and those who have come afterwards. In the case of those who have come before the 19th July 1948, citizenship is automatic. No conditions, no procedure is laid down with reguard to them. With regard to those who have come thereafter, certain procedural conditions are laid down and when those conditions are satisfied, they also will become entitled to citizenship under the article we now propose.

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government of

India not merely to enter India but a permit which will entitle him to resettelment or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit system'. This permit system was introduced from the 19th July 1948. Therefore the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution.

I may say, Sir, that it is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of the commencement of the Constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them. I suggest to the House that the amendments which I have proposed are sufficient for the purpose and for the moment and I hope the House will be able to accept these amendments.

Shri B. M. Gupte (Bombay: General): Was the permit system brought in on 19th July 1948?

The Honourable Dr. B. R. Ambedkar: Yes, on the 19th July '48 there was an ordinance passed that no person shall come in unless he has a permit, and certain rules were framed by the Government of India under that, on 19th July 1948, whereby they said a permit may be issued to any person coming from Pakistan to India specifically saying that he is entitled to come in. There are three kinds of permits, Temporary Permit, Permanent Permit and permit for resettlement or permanent return. It is only the last category of persons who have been permitted to come back with the express object of resettlement and permanent return, it is only those persons who are proposed to be included in this article, and no other.

Mr. President: I think we shall take up the amendments tomorrow. But before I adjourn, there is one thing about which I would like to take the sense of the House. In the next week, Monday which happens to be the 15th of August, is a holiday, and then Wednesday the 17th is also a holiday on account of *Janamashthmi*. It has been suggested to me that we might not meet on Tuesday so that Members might have a continuous four or five days from Saturday to Wednesday, and we might meet on Thursday; and instead of Tuesday, we might meet on the following Saturday. If that meets the wishes of the House, we can arrange our programme like that.

Honourable Members: Yes.

Mr. Nazirudddin Ahmad: A long adjournment might make us forget everything.

Mr. President: I think you will get time again to study. So, we shall sit up to Friday next, and then adjourn till 9 O'clock on Thursday, and we shall sit on the following Saturday also.

Now the House stands adjourned till 9 O'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday, the 11th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 11th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Articles 5 to 6—(Contd.)

Mr. President: We shall now take up consideration of articles 5 and 6. I have been looking into the amendments of which notice has been given. A large number of the amendments relate to the original Draft, but quite a good number relate to the present Draft also. I think the consolidated form in which the proposition is now placed before the House meets the point of view of many of the amendments of which notice has been given. There are some which touch the details. I would ask honourable Members to confine their attention to only such of the amendments as are of substance and leave out the others.

With regard to the amendments relating to the original Draft I find there are some amendments which deal with matters altogether outside the Draft. For example, there is an amendment dealing with the status of women after marriage—whether they become citizens or not. There are others also which deal with the position of persons who are not born Indians or born of parents or grand-parents who were Indians. I think all these matters under the present Draft are left to be dealt with by Parliament in due course. I would, therefore, suggest that amendments of this nature might also be left over to be dealt with by Parliament at a later stage and we might confine ourselves to the limited question of laying down the qualifications for citizenship on the day the Constitution comes into force.

Dr. Ambedkar drew the attention of the House to two important limitations. The first was that this Draft dealt with the limited question of citizenship on the day the Constitution comes into force. And the other point was that all other matters, including those which are dealt with by the present Draft, are left to be dealt with by Parliament as it considers fit. With these limitations in mind I think the discussion of these two articles can be curtailed to a considerable extent and the matter might be disposed of quickly.

I would suggest to Members to bear these considerations in mind when moving their amendments. We shall now take up the amendments of which I have received notice and I will take them up in the order in which they are in the list of the current session. Dr. Deshmukh.

Dr. P. S. Deshmukh (C. P. & Berar: General): May I also refer to the other amendments of which I have given notice?

Mr. President: Yes, you may take them together.

Dr. P. S. Deshmukh: Sir, this article on the question of citizenship has been the most ill-fated article in the whole Constitution. This is the third time we are debating it. The first time it was you, Sir, who held the view which was upheld by the House that the definition was very very unsatisfactory. It

[Dr. P. S. Deshmukh]

was then referred to a group of lawyers and I am sorry to say that they produced a definition by which all those persons who are in existence at the present time could not be included as Citizens of India. That had therefore to go back again and we have now a fresh definition which I may say at the very outset, is as unsatisfactory as the one which the House rejected and I will give very cogent reasons for that view of mine. But if it is necessary that I should move my amendment before I do so, I am prepared to do it. I would, therefore, like to move amendment 164 which is the same as amendment 2 in List III of Second Week. Sir, I move

"That in amendment No. 1 of List I (Second Week) of Amendments to Amendments, for the proposed article 5, the following be substituted :—

'5. (1) Every person residing in India—

(a) who is born of Indian parents; or

(b) who is naturalized under the law of naturalization, and

(ii) every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides

shall be entitled to be a citizen of India.'"

There are also, Sir, standing in my name other amendments which refer to the draft article that is before the House. By these amendments I have suggested the alteration of the article as proposed by the Honourable Dr. Ambedkar. The first of these amendments is No. 116 in List III of the Third Week. It reads as follows :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5, the words 'at the date of commencement of this Constitution' be deleted."

Mr. President : They are all consolidated in List I of the Third Week.

Dr. P. S. Deshmukh : Yes, Sir. But I have taken them from previous lists I have suggested the omission of the words : "At the date of commencement of this Constitution".

I do not propose to move No. 117. I would like however to move 118 in List III of the Third Week, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, for clause (a) of the proposed article 5, the following be substituted :—

'(a) who was born of Indian parents in the territory of India.'"

Thirdly, I would like to move amendment No. 119 in List III of the Third Week. I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, for the word 'five', the word 'twelve' be substituted."

This is the number of years for which residence is required for any person.

I would also like to move amendment 120 in List III of Third Week, which I believe is going to be accepted because a similar amendment has been moved by Shri Gopalaswami Ayyangar : Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, the Explanation to the proposed article 5 be deleted."

I would next like to move amendment 172 in List III of Second Week. Sir, I move :

"That in amendment No. 1 of List I (Second Week) of Amendments to Amendments, in the proposed new article 5-A, after the words 'territory of India' the words 'of Indian parents' be inserted."

The last amendment is No. 183 in List III of Second Week. I move:

"That in amendment No. 1 of List I (Second Week) of Amendments to Amendments, after the proposed new article 5-A, the following new article be inserted:—

'5-B. Every citizen shall—

(a) enjoy the protection of the Indian State in foreign countries;

(b) be bound to obey the laws of India, serve the interests of the Indian communities, defend his country and pay all taxes.'"

These are all the amendments that I would like to move. The rest may be treated as not moved.

Mr. Nazirudddin Ahmad (West Bengal: Muslim): May I suggest that all the amendments be moved first and then there can be a general discussion? Members could then have an overall picture of the proposals.

Mr. President: If that is the wish of the House, I have no particular objection.

Dr. P. S. Deshmukh: As the number of amendments is very large it would create confusion to let members only move the amendments and then call them to speak.

Mr. President: It seems that Members find it more convenient to speak when they are moving their amendments.

Dr. Deshmukh, you may proceed.

Pandit Hirday Nath Kunzru (United Provinces: General): Can you kindly tell us which amendments have been moved?

Mr. President: I will give you the numbers in this week's list: they are Nos. 3, 17 and 29.

Then from List III of the Third Week: amendments Nos. 116, 118, 119, and 120.

Dr. P. S. Deshmukh: The Honourable Dr. Ambedkar admitted that this was a sort of a provisional definition and detailed legislation was going to be left to Parliament. I quite agree with the objective, but I am afraid that the definition and the article that he has suggested would make Indian citizenship the cheapest on earth. I would like to proceed with an analysis of the article that he has proposed. I do not see any reason why it is necessary to say "at the date of commencement of this Constitution". The whole Constitution is going to be promulgated on a specific day. Whatever provisions there are will come into force and be applicable from that day alone. So, I submit that the words "at the date of the commencement of this Constitution" are entirely superfluous, so far as this article is concerned. It is sufficient to say that every person, wherever domiciled in this territory of India....shall be entitled to be called a citizen of India.

Secondly, all these sub-clauses of this article will make Indian citizenship very very cheap. I am sure neither the Members of this House nor the people outside would like this to happen. The first requirement according to this article is domicile. After that, all that is necessary according to (a) is that he should be born in the territory of India. This has no relationship whatsoever to the parentage. A couple may be travelling in an aeroplane which halts at the port of Bombay for a couple of hours and if the lady happens to deliver a child there, irrespective of the nationality of the parents, the child would be entitled to be a citizen of India. I am sure this is not what at least many people would like to accept and provide for. Indian citizenship ought not to be made so very easy and cheap.

[Dr. P. S. Deshmukh]

Then sub-clause (b) says "either of whose parents are born in the territory of India". This is still more strange. It is not necessary that the boy or the girl should be born on the Indian soil. It is sufficient not only if both the father and the mother have been born in India but it even one of them, happen to be born on the Indian soil as accidentally as I have already pointed out, viz a lady delivering a child in the course of an air journey through India. Under the proposed sub-clause (a) the child would be entitled to claim Indian citizenship and under (b) even the son of that child (which happened to be born so accidentally) can claim the same important privilege without any restriction and without any additional qualification whatsoever. Nothing more is necessary except that they should acquire a domicile.

According to sub-clause (c) Indian citizenship is obtainable by any person "who has been ordinarily resident in the territory of India for not less than five years". This has also no reference to parentage, it has no reference to the nationality or the country to which they belong, it has not reference to the purpose for which the person chose to reside in this country for five years. For aught I know he might be a fifth columnist. He might have come here with the intention of sabotaging Indian independence, but the Drafting Committee provides that so long as he lives in this country for five years, he is entitled to be a citizen of India.

The whole House and the whole country is aware of the way in which Indian nationals are treated all over the world. They are aware of the kind of colour prejudice that used to be there in England, the kind of persecution through which Indian citizens are going even now in South Africa, how they are persecuted in Malaya and Burma, how they are looked down upon everywhere else in spite of the fact that India is an independent country. The House is aware how it is not possible except for the merest handful to obtain citizenship in America, although they have spent their whole lives there. I have known of people who have been there in America and holding various offices for fifteen, twenty and twenty five years and yet their application number for citizenship is probably 10,50,000th. There is no hope of such a person getting his citizenship until the 10,49,999th application is sanctioned. In America Indians can obtain citizenship at the rate of 116 or 118 per annum. That is the way in which other countries are safeguarding their own interest and restricting their citizenship. I can well understand, if India was a small country like Ireland or Canada (which are held out as models for our Constitution) that we want more people, no matter what their character is or what the country's interests are. But we are already troubled by our own overwhelming population. Under the circumstances how is it that we are making Indian citizenship so ridiculously cheap? There is no other word for it.

As I have already pointed out one of the sub-clauses says anybody who has chosen to stay in India for five years shall be a citizen of India. I had asked the Honourable Commerce Minister (when Mr. C. H. Bhabha was in charge) a question, when sitting in the other Chamber, as to whether there was any register of foreigners coming to India. He said "No". I asked if there were any rules and regulations governing the entry into the country of people from foreign countries and he said there were none. I have no doubt the situation continues very much the same today. Such is the administration that we have. Is it then wise that we should throw open our citizenship so indiscriminately? I do not see any ground whatsoever that we should do it, unless it is the specious, oft-repeated and nauseating principle of secularity of the State. I think that we are going too far in this business of secularity. Does it mean that we must wipe out our own people, that we must wipe them out in order to prove our secularity, that we must wipe out Hindus and Sikhs under the name of secularity, that we must undermine everything that is sacred and dear to the Indians to prove that we are secular? I do not think that

that is the meaning of secularity and if that is the meaning which people want to attach to that word "a secular state". I am sure the popularity of those who take that view will not last long in India. I submit therefore that this article is unsatisfactory and worthy of being discarded as we did the previous article, because there is nothing that is right in it. If really we want a tentative definition we can have it from other people who are probably wiser than us and that should be quite enough for us. That is one of the definitions that I have proposed in my amendment No. 164, *viz.*,

"Every person residing in India—

(a) who is born of Indian parents; or

(b) who is naturalised under the law of naturalisation. . . ."

I do not mind if it is left to Parliament to debate the whole question of the citizenship of India. But, for the present this very short and brief definition may be absolutely sufficient and that is my contention and my submission to the House. It must be made clear that citizenship shall be primarily obtainable by a person who is born of Indian parents and I do not exclude even those who had been in India previously, provided the requirement of domicile is satisfied. If they are resident here in this country, or if they have not claimed citizenship of any other country or if they are born of Indian parents they shall be entitled to citizenship of India. So far as other persons are concerned, there will be the law of naturalisation which would make detailed provisions. We can lay down the business, the purposes for which or the way in which a person who claims Indian citizenship chooses to live in India. There would be ample time for the Parliament to debate this question and to lay down the principles. But if you are going to have this definition at this moment you are going to tie your hands, you are going to tie the hands of Parliament from interfering later. Will you then have the courage to deprive them of citizenship, the hundreds and thousands of them who have had it under the Constitution? It is impossible, it is quite improbable and no Parliament in India is going to take such a drastic step as to correct the foolishness that we are complacently committing today. I do not think any Parliament will be able to do it. Therefore I do not like citizenship to be made so cheap or so easily obtainable, because once you do it in this Constitution it will be very difficult for you to go back on it.

And then, this is not a definition in an Act of Parliament that is easily changeable. So, if by the Constitution you are going to give this right of citizenship in the way proposed in this article, you cannot change it later on and this will go against the interests of the Indian nation. So I have proposed that the circumstances and conditions of naturalisation should be left to be decided later on. Nothing need be done on this question by the Constituent Assembly at this stage. Every condition and every circumstance, which we are convinced should be laid down and satisfied for the conferment of citizenship right on an individual, should come into play when we pass the Naturalisation Act in Parliament. We should not lay down some conditions here in the Constitution and some conditions elsewhere for the grant of citizenship rights. The fact that a person is born in India should not be sufficient ground for the grant of citizenship, nor should five years' residence be sufficient. I say that we should leave all these things for the Parliament to lay down. We should merely say here that every person residing in India who is naturalised under the Law of Naturalisation will be a citizen of India.

In the second sub-clause I have proposed, I want to make a provision that every person who is a Hindu or a Sikh and is not a citizen of any other State shall be entitled to be a citizen of India. We have seen the formation and establishment of Pakistan. Why was it established? It was established because the Muslims claimed that they must have a home of their own and a

[Dr. P. S. Deshmukh]

country of their own. Here we are an entire nation with a history of thousands of years and we are going to discard it, in spite of the fact that neither the Hindu nor the Sikh has any other place in the wide world to go to. By the mere fact that he is a Hindu or a Sikh, he should get Indian citizenship because it is this one circumstance that makes him disliked by others. But we are a secular State and do not want to recognise the fact that every Hindu or Sikh in any part of the world should have a home of his own. If the Muslims want an exclusive place for themselves called Pakistan, why should not Hindus and Sikhs have India as their home? We are not debarring others from getting citizenship here. We merely say that we have no other country to look to for acquiring citizenship rights and therefore we the Hindus and the Sikhs, so long as we follow the respective religions, should have the right of citizenship in India and should be entitled to retain such citizenship so long as we acquire no other. I do not think this claim is in any way non-secular or sectarian or communal. If anybody says so, he is, to say the least, mistaken. I think my description (amendment) covers every possible case. The only thing we are agitated about is that our people, thinking that Pakistan would be a happy country, went there and came back. Why should we recognise them by means of this or that provision in the Constitution? Because, nothing of the sort is necessary. So long as they are resident in India when the Constitution is promulgated and they are born of Indian parents, they should be entitled to citizenship rights without any fresh registration or evidence. That is what is contemplated in my definition. I hope the House will accept it.

Prof. Shibban Lal Saksena (United Provinces: General): You say, 'being born of Indian parents'. How do you define 'Indian parents'?

Dr. P. S. Deshmukh: I think it should refer to all those persons who are resident in India. It would be quite easy to define it. If the Professor thinks a definition is necessary, it would be quite easy to frame one.

Prof. Shibban Lal Saksena: Then give a definition?

Dr. P. S. Deshmukh: Yes. I thought that an Indian is a very easily recognisable person. When combined with domicile, it is easier to define it. But if the Professor thinks that an Indian cannot be recognised and that it is necessary to lay down who is an Indian, what is his colour and complexion and so on, I would leave it to him to suggest a suitable definition. I think the existing definition is capable of being understood without any difficulty. I do not think that a definition is necessary for every expression used. If you examine the Constitutions of other countries, the Constitution of Poland for instance, you will find that all that they provided is that any person who is born of Polish parents is a citizen of Poland. They know who is a Pole, just as we know who is an Indian. I do not think therefore that any definition is necessary in this connection. If we want a tentative definition, an article which will serve as a transitory provision, my article should be quite enough.

I now come to my remaining amendments. In case my definition and the article, the substance of which I have given, are not accepted, I have suggested that, in the article proposed by the learned Doctor, the words "at the date of the commencement of this Constitution", should be omitted. Then, in (a), after the words 'who was born in the territory of India', the words 'born of Indian parents' should be added, and in (c) the words 'at least' should be added before the words 'five years'. I would like the word 'five' to be altered to 'twelve', so as to make it necessary for anybody to obtain citizenship by residence in India for that period.

So far as the Explanation is concerned, I think the Doctor himself is convinced that it is not necessary to retain it and for very good reasons. It says: "For the purposes of this article, a person shall not be deemed to be a citizen of India if he has after the first day of April 1947 migrated to the territory now included in Pakistan". I see no reason why Pakistan should be singled out. The word 'migrated' has a definite meaning. It means going out of the country with the intention of settling permanently in some other country and not remaining in the country from which he has migrated. If the meaning of the word 'migrate' is clear, then nobody who leaves the Indian shores and goes out —it does not matter whether he goes to Pakistan or Honolulu or the North or the South Pole, he will not be entitled to the citizenship of India. Therefore the explanation is meaningless.

In addition to this I have proposed that there should be some responsibility which ought to be shared by every one who claims to be a citizen of India and for that purpose I have proposed amendment No. 29 that 'Every citizen of India shall enjoy the protection of the Indian State in foreign countries; and (b) be bound to obey the laws of India, serve the interests of the Indian communities, defend his country and pay all taxes". I would not like to press this very much because even this it must be possible to include in the Naturalisation Act, when we pass it. You have also suggested, Sir, that all these might be left to Parliament. In view of that I would not mind withdrawing this amendment. But I would like to move my other amendments. If, however, my whole article is accepted, then there would be no need to move the other amendments which deal with the wording of the article as proposed. Otherwise it will be necessary that those words to which I have objected ought to be omitted.

Mr. Naziruddin Ahmad: Mr. President, Sir, I have a few amendments to move. Before I do so, may I request your ruling as to whether I am to speak on my own amendments or to speak generally on the article. I think it would be inconvenient if I have to speak on the article generally. This should actually be at the end, because I do not know what further amendments would be moved. I however would like to say that there would be no repetition. Sir, may I have your ruling as to whether I should only move and speak on my amendments or generally on the article.

Mr. President: I think it would be much better if you make only one speech.

Mr. Naziruddin Ahmad: There is no doubt about it, but it will be inconvenient to speak generally on the article unless we get all the amendments before us. That is the difficulty. Further, I find that in spite of your kind help to inform the Members as to what amendments are to be moved, there is yet some amount of confusion among some Members as they still do not know what amendments have been moved. The difficulty has been caused by last-minute changes, and the number of amendments is due to the fact that there have been constant changes.

Mr. President: I think the difficulty has arisen because Members have been offering to lists of previous weeks. The system that has been followed by the Office is to consolidate all the amendments at the end of the week and to put them into the first list of the next week, so that all the amendments that remained by the end of the second week are consolidated in the first list of the third week, and any further amendments that come in in the third week are put, down in the subsequent lists, II, III, etc. Dr. Deshmukh referred to the previous week's lists but I have mentioned the corresponding numbers in the existing week's lists. So, if the Members refer to the lists of the current week, they will find all the amendments according to their number. If the Member so desires, I will mention the numbers once again.

Mr. Naziruddin Ahmad : I do not know whether all Members have got the correct numbers by this time, but so far as I am concerned, I know what amendments I shall move. I shall move from List I amendments Nos. 4 18, 22, and 30 and from List V amendments Nos 148, 149, 151, 153, 154 155 and 156. There may be one or two others, but I hurriedly noted down only these numbers.

Sir, I move amendment No. 4 in List I –

"That in amendment No 1 above, in the proposed article 5, for the words 'At the date of commencement of this Constitution every person who' the words 'Every person who at the date of the commencement of this Constitution' be substituted."

Sir, I will omit the word "date", and so my amendment will substitute the words "Every person at the commencement of this Constitution" for the word "At the date of commencement of this Constitution every person who" I shall explain the necessity for this amendment at once. The expression 'date of commencement of this Constitution" is not proper. We have throughout the Constitution always referred to the "commencement of this Constitution' That clearly and distinctly refers to the "date" of the commencement Commencement only refers to the date. So, the date of the commencement of the Constitution" is unnecessary. Therefore I have sought to remove the word "date of". It is unnecessary and in other contexts it does not appear. The rest of this amendment is merely a rearrangement of the article to give more emphasis to the words "every person". That is my first amendment.

Then I come to amendment No. 18 in the First List. Sir, I move

"That in amendment No. 1 above, in the proposed new article 5-A, for the words 'now included in Pakistan' the words 'which at the commencement of this Constitution is situate within the Dominion of Pakistan' be substituted."

I submit, Sir, that in the context of article 5-A as proposed by Dr. Ambedkar the word "now" is extremely ambiguous. It is at any rate unprecise. If the words "territory *now* included in Pakistan" are used, we do not know to what period of time the word "now" refers. Does it refer to this date, the date on which this amendment is accepted? Does it refer to the 11th August 1949 or does it refer to the date when the Constitution comes into effect, or does it refer to the time when any lawyer or jurist reads the article? In fact, the word "now" is very unprecise. It has never been used in any part of this Constitution. Therefore for the word "now" I would like to substitute the words "commencement of this Constitution". The rest is merely verbal. The word "now" is highly objectionable, it is vague and it may lead to some difference of opinion.

The next amendment which I would like to move is amendment No. 22 in the First List. Sir, I move :

"That in amendment No. 1 above, in sub-clause (ii) of clause (b) of the proposed new article 5-A, the words 'date of' be deleted."

I have already explained the reason for removing these words. If we remove these words, it will read "the commencement of the Constitution". It certainly means the date of commencement of the Constitution.

Sir, I move :

"That in amendment No. 1 above in the proposed new article 5-B, for the words 'made by Parliament' the words 'made in this behalf by Parliament' be substituted."

This is merely verbal and I suggested this by way of improvement. This may be considered by the Drafting Committee. That concludes List No. 1 of Third Week. Then I come to List V, Third Week.

Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5, in line 1, the words 'date of' be deleted."

It refers to the same thing and perhaps it is a duplication of Amendment No. 4 and if that is so, then it would be unnecessary. I move also Amendment No. 149 in List No. V.

Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, the words 'the date of' be deleted."

I have already explained the need. Then I move amendment No. 151.

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-A, for the words 'a person' the words 'any person' be substituted."

In proposed article 5-A the text of the article runs thus : "Notwithstanding anything contained in article 5 of this Constitution a person who has migrated to the territory of India" and the word "any person" would be better. The word "any person" has been used in a similar context in proposed article 5-B. "A person" is rather vague and "any person", though meaning the same thing, is more precise and besides this amendment, if accepted, would make the drafting of this clause and clause 5-B the same. It is a drafting amendment and may be left over for consideration by the Drafting Committee.

I then move amendment No. 153 :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in sub-clause (ii) of clause (b) of the proposed new article 5-A, the words 'date of' be deleted."

It occurs in connection with the date of the commencement of the Constitution. These words, as I have already explained are unnecessary.

Then I move amendment No. 154 :

"That in amendment No. 130 of List IV (Third Week) of Amendments to Amendments, in the proposed new article 5-AA, for the words 'a person' the words 'any person' be substituted "

I have already explained the necessity for this amendment.

I also move amendment No. 155 :

"That with reference to amendments Nos. 130 and 131 of List IV (Third Week) of Amendments to Amendments, in the proposed new article 5-AA, for the words 'now included in Pakistan' in the two places where they occur, the words 'which at the commencement of this Constitution is included in the Dominion of Pakistan' be substituted."

The main purpose of this amendment is to remove the word "now" and to put in its place a more precise expression, namely, "at the commencement of" in the context of the article. The rest of this amendment is merely verbal.

Then I also move my amendment No. 156 :

"That in amendment No. 133 of List IV (Third Week) of Amendments to Amendments, for the proposed article 6, the following be substituted :—

'6. Notwithstanding anything contained in the foregoing provisions of this Part, Parliament may by law make further provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Provided that the making of any law by Parliament referred to in this article shall not be deemed to be an amendment of this Constitution within the meaning of article 304 of this Constitution.' "

[Mr. Nazruddin Ahmad]

With regard to this amendment, the first part, the body of the proposed article 6 is more or less verbal, but the proviso is new and I have suggested it simply to obviate the difficulties which would attend to the amendment of the Constitution itself. We are providing some rules of citizenship in the Constitution. By article 6 we authorize the Parliament to make further laws, lest it be said later on if the Parliament does so, it would have the effect of amending the Constitution itself, because it is quite conceivable that Parliament may make laws which will undo or at least modify clauses which it considers contradiction. That would involve the amendment of the Constitution itself. We have in a similar context taken care to provide that these amendments which are merely of a mechanical nature and not likely to go into the root of the Constitution may be done by Parliament and we have provided in those cases as a matter of caution that these amendments made by Parliament shall not be deemed to be amendments of this Constitution within article 304. So any possible controversy that the amendments are amendments of the Constitution itself would lead to almost an *impasse* by setting in motion the entire apparatus of amending the Constitution which would be highly inconvenient. On a small matter like this the matter should be left entirely to Parliament without it being considered to be an amendment of the Constitution itself. These are my amendments.

With regard to the entire set of articles proposed by Dr. Ambedkar, his amendments are needlessly cumbersome and as Dr. Deshmukh has pointed out, will lead to the introduction of "cheap" citizenship in India. I should suggest that it would introduce something more. Continuing the example cited by Dr. Deshmukh that a foreign lady, while passing through India on an aeroplane journey, gives birth to a child in Bombay, the child at once acquires the citizenship of India. Dr. Deshmukh thinks that this would be too flimsy a ground to give the child the status of an Indian citizen. I should submit it would lead to other serious consequences. The mother of the child in the example is a foreigner. It is conceivable, and it is easy to take it that the law of the country of her domicile will claim the child as her own citizen. In fact citizenship follows parentage. The father's domicile would also be the child's domicile. So, the father's or the mother's domicile will compete with the child's citizenship of India. On the one hand, India will claim the child to be the citizen of India and the mother of the child will claim the child to be a citizen of her domicile. It is conceivable that the father has another nationality and he claims the child to belong to that nationality. All the three countries will compete with one another and claim the child to belong to his or her own nationality. Carrying the illustration a little further, there are the grand parents; the four grand parents father and mother of the mother and father and mother of the father. There are thus again four sets of claimants whose nationality will decide the citizenship of the grand-child. The four different countries may claim the child to belong to them. What is more, the child is in a particularly favourable or unfavourable position of claiming or dis-claiming the nationality of India or the nationality of the mother or the father and those of the four grand parents. It will mean a confused state of affairs. The manner in which these articles have come into being and have been presented to the House and the way in which amendments have been coming in from day to day, to say the least and to quote Dr. Deshmukh, is very unfortunate. I think a subject of this difficulty and complexity should not have been dealt with in this fashion and I should have thought it much better to have postponed the consideration of these articles and allow the Members to have an over-all picture of the entire subject together with the suggested amendments. I find that I am not the only member of this House who finds it difficult to follow even the re-print of the entire Draft because we have to consider the amendments and place them in their context and con-

sider their effect. To do so accurately is not an easy job. As I have already submitted, there are many slow Members like me in this House who find it also equally difficult not only to follow the intricacies of this proposed new clause, but also the amendments to be proposed. It is this state of affairs which almost forces many Members to be inattentive and we appreciate the very just remarks which you made yesterday that many Members are interested in discussions having nothing to do with the amendment or the subject under consideration. The real reason is that the amendments and the new ideas come in too late to the Members for real consideration. The subject of these series of articles will inevitably lead to inattention because it is a little bit difficult to follow them without mistake. As these are difficult matters and as there are anomalies, I feel, that if we postpone the discussion of these articles for further consideration, more complications will follow Therefore, the best course would be to adopt these articles and to provide for any correction or supplementation if there is necessity through the excuse of article 6. That would to a certain extent avoid any complications which may unconsciously be created by further amendments. That would afford an excuse to Members for going more deeply into the matter; we relegate our thoughts and our labours to the future Parliament which may cure defects if there are any in these drafts. It will be very difficult to follow them and it will lead to confusion of nationalities landing us in difficulties, not merely granting cheap citizenship These are the few words that I have to submit before the House.

Shri Jaspat Roy Kapoor: (United Provinces : General) : Mr. President, Sir, the first amendment that stands in my name is amendment No. 5 in the First List, Third Week which relates to the definition of citizenship subsequent to the date of the commencement of this Constitution. In view of the explanation which Dr. Ambedkar gave yesterday that his intention was to confine the definition of citizenship only at the date of the commencement of this Constitution and more particularly in view of your advice that we should confine our remarks only to this aspect of the question, I should not venture to move this amendment. But, Sir, I find that the Draft which has been moved by Dr. Ambedkar is not only a provisional Draft, but it is of such a limited nature that it does not make any provision for the acquisition of the right of citizenship subsequent to the date of the commencement of this Constitution even up to the period that Parliament may make any law in this respect. I, therefore, suggest to Dr. Ambedkar to seriously consider whether it would not be advisable to accept the suggestion contained in this amendment. The suggestion reads like this :

"That in amendment No. 1 above, in the proposed article 5- -

after the words 'at the commencement of this Constitution' the words 'and thereafter' be inserted; and

in clause (a), after the word 'was' the words 'or is' be inserted;

or alternatively, that with reference to amendment No. 1 the following new article be inserted as 5-D : -

'After the date of the commencement of this Constitution, every person who possesses the qualifications mentioned in article 5 of this Constitution shall, subject to the provisions of any law that may be made by Parliament be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State'"

Mr. President: You drop 'continue to be'.

Shri Jaspat Roy Kapoor: This is a mis-print. It will only read as "shall be a citizen of India....". I hope Dr Ambedkar will give serious consideration to this sugestion and find it acceptable.

The next amendment that stands in my name is No. 13, but in view of the fact that the substance of this amendment is covered by amendment No. 130

[Shri Jaspat Roy Kapoor]

which has already been moved by Dr Ambedkar, I do not propose to move it I am not moving Nos. 8 and 9 either. Then I pass on to No 11 which I beg to move :

"That in amendment No 1 above, in the proposed new article 5 B, the words 'deemed to be' be deleted"

There is another amendment No 19 in my name as well as in Mr Sadhva's name but I leave it to be moved by Mr. Sadhva because he is my senior partner in this amendment.

The next amendment which I would like to move is amendment No 124 which runs thus :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5-A, after the word 'who' a comma and the words 'on account of civil disturbances or the fear of such disturbances,' be inserted"

There are some other amendments also standing in my name but I do not propose to move anyone of them.

Sir, this article 5 which relates to the definition of citizenship has had rather a chequered history. The Drafting Committee has placed before us for our consideration various drafts from time to time, each draft being supposed to be an improvement on the previous one, but every time that it came before us for scrutiny and consideration, it was found to be defective and not comprehensive enough, and, therefore, it had to be sent back to the Drafting Committee for being recast and improved upon. Even during this Session one amendment after another has been pouring in from the Drafting Committee until we have before us the Draft as has been moved by Dr. Ambedkar yesterday Let us see whether even this Draft is satisfactory enough. I am afraid even this is not satisfactory and is not comprehensive enough. First of all, we find that it confines itself to defining Citizenship at the date of commencement of this Constitution and makes no provision for the acquisition of the right of citizenship subsequent to that date. Of course under article 5(c) the right acquired on the day of the commencement of this Constitution will continue to rest with the citizens even thereafter, but with all that it makes no provision for acquisition of the right of citizenship subsequent to that date. It has been conveniently left over to be dealt with by Parliament. Now, the date of commencement of the Constitution is going to be under the schedule which has been thought of at present as 26th January, 1950. So it means that 26th January 1950 is going to be the deadline by which the right of citizenship should be acquired and no provision has been made for the acquiring of this right subsequent to the midnight of 26th January 1950. I consider this to be rather a very unsatisfactory state of affairs. I can quite appreciate the view that it may not be very easy to-day to make an exhaustive definition of citizenship. It may not be possible to envisage at this stage as to what possible qualifications should be provided for the acquisition of the right of citizenship, and it should be left to Parliament to make a very comprehensive definition of citizenship; but I see no reason why we should not make an attempt, when it is easy enough —according to me—to provide for acquisition of this right during the period intervening between the date of commencement of this Constitution and the date on which the Parliament may enact any new Law on the subject. Is it not very unsatisfactory that we should make no provision for all those persons who may be born after midnight of 26th January 1950, and should we not make any provision for acquisition of the right by those who may have been domiciled in this country and some time after January 1950 may be completing the period of five years of residence? That seems to be an obvious lacuna. Lacs of persons would continue to be considered as non-citizens of this country between the date of commencement of this Constitution and the date when the new law will be

made by Parliament, and the brunt of this difficulty will be felt even by several members of this House who have been recently married including even Honourable Ministers who may have children born immediately after 26th January 1950 and who will find themselves in the very unhappy and uncomfortable position of being parents of children who are not citizens of this country. The anomaly of the position becomes more funny when we find this in article 5-B—the relevant portion runs thus :

"He shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution."

I particularly wish to draw attention to the word 'after' which means that whereas article 5-A confines itself to defining citizenship only at the date of commencement of this Constitution, according to 5-B, in respect of persons who are not born or residing here but who have been born in a foreign country or residing there, even on a date subsequent to commencement of this Constitution, if an application for registration is made to our embassy there, they shall be registered as citizens. So obviously persons born in this country are going to be placed at a disadvantage as compared to persons born in a foreign country—of course of Indian parents. It may be said that such persons would not necessarily become automatically citizens because they will have to be registered and it may be said that certain rules may be framed by our Government laying down the conditions under which only they could be registered, or that a subsequent law may be made—a comprehensive law—on the subject which would take note of all these contingencies. According to article 5-B, a citizen of Pakistan whom we are trying to eliminate from our definition of citizenship, if he goes over to a foreign country and presents an application to our embassy, he can be registered as a citizen of India. In this article 5-B the condition that he should not have acquired the right of citizenship of any foreign State which we find in article 5-A does not find place. It may be said that we shall not allow such an anomalous position to stand and we shall make necessary legislation on the subject. True, but then what I find is that this very safeguard which there was originally in the original article 5-B incorporated as follows : "and subject to the provision of any law made by Parliament" is proposed to be deleted. Originally it stood like this : "Notwithstanding anything contained in articles 5 and 5-A of this Constitution and subject to the provisions of any law made by Parliament etc." If the saving clause be there, of course any defect that may have appeared to us in the provisions of 5-B could be removed. Now Mr. T. T. Krishnamachari yesterday moved an amendment which has been very generously and gladly accepted even before it was moved, by Dr. Ambedkar. I do not see with what object Mr. Krishnamachari suggests that these words should be deleted. If his contention be that this is redundant because under article 6 Parliament shall have the right to frame any new law laying down what qualifications there shall be for the right of acquisition of citizenship, I submit.....

Shri T. T. Krishnamachari (Madras : General) : May I point out that if he reads article 6 as amended, he will find the explanation for my amendment.

Shri Jaspat Roy Kapoor : I did rightly anticipate the argument that would be placed before us by Mr. Krishnamachari in reply to my objection, but if article 6 as amended covers such case and makes these words redundant may I ask where is the necessity for these very words being inserted in article 5-C? Article 5-C says "Every person who is a citizen of India under any of the foregoing Provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen". We have these

[Shri Jaspat Roy Kapoor]

words in article 5C. But in article 7B these words, which are necessary there, are now proposed to be dropped. If they are redundant and are covered by the newly drafted article 6, they must go from article 5B also. If they are necessary in article 5C, they are still more necessary in article 5B.

I submit that I consider that it is necessary to retain these words in article 5B. I do not think it will be open to Parliament to enact any law by virtue of the powers conferred on it by article 6, which is in contravention of the provisions of article 5B. 5B is a definite article laying down the qualifications for citizenship in respect of the persons mentioned therein. A definite article conferring the right of citizenship under the Constitution cannot, I think, be tampered with by any subsequent law made by Parliament. Be that as it may, to avoid the possibility of any ambiguity it is necessary either to have these words both in articles 5B and 5C or not to have them in any one of them. Having them only in article 5C may lead to the presumption that 5C only is subject to the provisions of any subsequent law on the subject and article 5B is not subject to any such subsequent law.

My submission with regard to the point that I had raised originally is that we should amend article 5 in such a manner as to cover the case also of those persons who are newly born of Indian parents on Indian soil after the 26th January 1950. I see absolutely no difficulty in my suggestion being immediately accepted. Even if it is accepted article 5 would not become an absolutely permanent definition of citizenship: that can be amended, varied or altered under article 6, as has just been pointed out by Mr. T. T. Krishnamachari. I only want that the lacuna that is there must be filled in. Let it not be said that the period immediately following the auspicious day of 26th January 1950 was so inauspicious that persons born in this country after that date and before the enactment of a new law was so unlucky that children born therein were not citizens of this land by birth. I therefore, suggest very seriously and respectfully that article 5 be amended in the way I have suggested. This can be done merely by incorporating the two words "and thereafter" after the words "At the date of commencement of this Constitution".

The other point that I would like to refer to is regarding article 5A. This article relates to those persons who have migrated to India after the partition. They are to be "deemed to be citizens of India". I particularly object to the retention in this article of the words "deemed to be". The article reads like this:

> "Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution."

I do not know with what particular object these words "deemed to be" have been incorporated herein.

This article relates to the acquisition of the right of citizenship by persons who have migrated into India. I do not see any reason why they should not be considered after having migrated into India as citizens of India as of right, and why it should be suggested that we are conferring on them this right by way of grace, as it were. It seems to me that it is likely to be felt very seriously and bitterly by those of our brethren who took all the trouble and who underwent all that misery and agony by migrating from Pakistan to this dear and sacred land of theirs. All the while that they were on their way to this land, they were thinking of this beloved country of theirs, pining and praying to reach our borders, and immediately on reaching those borders, with a great sense of relief they cried out "Jai Hind", a cry which touched every one of us. They had such tremendous loyalty and affection for this country. They were so eager to rush to this country, to offer their loyalty to it, and yet we say that we are

conferring on them this right of citizenship more by way of grace than by way of right. I do not see any reason for it, Sir. On the contrary, I see very great reason that these words must be deleted and satisfaction given to our refugee brethren. In matters like this, it is always best to act gracefully and to give a psychological satisfaction to our refugee brethren. I would, therefore, respectfully and earnestly suggest that these words might be deleted, for nothing is to be lost by the deletion of these words, and much is to be gained

Similarly, Sir, in article 5-B these words 'deemed to be' may be deleted, though it is more necessary to delete these words in article 5-A than in article 5-B.

Then I turn to amendment No. 124 which I have already read out. It says that in the proposed new article 5A, after the word "who" a comma and, the words 'on account of civil disturbances or the fear of such disturbances,' be inserted. So after the incorporation of these words, article 5A would read thus : .

"Notwithstanding anything contained in article 5 of the this Constitution, a person who, on account of civil disturbances or fear of such disturbances, has migrated to the territory of India. . . . ."

Now, Sir, the object of this amendment of mine is to bring it in line with certain other legislation already in force : I mean the legislation relating to the evacuee property. We have Sir, not only at the Centre but also in several of the provinces in the country almost every other province, excepting West Bengal, Assam and probably Madras too an Evacuee Property Ordinance in force. According to that Ordinance, an evacuee has been defined as one who has left a territory because of civil disturbances or because of fear of such disturbances. It appears to me very rational and reasonable, Sir, that in a provision like article 5A, we must say what are the particular reasons which are guiding us for making a provision like this. We must make it known definitely here that it was not our intention to confer the right of citizenship on anybody who wanted to migrate to this country; but we want to confer this right on such persons because of certain reasons, the particular reason being that such persons found it difficult to stay in the place of their original domicile. We must lay it down definitely what are the reasons which are guiding us in making a provision as is contained in article 5A. I therefore think that the inclusion of the words which I have suggested is very necessary to make our intention very clear.

Then, Sir, I have one thing more to say with regard to another amendment which has been moved by Shri T. T. Krishnamachari -that is amendment No. 131. This amendment stands in the name only of Shri T. T. Krishnamachari I do not know what particular reason there was for Dr. Ambedkar to dissociate himself from this amendment, though of course, while moving his amendment as a whole, he has accepted it. I do not know why he should have accepted it, when originally he did not like the idea of himself being associated with it.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : But he has not even moved it ! Oh, that proviso—yes, I have accepted it.

Shri T. T. Krishnamachari : It is not in Dr. Ambedkar's name but in Shri Gopalaswami Ayyangar's and mine.

Shri Jaspat Roy Kapoor : That is exactly what I was submitting. Therefore, I was perfectly correct. I am glad to find that it has come to Dr. Ambedkar as a surprise. I have said that this amendment has been accepted by him. He was under the impression that it had not been moved at all, and if he has accepted it in an unguarded moment, or under any misapprehension, I hope he will immediately correct himself and make it clear to us that it is not his intention to accept this amendment.

Shri T. T. Krishnamachari: May I interrupt my honourable friend and tell him that he knows very well why that amendment has been moved?

Shri Jaspat Roy Kapoor: Yes, I know very well why that amendment has been moved: I know also very well why this amendment is a very obnoxious one, and why it should not be accepted. I say it is obnoxious even to this extent that Dr. Ambedkar did not originally consider it necessary and advisable and proper to associate himself with this amendment.

Why is it, Sir, that I consider it obnoxious? It says that those persons who migrated from India to Pakistan if, after 19th July 1948 they came back to India after obtaining a valid permit from our Embassy or High Commissioner, it should be open to them to get themselves registered as citizens of this country. It is a serious matter of principle. Once a person has migrated to Pakistan and transferred his loyalty from India to Pakistan, his migration is complete. He has definitely made up his mind at that time to kick this country and let it go to its own fate, and he went away to the newly created Pakistan, where he would put in his best efforts to make it a free progressive and prosperous state. We have no grudge against them.

Shri Brajeshwar Prasad (Bihar: General): May I ask my honourable friend whether it is true that all those persons who fled over to Pakistan did so with the intention of permanently settling down there and owing allegiance to that State? Is it not a fact that they fled in panic?

Shri Jaspat Roy Kapoor: My honourable Friend Mr. Brajeshwar Prasad even today, on the 11th August 1949, doubts as to what was really the intention of those persons who migrated to Pakistan. I do not want to refer to this unpleasant subject, because the sooner we forget the bitterness of the past the better. But do we not know that Muslim Leaguers wanted division of the country and exchange of population, and that the number of persons belonging to the Muslim League was tremendously large? To our misfortune, only a handful of nationalist Muslims were opposed to the idea of Pakistan. The vast majority of the Muslims and most certainly those of them who went away to Pakistan immediately after Partition had certainly the intention of permanently residing in Pakistan. May be that some of them or quite a good number of them went to Pakistan at that particular time because of the disturbances here but has my honourable Friend any doubt that even if there were no disturbances, many of them, almost all of them, would have gone away to Pakistan, because they were themselves demanding that there should be a transfer of population?.....(Interruption by Shri Brajeshwar Prasad.)

Mr. President: The honourable Member is entitled to his own views and it is no use cross-examining any Member across the floor of the House. If Mr. Brajeshwar Prasad has his views, let him have them and let Mr. Kapoor express his own views.

Shri Jaspat Roy Kapoor: I know that my honourable Friend Mr. Brajeshwar Prasad does not agree with any sensible view or proposition that is advanced in this House, and it is no surprise to me that he is not agreeing with me on this occasion as well. What I was submitting is that those persons who went away to Pakistan went definitely with the intention of settling down there permanently. They gave up their loyalty to this country and they gave their allegiance to the new country of Pakistan. Their migration was therefore complete and absolute and, therefore, the right of citizenship which they had before their migration is eliminated altogether. There have been cases of a large number of government employees, both in the higher and lower posts and particularly in the railways, who had opted of their own free will for Pakistan, even before Partition had taken place; and quite a large number of them, particularly railway employees, after going over to Pakistan came back

to India finding that they had no scope for a decent existence in Pakistan, after obtaining valid permits. Could it be said in their case, as Mr. Brajeshwar Prasad is contending, that they had left this territory because of fear of disturbances? They had definitely said even before there was any sign of disturbance that they would like to go and settle down permanently in Pakistan and serve the Pakistan Government. There should, therefore, be no doubt in the mind of anyone of us that such persons definitely went away with the idea of settling there permanently. Now if they want to come back to India to settle down here permanently, we may welcome them as we would welcome any other foreigner. Once they became foreigners to our land they must be treated on the same footing as any other foreigner. If any permit is given to them to come over and settle down permanently, it only means that we are showing consideration to them and telling them. "You can come back again and settle permanently here if you like; but please do not think it is for the reason that you kicked this country once. We do not wish to put a premium on this conduct and grant any concession therefor. But we are prepared to give you the same facility for re-acquiring the right of citizenship of India as we are prepared to give to any foreigner." It means let them come back by permit and settle here for five years, and thereafter perhaps they may be permitted to acquire the right of citizenship as any other foreigner may be permitted by any subsequent law made by Parliament. Therefore it is a matter of principle and we should not throw away this principle for any reason, without any valid reason.

Also it has certain financial implications which we should not forget to realise at this stage. The question will arise as to whether in regard to the property which such persons had left at the time of migration they will be entitled to get them back along with their citizenship after they are allowed to come back and resettle here. In the various Ordinances that have been promulgated an attempt has been made to vest in the Custodian of Evacuee Property the right of management of all the property which has been left over by evacuees. Now such persons, even though they have come back after the 19th July 1949 under a valid permit continue to be evacuees under the definition of the various Ordinances. There will be an anomalous position then. While on the one hand we confer on them the right of citizenship, the property which they had left behind at the time of migration will continue to be evacuee property. You will perhaps treat the question with fairness and generosity, and I agree that it must be treated with fairness and generosity, because every great nation must always adopt that attitude. With that attitude of fairness and generosity, I am afraid it will be well nigh impossible for you to say to them that "Though we adopt you as citizens of this country, yet we would treat your property which you had left behind at the time of migration as evacuee property." That may not be possible and, therefore, property worth crores of rupees will be going out of your hands. I ned not elaborate this point because the implications of this are very clear to every one of us and more particularly to those who are responsible for sponsoring this amendment.

I would only say one word. While it is good to be generous, generosity loses much of its virtue when it is at the cost of others, because this generosity will be at the cost of nobody else but ultimately perhaps at the cost of our refugee brethren. Eventually it may or may not be so: we do not know, but we will very much regret it, if that becomes the position. It is the refugees who are going to benefit from all such property and if we are going to make a free gift of all this property to those who migrated but have come back it is the refugees who are going to suffer and none else. I would, therefore, beg of Mr. T. T. Krishnamachari and also Mr. Gopalaswami Ayyangar not to press this amendment and let this article 5A remain as it is in the draft without the proviso.

[Shri Jaspat Roy Kapoor]

I have done, Sir. I will only repeat the appeal I have already made, that this particular amendment at least of Sub-clause (1) of clause (a) should not be accepted.

Mr. President: Professor Shah may move his amendments (List I, Third Week).

Prof. K. T. Shah (Bihar: General): Sir, I have some amendment in the Printed List—No. 1 which has not been covered by the last two days' list. I would like to move them with your permission.

Mr. President: I had one such amendment of yours in mind when I made certain remarks in the beginning.

Prof. K. T. Shah: That is a new article. That comes later. I am speaking just now of amendments 203 and 208 which relate to the restriction of parents on the paternal side. That has not been moved.

Mr. President: You may move amendment No. 203.

Prof. K. T. Shah: With your permission, Sir, I would move all my amendments and then speak on them collectively.

The first amendment I would like to move is:

"That in clause (a) of article 5, after the words 'grand parents' the words 'on the paternal side' be added."

The numbering of the clauses will have to be altered. As the same idea is repeated in amendment No. 208 I am not repeating it. The next amendment of mine in the Printed List is No. 227. As it is included in the new amendment I have given notice of, I do not read it just now. My next amendment is No. 231. As it relates to a new article, I do not propose also to read it just now. Then I move:

"That in amendment No. 1 above, in the proposed article 5—

(i) after the figure '5' the brackets and figure '(1)' be inserted;

(ii) before the Explanation, the following proviso be added:—

'Provided further that the nationality by birth of any citizen of India shall not be affected in any other country whose Municipal Law permits the local citizenship of that country being acquired without prejudice to the nationality by birth of any of the citizens; and

Provided that where under the Municipal Law no citizen is compelled either to renounce his nationality by birth before acquiring the citizenship of that country, or where under the Municipal Law nationality by birth of any citizen does not cease automatically on the acquisition of the citizenship of that country.';

(iii) after the Explanation, the following new clause be added:—

'(2) Subject to this Constitution, Parliament shall regulate by law the grant or acquirement of the citizenship of India.'"

I also move:

"That in amendment No. 6 above, after the proposed new clause (2) of article 5, the following proviso be added:—

'Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship.'"

Then there is my amendment No. 152 in today's list (List V of Third Week).

Mr. President: But, then, are you not moving amendment No. 20 (List I of Third Week)?

Prof. K. T. Shah: I am moving it.

I move:

"That in amendment No. 1 above, in the proposed new articles 5-A and 5-B, for the word 'Dominion', wherever it occurs, the word 'Republic' be substituted."

The next amendment that I move is No. 152 in List V of Third Week. I move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of sub clause (i) of clause (b) of the proposed new article 5²A, but before the word 'and', the following proviso be added:—

'Provided that any person who has so migrated to the areas now included in Pakistan but has returned from that area to the territory of India since the nineteenth day of July, 1948, shall produce such evidence, documentary or otherwise, as may be deemed necessary to prove his intention to be domiciled in India and reside permanently there.'"

These are all the amendments which I move in this connection at the present time. While commending these amendments to the House, may I offer my sincere congratulations to the draftsman for the great erudition and mastery of a very complicated subject that he has shown and also, in the midst of very serious difficulties, tried to keep a balanced judgment on an admittedly very difficult subject where feelings run high? It is not customary for me to throw many boquets at the learned draftsman of this Constitution. I therefore trust that as I do such a thing so rarely, let me for once offer this boquet of roses which I trust he will appreciate, even though there are some thorns in the boquet.

Sir, I have been obliged to move these amendments, spread over a number of items, and dealing with a number of aspects, because I think a number of vital principles are involved. Would you permit me to simplify the entire lot of amendments by formulating in general terms my idea why they have become necessary in the face of this Draft, which I consider to be of importance, and why, if they are included, the Draft would be very much improved in my opinion?

Sir, to put the matter briefly and succinctly citizenship of a State is had or acquired in a variety of ways. Therefore the first proposition that may be laid down is that anyone born in a country is automatically a citizen of that country, unless by his own act, when he attains maturity, he or she renounces that privilege. This is a simple proposition to which there ought to be no exception. It goes further and makes citizenship not only a birthright, but also an inheritance. That is to say any one whose father or mother according to my amendment and according to this Draft whose grand-parents, or whose grandfathers on the paternal side according to my amendment were born in this country, would also acquire automatically the privilege of being a citizen of this country, unless it is specifically renounced by any act of the person concerned.

Sir, it has been said by previous speakers, and I would like to endorse it, that the privilege of citizenship of India should not be regarded as something very commonplace affair, cheap and easy. It is, I submit—and it promises to be still more,—a great privilege, of which not only those of us who are now citizens may be proud, but even those who may hereafter become citizens of India should also be proud. It was the proud privilege in the days of the Roman Republic for any Roman citizen simply because of that citizenship to regard himself as equal to any King. The last word in status and importance was said when he proudly asserted: "*civis Romanum sum*" I am a Roman citizen". I hope the time is coming when the same proud boast may justly be made by Indians, when the citizenship of India will not be merely regarded

[Prof. K. T. Shah]

as a burden of our 'nativity'—for we were used to be called 'natives' in the dead and buried past - but it would be regarded as something to which the rest of the world will look up with respect.

Holding this opinion, Sir, as I do regarding the great privilege of being a citizen of India, I entirely agree with those who think that we should not make it too cheap and easy. Nor should we be unduly niggardly about any reasonable demand or reasonable claim by birth or inheritance to that citizenship.

Sir, I think now that the subject of citizenship has become complicated we would be landing ourselves into great difficulties if we continue this right of inheritance almost *ad infinitem*. For, though you take it only up to the grand-parents on both sides,—that is to say, the inheritance by descent from the mother and father of the mother and father of the person claiming citizenship, it is a very difficult matter to prove and establish. It has been said, Sir, that whereas maternity is a fact, paternity is an assumption. It is difficult to prove paternity beyond the shadow of a doubt, though there may be unimpeachable evidence in support of maternity. Nevertheless, for centuries, if not millenia past, we have been accustomed to reckon descent only on the paternal side. And hence my amendments. Under these circumstances, and especially in view of our country's very poor registration system, where the evidence of birth and death is not easy to obtain, I am afraid that the extension in this manner to inheritance of citizenship is bound to create difficulties especially in view of the circumstances that led to the partition of this country, and the aftermath of terror and migration that has followed that partition. I would, therefore, willingly accept for my part the suggestion of Dr. Deshmukh, which would restrict the privilege of citizenship by birth only to the second degree, which can be more easily established or proved. If you go further, if you want to be more liberal and generous, you may take it up to the third generation. But there I would stop and try to keep the right of inheritance of citizenship only on the paternal side.

I say this with no desire to suggest, even by implication, that I have any lack of belief in the equality of men and women, so far as citizenship rights are concerned. I say it because of the many complexities and difficulties involved in this tracing of inheritance from the maternal side, not the least of which is the problem of proof. I would, therefore, suggest, either and preferably, that the definition suggested in this regard by Dr. Ambedkar be accepted in preference to my own suggestion; or at any rate, if you wish to be generous in this regard, you might keep it to the male grand-parent of the person claiming to be a citizen by inheritance.

Sir, inheritance is a thing that can be acquired; and it can also be renounced; and, therefore, in the case of those who have voluntarily or, as some honourable Member has suggested, in panic, gone out of this country, and have indicated by every act in their power that they would have nothing to do with this country, that they belong to a different nation, that they are different in race, language, culture and religion, or whatever the reason that inspired them, we would be justified in presuming that they have renounced their birthright. They having renounced their birthright, we are justified in saying that they would not be entitled to the right of inheritance.

If they want to return and desire to become once again the citizens of India, in such cases, also, I hope the House will agree with me that we would be entitled to see to it that there would be no Quislings amidst us. It is but fair, therefore, that such persons be required to produce sufficient evidence, documentary or otherwise, not only of their right by descent, but also to show their

intention to permanently reside in this country, and be its loyal citizens. For that purpose, Sir, the amendment that I have suggested would, I think, be much more adequate, much more appropriate, and much more necessary than the Draft before us. I, therefore, commend that item to the honourable Draftsman.

Coming next, Sir, to the case of those who happen to be away, who by settlement in other lands for business connection or by a formal act of acquisition of another citizenship, under the Naturalisation laws of that country, become citizens of that country, we would be right in providing that, if they desire to acquire the citizenship of India, their path should be simplified Subject however to the condition that I have already indicated, *viz.*, that there must be some concrete evidence that they really intend to reside in that country, be part and parcel of that country, would share all the duties and obligations of that country's citizenship, and would not be traitors to their country of adoption

If citizenship is given as a matter of course to those who by settlement, by business connection, or otherwise, claim the right of being citizens of this country, and demand all the advantages that accrue from it, I think we must have reasonable evidence, we must demand reasonable proof that they intend permanently to live here, and be part of this land, loyal and devoted to her; and not merely for taking advantage of our generosity or liberalism in this regard.

I am thinking, Sir, in this connection much more of those foreign capitalists or businessmen who had been with us, and who had claimed in the past that there should be no discrimination against them. The Government of India Act, 1935, is disgraced by a whole chapter of many discriminatory provisions,—the discrimination being always against Indians and in favour of those outsiders. With that experience before us, and with the possible development of our future fiscal policy in such a manner that Indian citizenship in business, in industry or any other enterprise may receive special protection, may receive special benefit, we must take good care against foreign capitalists who might come and settle here, merely to enjoy those benefits of our fiscal or industrial policy, without their heart being in this country. I, therefore, suggest that whether in the Constitution, or in any legislation that Parliament may make in this regard, we should see to it that such citizens by self-interest furnish evidence, sufficient evidence of their intention to make India their permanent home, and not merely being mere birds of passage, exploiting the country, and only taking advantage of any fiscal legislation or financial advantage, and then quitting the country after their purpose is served.

Sir, here is a point, which, may I say with all respect, does not seem to me to be sufficiently borne in mind by the Drafting Committee; and perhaps the amendment of the kind that I have suggested, or some other amendment in that sense may be necessary to cover that position. I frankly confess, with the views that have been expressed from the highest quarters about the need for foreign capital, and about the necessity for offering all kinds of advantageous terms to these foreign investors, we are not going to end exploitation of this country, if we permit the citizenship of India and its attendant privileges to be lightly acquired. Unless the Constitution contains some provisions which entitled Parliament to make discrimination,—I have no hesitation in using that word,—so that indigenous talent and enterprise will be sufficiently protected and safeguarded against their foreign competitors, unless there is some such provision and authority in the Constitution itself, Parliament itself may be unable to protect adequately our own enterprise as against those people whose only purpose in acquiring Indian citizenship is to take advantage of our fiscal policy, or any other cognate advantage, and not make any adequate return to the country that gives them that advantage. I, therefore, trust, Sir, that my reasoning in this regard will at least commend itself to the Honourable

[Prof. K. T. Shah]

the Drafting Committee Chairman, even if the actual wording may not. I would trust to his erudition, to his understanding, to his patriotism to see to it that some such provision as I have asked for would be incorporated in the Constitution in any form which he thinks most appropriate. So far as the actual technical drafting is concerned, I have not the slightest hesitation in admitting that the Chairman of the Drafting Committee is a far greater master than I could ever pretend to be; and that, therefore, I would leave it entirely to him, if he accepts the reasoning I have put forward, to put up such an amendment as he may think necessary in his own words.

I now come, Sir, to the next amendment, I mean, that which relates to those countries, our near neighbours in Asia, where large numbers of Indians have settled; and where, under the new up-surge of local nationalism, their treatment is not all that can be desired. There is a feeling that in Burma in Ceylon, or in Malaya, for instance, our *citizens* are not meeting with all the equality of treatment or reciprocity that we may desire. Hence it is that by two of the amendments in amendment No. 6, I am trying to suggest that wherever the local legislation permits an Indian to acquire all the rights and advantages of citizenship, without prejudice to his own nationality by birth, we should give the same treatment. We should also preserve the nationality of that person of Indian birth who has settled, and who owes allegiance to the Government of another country, though that country's legislation permits him to do so.

Permit me to add, Sir, that in this demand it is not that I am becoming self contradictory, because just a moment before I said that a person who has settled in India should be guarded against as much as we can by our Constitution, lest the privilege of such acquired citizenship be used to our prejudice. I am not debarred from making the suggestion. I am now putting forward—I repeat, I am not becoming inconsistent, because, according to the information I have received, there are 8 lakhs of Indians in the Federated Malay States. Under the new Constitution of the Federated Malay States, they permit such Indians settled there, to acquire the fullest rights of local citizenship, without losing their Indian nationality by birth. On the other hand, in Ceylon and Burma, according to the information I have, the position of Indians is very much more invidious. Burma, for example, I have been informed by people who should know, provides that an Indian can acquire Burmese citizenship according to certain formalities prescribed by the Burmese legislation. But before a certificate of naturalisation can be delivered to him, he will have to make an express declaration that he renounces his Indian citizenship. Speaking for myself, I would say that this is not fair. But even if it be taken as fair dealing with good neighbours we can make an exception in the case of those Indian citizens, who have to live their lives there, and who cannot remain Indians under the Municipal law, if they wish to remain in that country where their own life work lies. In that case, I would make an exception and not insist on Indian nationality being retained by one who has had to renounce it. But there is another case, that of Ceylon. Again I am speaking from the information that I have gathered—in Ceylon the local legislation for acquiring Ceylonese citizenship automatically denies or destroys the citizenship of the previous origin by birth or otherwise if once a person acquires by naturalization the citizenship of Ceylon. The obligations of citizenship are plenty, and none would be more aware of them than I am of such obligations and would require allegiance to one's country of adoption, without however there being any necessity automatically to forego the nationality by birth. That I think is asking a little too much. But even so, I recognise that Ceylon is an independent dominion, and is entitled to make its own laws. On that basis

we must allow these Indians, who are settled there, to follow the local legislation without any objection on our side as to their retaining their nationality by birth, even after acquiring Sinhalese citizenship. We need not insist that they shall continue to remain Indian nationals.

The case that I now come to is the reverse of these, and provokes much more strong comment than these three other cases, which are or were also British Dominions or Protectorates until recently. I am now thinking of those other Dominions, countries like Australia, New Zealand, or Africa, where Indians do not receive equal treatment. I need not weary this House with a tale of [illegible] in Africa. They are all too well known. We are all full of resentment against such legislation as is being perpetrated now in that country. With that experience, I see no reason why we should not reserve in our fundamental Constitution express power that Parliament shall not grant rights of equal citizenship, or equal treatment to those who deny our nationals,—law-abiding, peaceful enterprising farming on business and adding to the prosperity of that country—the same treatment that they accord to other classes within their jurisdiction.

Africa is perhaps the most glaring, the most poignant case of invidious discrimination against Indians; and as such I should say, it is not enough to tell us as this Draft says, that Parliament is free to pass legislation for regulating the acquisition or termination of citizenship; and that under that power such cases will be dealt with. I would add a provision, making it incumbent upon Parliament also not to grant equal treatment to the nationals of those countries who discriminate in this manner against Indians settled there, working there for all their lives, and adding by their labour, by their enterprise, by their skill, to the wealth of that country remaining peaceful, loyal, law-abiding citizens of that country.

Sir, it is an unfortunate fact that, for whatever reasons, we are still members of the so-called Commonwealth of Nations dominated by Britain our former exploiter. In the Commonwealth of Nations, even though theoretically we are supposed to be equal members, equality is shown more in exclusiveness by some, and maintaining their superiority of the old imperialist days, by others, than in the real spirit of true brotherhood that might make that Commonwealth more honest and attractive. I for one have never been an admirer of [illegible]. I was converted by the recent utterances of Dr. Malan and his latest developments.

As [illegible] we must [illegible] process provide [illegible] as we have done in other cases of retaliation, may I use the word, against those Dominions, against those countries, which do not give equal rights to our people. Even in the case of Australia while it may not be so clear, so pointed so invidious as in the case of South Africa there is the policy of "White Australia" which is being proclaimed from the house-tops, and which is spoken of with pride by the present Prime Minister of that country; he has even asserted that the highest authorities in the country have also agreed to the ideal. I do not know how far that is true. Whether it is so or not, with this insistence of the policy of "White Australia", I do not see why we cannot discriminate, in our own Constitution, against these people, who without regard for good neighbourliness, without regard to the many proofs of friendliness that we have given in the past and we are still giving, would insist upon their narrow, restricted, geographical nationalism. That does not suit a new country of that type, which has yet to develop all its resources, and where its own population is hardly adequate to the climatic and other conditions prevailing in that country. It does not become such a country to say that they would insist on the supremacy of the heaven-born white race, and that that race alone would settle and the citizens there, and all others whatever their claim may be [illegible] of becoming full citizen.

[Prof. K. T. Shah]

This applies even to that country which now claims to be the leader of all civilised, progressive, western nations, I mean America. The United States of America is very rich in high professions about equality of human rights But when it comes to implementation of those rights in their own land, I am afraid, the U.S.A. has not given in the past, and is not giving today, any concrete indication that there is a complete unanimity between the tongue and the heart. In fact there is a large gulf between the two. In the United States, until recently, Indians could not acquire full citizenship rights. Even today, so far as my memory goes,—I am open to correction by the superior knowledge of the Drafting Committee,—only about one hundred Indians every year can immigrate into that country and become eligible for full citizenship of that country a country which professes to have advanced views on liberalism, a country which speaks of equality of human rights, a country which professes to be the pioneer and promoter of the famous four freedoms in the world, but which every day violates the "freedom". That is not quite compatible with their own professions of equality all round in the world, and to whom anybody who wants dollars should go with bended knees, with the beggar's bowl, ready to submit to any condition that the masters of the mighty Dollar are prepared to lay down.

This country need not be very much afraid of them, because we may have industries to develop and our resources are undeveloped. We are told by some that we have not our own capital resources adequate to do so. I am not one of those who believe that. We need not show any apprehension; we need not be so hesitant about ourselves that we should not lay down, quite clearly and categorically, that those who do not treat us equally shall not be treated equally in this country. Whatever may be the consequences, I am not afraid I do not see why this country, though only two years old as an independent sovereign State, should show, in its Constitution, in the fundamental law of its being and working, that it is going to be afraid of any people lest that people be displeased, and lest they should regard us as out-castes. If they do so, it will be to their own prejudice, and it will not be to our loss. The sooner the day comes when we learn by bitter experience to stand on our own legs, and fight with our own arms, the better for us. So long as we want to be protected, supported, assisted from outside, we shall not be able to call our soul our own.

Hence it is that without any ambiguity, without any circumlocution, I would lay down this point in the Constitution itself regarding citizenship. Whatever that may be, hereafter Parliament shall not be free to accord equal rights to those who deny such equal treatment to us. We are prepared to accord full reciprocity to all, be they Pakistan, America, Australia, Africa or Britain; we are prepared to grant equality, if equality is given to us. We are not prepared to take merely the word of these great white gentlemen if their acts do not correspond to their words. We are not prepared to accept merely their verbal professions of equality, like the spider's proverbial saying to the fly "come into my parlour". I do not compare ourselves to a fly—but we need not go to be devoured in a flattering manner by the spider, be the web in New York, or London or Brisbane, or Canberra. It does not matter two hoots where they are, and what they are, so long as their words do not correspond to their deeds. We cannot take our stand too strongly and guard ourselves against being humbugged against being deceived betrayed and sold, too effectively. I, therefore, suggest that Parliament itself should be restricted by the Constitution against granting, as we have unfortunately granted and agreed to grant to the members of the Commonwealth, equal treatment to those that do not give us the same treatment.

We have recently undertaken many international obligations. I call to mind only one of these just now, that of the so-called Havana Agreement or the Havana Trade Agreement,—I forget the exact words—one is so bewildered by this plague of initials that one cannot remember the original Christian name of these organisations. I take it that the House is aware that we are undertaking these international obligations. But these international obligations should not act, and I hope they are not acting, against us only. When it did not suit Britain for example to act up to the spirit of the Havana Charter, she was quite free to and has entered into trade agreements with Argentina, which I am told has seriously displeased the New York money market. That may be so, but Britain has not hesitated to seek her own interest. If an occasion like this should arise, we also ought to have this power with us to deal with these people and to deal with these circumstances when they arise without fear or favour. So, I say that by the amendments I have suggested,—I repeat I am not insisting upon the letter of the amendments,—by the spirit of the suggestion, we would be able to guard against any such mischance. I hope nobody will consider me to be a narrow nationalist, though I am not ashamed to be called so. But this is essential to all those who would like to stand on their own legs, who would like to fight with their own arms, who would not care for any man on earth as to what they think or what they feel, provided we believe that we are right. On a famous occasion, when the timorous Generals of the civil war came to President Lincoln on the eve of a great battle and said, "We hope, Sir, that God is with us," President Lincoln replied, "It does not matter if God is with us; it matters a great deal if we are with God." I am quite sure that we are with God and I am perfectly certain that if we accept the spirit of the amendments that I am suggesting, we shall have nothing to regret.

Shri Krishna Chandra Sharma (United Provinces: General): Sir, I beg to move:

"That in amendment No. 1 above, at the end of clause (c) of the proposed article 5, the words 'and subject to the jurisdiction thereof' be inserted."

The meaning is this that without these words the provision will come in conflict with international law, *i.e.*, the children of the embassy station here are not subject to the law of this land. For instance, you cannot haul them for conscription and it is an elementary law that a man would not enjoy the right of citizenship unless he takes up the obligation thereof. Therefore, you cannot bestow citizenship on a person from whom you cannot expect or you cannot call him to take up the obligation and therefore it is just to be in consistency with international practice and would bring the provisions in accord with the international law. This is necessary and I hope the Honourable Dr. Ambedkar will accept this.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"(a) That in amendment No. 1 above—

'(i) in the proposed article 5—

for the words 'has not voluntarily acquired the citizenship' the words 'is not already the citizen' be substituted;

(ii) in the Explanation for the word 'has' the word 'had' be substituted; the word 'now' be deleted; and the following be added at the end:—

'at the commencement of this Constitution.'

(b) in the proposed new article 5-A, for the words 'now included in Pakistan' the words 'included in Pakistan at the commencement of this Constitution' be substituted.'"

I have another amendment in common with Sardar Bhopinder Singh Man and I leave it to the Sardar Sahib to move it.

[Prof. Shibban Lal Saksena]

Sir, this is one of the most difficult articles in our Constitution, and as the speeches so far made have shown, and even Dr. Ambedkar has himself confessed that though this Draft has been put forward after the most careful consideration, still friends have come forward to point out its defects. I want to say, first of all, that my Friend Dr. Deshmukh has moved a very important amendment to the first clause of article 5. His contention is that we are making this 'Citizenship of India' very cheap whereas it is a very difficult thing to acquire in other countries. I concur fully with him and think that the article as it stands needs to be altered in some form. Let us see what would happen otherwise. The article says :

"At the date of commencement of the Constitution every person who has his domicile in the territory of India and was born in the territory of India or either of whose parents were born in the territory of India shall be a citizen. . . ."

This clause will give citizenship to a class of persons to whom probably we would not like to give it. Mr. Amery was also born in India in my District of Gorakhpur where his father was a Forest Conservator and his son John Amery will get our citizenship if he only stays here for some time before 26th January 1950, and we shall not be entitled to stop him from acquiring that. In clause (c), five years residence is sufficient to give citizenship to anybody. I think we are making our citizenship very cheap. We have said 'if he has not voluntarily acquired the citizenship of any Foreign State'. I think it should be 'unless he is already a Citizen of any Foreign State'. This clause has to be amended accordingly. Dr. Deshmukh suggested 'that he should be born of Indian parents'. Now 'Indian parents' will have to be defined because we are defining 'Indian' in this clause and I suggest that by Indian should be meant 'whosoever may be called a citizen of India under the 1935 Act, and if a man is born of such parents, he shall certainly be called a citizen of India.' Dr. Deshmukh's amendment is quite correct, for the Hindus and Sikhs have no other home but India and I do not see how we can include everyone in this category unless we say it bluntly in this form. We should not be ashamed in saying that every person who is a Hindu or a Sikh by religion and is not a citizen of another State shall be entitled to citizenship of India. That will cover every class whom we want to cover and will be comprehensive. The phrase 'Secular' should not frighten us in saying what is a fact and reality must be faced. I therefore think that Dr. Deshmukh has given a very good suggestion. The present Draft is too wide and gives citizenship to almost everybody. In fact some friends from Nepal met me and asked me whether the Nepalese living in this country shall be called citizens of India and I was really at a loss to give an answer. But clause (c) gives an answer. If they have been here for five years, they will be citizens. Dr. Deshmukh's amendment would give them citizenship here if they wanted. So this article needs to be amended. We must not make our citizenship very cheap; but for those who owe allegiance to this State, whosoever they may be, they must be allowed to have the citizenship of India and we must say so in our Constitution. The word "voluntarily" should go. Anybody who has acquired the citizenship of any foreign State should not be entitled to citizenship of India. If you say "voluntarily acquired" he may say 'I did not voluntarily acquire it' that it was something involuntary and all that sort of thing. I therefore think that my amendment to this article should be accepted.

In regard to article 5-A I agree with Mr. Jaspat Roy Kapoor that the words "deemed to be" should not be there. Those who have come to India from Pakistan are citizens of India. Why say "deemed to be"? These words do not add any lustre to the article. We should give dignity to our friends who have come over here. They are citizens of India and there is no question of their being "deemed to be" citizens of India.

Then the words "now included in Pakistan" are ambiguous—particularly the word 'now'. This Constitution is made for a long time to come. Whenever it is read, the words "now in Pakistan" will not convey the proper meaning, as the word 'now' will have changing meanings. For instance, today some areas are in Pakistan, tomorrow they may not be there. Or, today some areas are not in Pakistan, but later on they may be acquired by it. Then it will mean that everybody who is a citizen of Pakistan at that time shall, if he had migrated, be a citizen of India. I therefore suggest that instead of saying, "now in Pakistan" we might say "in Pakistan at the commencement of this Constitution". We must limit what Pakistan means. As I said, "now" will be a word with a changing meaning according to the area of Pakistan. I therefore suggest that the word "now" should be deleted and the words "at the commencement of this Constitution" be added at the end of the Explanation. This is my amendment. I hope Dr. Ambedkar will carefully see whether the words "now in Pakistan" may not be differently interpreted at a later period of time.

In my amendment No. 163 of List VI, which my Friend Sardar Bhopinder Singh Man will move, I have desired the deletion of the proposed proviso to the proposed new article 5-AA. My Friend Mr. Jaspat Roy Kapoor was very frank in giving his opinion in this respect. Apart from his reasons I will say one thing. This will allow the executive authority to give anybody a permit and he shall become a citizen of India, so that it will be something changing and it may have repercussions which we do not like. We must definitely say what we have said in clauses 5-A and 5-AA, that a person who has migrated from India will be treated as a foreigner and when he comes back he will have to acquire citizenship by residence of five years and so on. I do not think the proviso is necessary and I therefore think amendment No. 163 seeking to delete the proviso should be accepted. I would request the Honourable Mr. Gopalaswami Ayyangar and Mr. T. T. Krishnamachari to withdraw the amendment which they may move and the House should reject it. This proviso should not nullify what is contained in the other portions of the article.

In clause 5-B, my Friend Mr. Jaspat Roy Kapoor suggested that the omission of the words subject to the provisions of any law that may be made by Parliament" was incorrect and Mr. T. T. Krishnamachari pointed out that as article 6 is there it is not necessary. I do not agree with Mr. T. T. Krishnamachari, because it will again become a question of interpretation. I do not want it to be a matter for litigation. Parliament must have full authority to put limitations on the rights of diplomatic and consular representatives to enrol men as citizens of India. Otherwise it will be very easy for anybody to acquire citizenship of India. I think these words should remain in this very article 5B. Article 6 is of course an overall clause, but unless the thing is mentioned in the other articles also, Parliament's power will be limited. Article 5B is absolute and therefore it should not be limited by the omission of these words. These words are not superfluous there. The words were there in the original Draft and I do not know why they were omitted. They should remain there so that the intention may be clearer than what it is.

Our learned Professor Shah has just now told us how keenly we feel the discrimination against Indians in other countries. In amendment No. 7 he says that "Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship". I think our self-respect demands that this proviso should be there. Otherwise it is hopeless that when we are discriminated against by any country, still to the nationals of such country when they come here we accord equal rights of citizenship. I personally feel, and the people also feel, that if they kick us they shall also be kicked. This amendment No. (7) is a very important amendment and should be accepted.

[Prof. Shibban Lal Saksena]

His suggestion about foreign capitalists coming here and trying to take advantage of this article is also worthy of consideration and I hope the learned Doctor will give it the weight it deserves.

There is another word "Dominion" here. The word "Dominion" will jar on the ears of people after India has obtained freedom and has ceased to be a Dominion. I therefore think that in article 5-B, the words "Dominion of India" should be changed to some other language. In fact in connection with another article of the Constitution we felt that the word "Dominion" in the Constitution should not be a reminder of the days of slavery, which we have passed. This should also be changed and the amendment contained in Professor Shah's amendment No. 20 should be accepted.

The whole article is a difficult one and Dr. Ambedkar has said that this contains the greatest common measure of agreement. The article still leaves much room for improvement. There are still many lacunae in the article which will affect millions of countrymen and also the future. The article must therefore be properly considered and amended as required.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, I beg to move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in clause (c) of the proposed article 5, for the words 'five years' the words 'ten years' be substituted."

I further beg to move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5-A, for the words beginning with 'Notwithstanding anything' and ending 'at the date of commencement of this Constitution if', the following words be substituted :—

'Notwithstanding anything contained in article 5 of this Constitution a person who on account of civil disturbances or the fear of such disturbances—

(a) having the domicile of India, as defined in the Government of India Act, 1935, and being resident in India before the partition, has decided to reside permanently in India; or

(b) has migrated to the territory of India from the territory now included in Pakistan;

shall be deemed to be a citizen of India at the date of the commencement of this Constitution if.'"

I further beg to move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of the proposed new article 5-A, the following words be added :—

'or if he has before the date of commencement of this Constitution unequivocally declared his intention of acquiring the domicile of India by permanent residence in the territory of India or otherwise and established such intention to the satisfaction of the authority before whom the question of his citizenship arises.'"

I further beg to move :

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-AA—

(i) the words 'nothing in this article shall apply to' be deleted;

(ii) the words 'or permanent return' be deleted; and

(iii) for the words beginning with 'and every such person shall' and ending 'nineteenth day of July 1948' the following words be substituted :—

'shall be entitled to count his period of residence after the nineteenth day of July 1948, in the territory of India in the period required for qualification for naturalisation or acquisition of citizenship under any law made by Parliament'."

Sir, I move :

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-A—

(i) the words 'nothing in this article shall apply to' be deleted;

(ii) for the words beginning with 'and every such person shall' and ending 'nineteenth day of July 1948' the following words be substituted :—

'shall be eligible for citizenship by naturalization if he fulfils the condition laid down by law and his permit shall be liabel to be cancelled on the grounds on which under the law relating to naturalization the certificate of naturalization can be cancelled'."

Further, Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5B, after the words 'any person' the words 'having his domicile in the territory of India' be inserted."

Further, Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5B, for the words 'whether before or after' the word 'before' be substituted"

Further, Sir, I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5B, the words 'or the Government of India' occurring at the end of the article be deleted."

With your permission, Sir, I would further move :

"That in amendment No. 1 above, at the end of the proposed new article 5B, the following proviso be added :

'Provided he has not abandoned his domicile by migrating to Pakistan after the 1st April 1947 or acquired after leaving India the citizenship of any other State.'"

Mr. President : Am I right if I say that the following amendments have been moved :

List VI/3rd Week : Nos. 160, 161, 162, 164, 165, 167, 168 and 169.

List I/3rd Week : No. 32.?

Pandit Thakur Das Bhargava : Yes. A perusal of articles 5, 5A, 5AA, 5B, and 5C will show that it is established that birth, domicile, stay for five years, migration plus birth, or registration by the officers appointed by the Government of India, or some sort of registration in any country with the Embassy have been regarded as giving qualifications for citizenship.

So far as the question of birth is concerned, I for one fail to understand how the birth of a grand-mother or the birth of a grand-parent in India or any other country can be regarded to give qualification to any person for citizenship. If you at least consider these articles separately, one by one, it would appear that there is no account taken even of birth because under 5C, if there is a foreigner and he settles in India for five years, he is also entitled to become a citizen provided he has got the domicile of India.

Similarly, with regard to domicile, this is not a condition *sine qua non*, because in 5-B, if a person was born in the territory defined in the Government of India Act, 1935 as India and is then staying in any foreign country, these two are enough for his acquiring the right of citizenship, provided he applies to

[Pandit Thakur Das Bhargava]

the Embassy and registration is allowed. Even the domicile is not required I do not know, Sir, what is there in this citizenship which is absolutely necessary for a person to be acquired before he becomes a citizen. To my mind, Sir, domicile is a very important factor and I should think that domicile is one of the indispensable conditions of citizenship. Whatever else may or may not be, as I understand the laws of naturalization in all civilized countries of the world, any foreigner can acquire the right of citizenship by naturalization if he satisfied the conditions laid down by the law of the land. But so far as domicile is concerned, unless this is present, in my humble opinion no person can say that he has got this citizenship of a particular country if he has not got the domicile. After all, the rights of citizenship, the obligations of citizenship, the status of being a citizen is not an ordinary matter. It is not a nebulous thing. it must be definite. I understand that a person gets certain rights by becoming a citizen of a State, and he also takes upon himself the liability to discharge certain obligations if he belongs to or is a citizen of that State. What I find is that in our desire to spread out our net too wide, we have not cared to see whether we can impose any sort of obligations on those to whom we are giving the right of citizenship : nor have we cared to see that after all, if we make a person a citizen of India we undertake a very large responsibility so far as that person is concerned Who does not know in this House that when Miss Ellis was captured by the tribal people in the North-West Frontier, the whole of Great Britain was convulsed, because she was a citizen of England ? Now, Sir, do we not find that today those who are regarded as our people, and who may or may not be our citizens, are insulted in different lands and we are helpless ? Do we not know that even our ladies are yet in Pakistan and we cannot recover them ? I do not know, Sir, if a country is so poor and so weak as not even to be able to protect the ladies or citizens of this country, what right it has got to extend its net so wide. If our country is resourceless and if we cannot find solace and comfort for and rehabilitate our refugees, what right have we got to call others from Pakistan and make them our citizens ? What right have we to call South Africans our citizens, if we have no resources in this country even to see that those who live here are properly fed and housed ?

My humble submission is that I do not want that we should make our citizenship so cheap because the State has certain obligations, and the obligations of the State are shared by the rest of the citizens : and if a citizen is insulted in any part of the country, it is the duty of the State and of the citizens of this country to see that the insult is avenged and amends are made. If we are not able to deliver the goods, what is the use of taking so many people who may or may not like to be citizens and asking them to call themselves our own citizens ?

In this connection I do not want to take much time of the House, as already some of the Members have spoken in this vein on the subject. I would rather like, Sir, to give you my own views on the matter in regard to the present question. When we are making almost a provincial law I am desirous that not a single person who has come from Pakistan as a refugee should have any trouble in being a citizen of India. I am anxious that no obstacle should be placed in the way of those refugees who have come from Pakistan on account of disturbances and who have left their hearths and homes and come to this country. My second desire is that those who were desirous to become the citizens of Pakistan on the 15th August 1947 or who left this country to become citizens of Pakistan with open eyes and with the song on their lips :

"Hanske liya Pakistan
Ladke lenge Hindustan."

should not be made the citizens of India Those persons have now forfeited their right to become citizens of this country Sir, I submit that so far as these refugees are concerned they were the nationals of India. By the mere fact of partition they have not ceased to be citizens of India, provided they have come here and want to settle permanently in this country. They have every right to citizenship and any obstacle in their way I regard as unjustifiable and wrong.

With this view I have tabled my amendments. I would, with your permission, Sir, just state what further corrections or amendments I want to be made in these articles to achieve the two objects I have mentioned

First of all I come to article 5 Before coming to the cases of those refugees and those who want to re enter India from Pakistan, I would first refer to the case of those who come under article 5. Under this article according to the definition of the clause, there can be persons who may have never seen India He should be a person born in India or any one of his parents should be born in India or possesses a domicile. This domicile is merely a mental attitude or conception that he may ultimately have a permanent home in India if a person desires to be a citizen of India. I do not know how this country will be able to impose any obligations on such a person However, that is about those who were born in India or whose parents were born in India or who had the domicile of India In regard to foreigners who desire to acquire rights of citizenship there is the Naturalisation Act VII of 1926. This Act with the necessary modifications must be accepted as the law of India In other countries also there are similar laws regarding naturalisation and if any foreigner wants to become a citizen of this country the law requires not only that he should have lived for five years in the country but insists that he must be a man of good character, and further that he must take the oath of allegiance to this country. With your permission, Sir, in this connection I would refer you to section 5 of the Naturalisation Act VII of 1926 which gives the conditions under which a person acquires the rights of naturalisation. Among other conditions like possessing a good character, etc which are given in section 5 a further provision is made in section 6 :

"Every person to whom a certificate of naturalization has been granted shall, within thirty days from the date of the grant thereof take and subscribe the following oath, namely

I, A B of

do hereby swear (or affirm) that I will be faithful and bear true allegiance to. . . "

In the case of persons who have been living here in this country, the mere fact of their stay for five years in this country should not be enough, if other conditions relating to citizenship by naturalisation are waived in their favour. My humble submission is that if you study the law of naturalisation you will come to the conclusion that a person who even acquires the right of citizenship by naturalization has a liability to fulfil certain conditions. He has to perform certain obligations and be a man of good character. All those conditions are being waived and he is regarded as being a citizen of this country. It is therefore only fair that we should provide for a residence of at least ten years to show that as a matter of fact a person means to stay in India. Otherwise there are many persons who have been in the service of the Crown and have stayed here for a good time. They might now prefer to stay here for reasons best known to themselves. The difficulty in my way is that I do not believe that those who come from Pakistan and other countries propose to stay here only for the love of the country. If they stay for that purpose, I have no objection that they become citizens of this country. But I know very well that there are a good many people who have not come to this country, or are not staying

[Pandit Thakur Das Bhargava]

in this country with this object. In their case I would like to provide ten years instead of five years which should be regarded as indispensable in the interests of caution.

The second amendment which I have moved is No. 161. In regard to this amendment it would appear that this seeks to make certain changes in the Preamble of article 5A. I have provided for a case in which a person born or domiciled in India as defined in the Government of India Act, 1935, if he came to India three years before Partition and has not been living here for five years. Such a man is not provided for in this article. To safeguard the rights of persons like these about whom I am told there are many in Assam I have tabled this amendment. I want that every person who had come to India before Partition and has been staying for less than five years and has decided to stay here, because he does not want to go back on account of conditions in East or West Pakistan, such a person should be allowed to be a citizen of India. If you do not provide for this class of persons many will be left without citizenship who would like to be citizens of India. This is wrong. This article 5A provides for such people whom everybody will consider to be fit citizens of India.

There is another difficulty and I do not want to conceal this fact. I have been told by a reliable authority, by some honourable Members of this House, that after partition as many as three times the Hindu refugees from East Bengal, Muslims have migrated to Assam. If a Muslim comes to India and bears allegiance to India and loves India as we love her, I have nothing but love for that man. But even after the Partition for reasons best known to themselves many Mussalmans have come to Assam with a view to make a Muslim majority in that province for election purposes and not to live in Assam as citizens of India. My humble submission is that those persons have come here for a purpose which is certainly not very justifiable. Those who have come here on account of disturbances in Pakistan or fear of disturbances there, certainly they must get an asylum in India. If any nationalist Mussalman who is afraid of the Muslims of East Pakistan or West Pakistan comes to India he certainly should be welcomed. It is our duty to see that he is protected. We will treat him as our brother and a *bona fide* national of India. In regard to those others who have not come here on account of disturbances, we should not allow them to become citizens of India, if we can help it. Therefore I have added these words :

> "Notwithstanding anything contained in article 5 of this Constitution a person who on account of civil disturbances or the fear of such disturbances. . . ."

I would rather insist that that man should not come here and become a citizen just to bolster up a Muslim majority in one of the provinces of India. Therefore the first condition of migration would be that he comes here on account of disturbances. For those who want to stay here on account of disturbances the doors of India would be open. But to those who come from sinister motives, from motives of occupying lands and usurping the rightful owners by terrorising them and becoming a majority in this country, it is up to us to say that no asylum would be offered here. They are not migrating with a view to live permanently here. Their object is only to create trouble here. But to achieve our object I would request everyone to agree with me that this innovation should be made in article 5A.

Then I proceed to consider the next amendment (162). In regard to this my own fear is that when article 5A was drafted the possibility of many refugees not being covered by it was not envisaged. I am thankful to the Drafting Committee for accepting my suggestion and for being pleased to waive the condition that all the refugees should file declarations about citizenship. But,

in regard to those who have come after 19th July 1948—there will be some ignorant people, ignorant of the condition that the door will be closed on 26th January 1950—I do not know what will happen to them. Perhaps a new law may provide something for them, that after five years' residence they will be regarded as citizens. In regard to such people I believe we are bound to make a provision that if they come to India and settle permanently, that will give them right to citizenship without any further qualifications. For that, I have provided that, if a person before the commencement of this Constitution unequivocally declares not before any officer, but by his own conduct—of permanent residence in the territory of India, he shall be a citizen of India. This question may not crop up now. But sometime it may crop up in some civil or criminal case. So, whenever a question arises whether a person is a citizen of India or not, he should be allowed to say that he came to India before the commencement of the Constitution and by permanent residence unequivocally declared his intention to be a citizen of India. I have included this provision on behalf of those who will not be registered before the commencement of this Constitution. Unless this is included you will be shutting the door against many people who, on account of ignorance or illiteracy, have not been able to take advantage of the new provision. After all, this provision has not been promulgated in the country so far and no officer has been appointed so far. We do not know what steps will be taken to get every refugee registered. When lakhs of people are involved I think it will be difficult to inform every person to get himself registered. Therefore, no person who came to this country for permanent settlement on account of the troubles in Pakistan should say that no provision has been made by this Government for him. It is only to provide against that contingency that I want amendment No. 162 to be accepted.

Coming now to article 5AA and the provisos thereto, I must submit that I approach this subject with a certain amount of feeling. I am glad that the Drafting Committee accepted the principle suggested by me that a person who has once migrated from this country has migrated for all time. The legal maxim is that any person who has abandoned his domicile has abandoned it for all time. There is no question of partial abandonment. The Explanation to article 5 which originally did not appear and was subsequently added there is now included in 5AA. That Explanation says that a person who migrated from the territory of India to Pakistan will not be deemed to be a citizen of India. That is good so far as it goes. But so far as the question of persons who have come to this country subsequently, after having migrated to Pakistan is concerned, a new proviso is sought to be added. I have no quarrel with that proviso except in a certain particular. If the Government of India in their wisdom have seen fit to allow thousands of people to come back from Western or Eastern Pakistan and allowed them permits for re-settlement, they are themselves responsible for it. Perhaps you are not conscious as to what difficult questions of property and propriety are agitating the minds of the refugees in this connection. Now we all know that Pakistan has refused to give compensation for the properties which it originally agreed to give so far as movable property is concerned. With regard to other properties we know the attitude of Pakistan and how it is behaving. The properties of persons who are living in Pakistan have been declared evacuee property and taken possession of. I do not know how the return of these thousands of Muslims to India will affect the rights of evacuee property here. Now a new Ordinance has ben passed by our Government and perhaps another is under contemplation. If a person who comes for resettlement and becomes a citizen and then after that his property is confiscated or seized, I do not know how the provisions of article 24 relating to compensate will affect him. He may in a court of law get a declaration that he has a right to the property taken possession of by the Custodian or apply for restoration. Therefore many difficult questions are likely to arise. These questions are

[Pandit Thakur Das Bhargava]

agitating the minds of every evacuee. Though *bona fide* refugees have not yet been rehabilitated, the houses in Delhi etc., were reserved for those who had yet to arrive from Pakistan and many of such returned people have got their houses back. There is a good deal of confusion and uncertainty in the minds of the refugees that they do not understand the position of the Government of India. At a Conference recently held some responsible person stated that some people came here with temporary permits obtained from the High Commissioner or Deputy High Commissioner in Pakistan and were taken by Muslim dignitaries and ministers to our high placed ministers and leaders and recommended for permanent permits. This may or may not be so. But even if there was a single instance of this nature, this must give rise to agitation in minds of refugees who are driven from pillar to post and not rehabilitated properly. Therefore I say that, apart from rights to property which may run to crores, I for one do not understand how, according to law and equity, we can hold to a proposition that if any person gets a permit for resettlement in India, *proprio vigore* he becomes a citizen of India. It means that the High Commissioner at Karachi has got the power of making any person he likes a citizen of India. It virtually comes to that. By saying this, I may be doing some sort of injustice to that dignitary. I should say in fairness that he never knew that any person to whom a permit has been given was proposed to be made a citizen of India. Therefore my humble submission is that if he knows that his permit will have this effect, he will consider twice before issuing a permit. May I know, Sir, how any person can justify that position because the permits have been begun to be given after the 19th July 1948? Those persons who came before were less fortunate, because they did not get any permits. Those persons who will come after the 26th July 1949 will not have completed six months before they apply for registration. Therefore I beg to point out that permits issued between the 19th July 1948 and 26th July 1949 will only come under the provisions of this rule. After all, what is the difference between the two persons? How can anybody justify different treatment in their cases? All such persons could be considered under article 6.

Then again, Sir, when a permit for entry has been given, it means that the person concerned wants to come in and rehabilitate himself, and the provisions of the Naturalisation Act which I have read out require that this man should be of good character. I will not say that all the persons who want to come in for resettlement are coming with sinister motives, but it is true that the majority of them come with sinister motives, with a view to making money, with a view to dispose of their property and for other purposes. After all, Sir, there are many here who have got sons there, wives there and just a son or wife here, and they get all the advantages here and all the advantages there. Now, Sir, those specially in Western Pakistan have got much more facilities, much more comfort than we enjoy in East Punjab. There is no reason why they should come here at all My submission is that they are coming not with the idea of remaining here. Of course, they have got permits, but we all know how permits can be obtained. Sir, those people do not take any oath of allegiance to this country We are not sure that these people are of good character. All the provisions of sections 6 and 8 of the Naturalisation Act should apply to them. With your permission, I would just read out section 8, under which a foreigner from any other country would be subjected to certain liabilities and there is no reason why people coming from Pakistan and thereafter choosing to remain here for a year or two and then going back, should be treated in a different manner. The relevant portion of section 8 says—

"Where the Central Government is satisfied that a certificate of naturalization granted under this Act, or the Indian Naturalisation Act, 1852, was obtained by false representation or fraud or by concealment of material circumstances or that the person to whom the certificate has been granted has shown himself by act or speech to be disaffected or disloyal to His Majesty, the Central Government shall by order in writing revoke the certificate."

In the case of a man who comes to this country by obtaining a permit, where is the guarantee that he will stay here? Even if we see under the Naturalisation Act that he behaves well, where is the guarantee that he will not go back after he has disposed of his property? My submission is that there is no reason why the Government of India or we should have a soft corner for these people, who come in in order to take advantage of our weakness or leniency towards them. I do not say that they should not have the right to be repatriated according to law when we have passed a Naturalisation Act under article 6 or any other article. I only want that they may be given their proper rights and to that end. I have proposed amendment No. 164 which says such persons—

"shall be entitled to count his period of residence after nineteenth day of July 1948, in the territory of India in the period required for qualification for naturalisation or acquisition of citizenship under any law made by Parliament."

I do not disqualify him for all time. I have only sought to give him his due.

"He shall be eligible for citizenship by naturalisation if he fulfils the condition laid down by law and his permit shall be liable to be cancelled on the grounds on which under the law relating to naturalisation the certificate of naturalisation can be cancelled."

Now, Sir, one of the conditions is that if during the first five years, a man goes to jail for committing any crime, then his certificate will be revoked. Now, I do not see why this condition should not apply to those gentlemen who come here after obtaining permits. Now, Sir, with regard to 5AA, I do not want to take the time of the House any further.

I would now proceed to 5B. In regard to 5B, I have already submitted that it is no use giving rights of citizenship to any person whose parents or grand-parents were born in India as defined in the 1935 Act and who is now residing outside India. He has to apply before an Embassy and this can be done before the commencement of the Constitution and even after that. My submission is that in 5A, 5AA and 5C the words used are "before the commencement of this Constitution." It is only article 5B in which it is contemplated that even after the commencement of the Constitution a person can become a citizen. Now, has such a person got any sort of connection with India? His grand-parents might have been born in some far-off corner of India, but I do not see what possible connection can there be between him and India. My submission is that unless and until he can prove and show that he possesses at least a remote idea of returning to India, that person has no right to become a citizen of India. To be consistent, I propose that the words "whether before or after" should be replaced by the word "before" because after the commencement of the Constitution we propose to enact a law which will provide for these contingencies. In connection with 5B and 5C the words used are "subject to any law made by Parliament" and I welcome these, because after all even if we are passing today rather hastily these provisions which are not justifiable after the commencement of the Constitution Parliament will have the right to rectify them. In article 5B as well as in 5C I welcome these words and I want that those words should be retained. I oppose the amendment which says that these words should not be there. After all, Parliament should be armed with

[Pandit Thakur Das Bhargava]

powers to rectify these if it thinks them unjust. My submission is that these words "of the Government of India" should not also find a place there, because before the commencement of the Constitution ours is the Dominion Government of India. My submission is that all these three amendments should be accepted.

As regards amendment No. 32, as I have already submitted, if a person has acquired the citizenship of any other country, he cannot become a citizen of this country. These words do not find a place in 5B. If they are good for 5, I submit these words are good for 5B also. Therefore they should find a place in 5B also.

Now, Sir, I have come to the end of all my amendments. I have one more word to submit for your consideration. When the Act relating to these permits was placed in the House, we did not know that they would acquire this force. Now, since we find that attempts are being made to make citizens of people who have got these permits, I would beg and humbly beg the Ministry concerned not to issue any further permits. What is the meaning of taking people from Pakistan and foisting them on us when our own people are suffering? My submission is that any further issue of these permits would not be just and would not be conducive to the solidarity of this country.

Shri R. K. Sidhwa (C. P. & Berar: General) : Mr. President, Sir, I beg to move :

"That in amendment No. 1 above, in the proposed new article 5A, the words 'deemed to be' be deleted."

Before giving the reasons as to why I move this amendment, I would like to make few observations on the main article. Sir, the Honourable Dr. Ambedkar has rightly stated that it has given them a headache for framing this article. Originally in the Draft Constitution it comprised only one main clause and three sub-clauses. In the new article there are 6 main clauses and 6 sub-clauses. In the old article the clauses were so vague and conflicting with each other that the Drafting Committee—I am very glad—had to reconsider the whole question *de novo* and submit to this House a very comprehensive article, which in my opinion covers all the points. I have gone through it very carefully and from the experience that they have gained for eighteen months, they have come to the right conclusion and of including even future events that are likely to occur. I therefore congratulate and compliment the Drafting Committee, not only myself, but I think the whole House will compliment them for the trouble they have taken in framing this article. It is true that there are many amendments, but I do feel that in proposing these amendments, Members do not wish to belittle the work of the Drafting Committee and the pains that they have taken to bring about such a comprehensive article; but what these amendments mean is that if there are some loop-holes or there are some points and difficulties, they would like to point them out to the Drafting Committee, so that they may consider and accept them wherever possible.

Now, Sir, coming to article 5A, my honourable Friend, Mr. Kapoor has suggested an amendment that after the words "At the commencement of this Constitution" the words "and thereafter" be inserted. Reading English as it is, it appears there is some vagueness in it that at the date of the commencement only those persons will be called as citizens of India, but I understand that under birth-right clause a person wherever he is born, he is supposed to be a citizen of that country. I am not very clear in my mind on that but if that is not so, I would really like to know whether this expression "at the

date of commencement" would mean that even after the date of commencement, that is to say when a person is born after 27th of January 1950 and when he becomes a major, will be entitled to be a citizen of this country. English as it is, I take it that at the date of commencement means at that time only and not 'afterwards'. As far as my memory goes, there is an Act which says that the birth-right of a person who is born in that country is supposed *ipso facto* to be a citizen of that country. This matter, therefore requires looking into.

Then my honourable Friend, Dr. Deshmukh, has suggested an amendment to this very article wherein he wants that the Sikhs and Hindus wherever they are born and whenever they desire shall be entitled to become citizens of India. When he has mentioned names of communities, I would like to point out to you, Sir, and the Members in this House, that there are nearly 16,000 Parsis who are professing the faith of Zoroastrian outside India; there are about 12,000 in Iran and those persons who are in Iran are professing the same faith as the Parsis are professing in India and I know that article 5-B covers the point which my honourable Friend Dr. Deshmukh desires wherein it is laid down that even the grand-fathers and their grand-fathers if they are born in other countries, if they desire to become citizens of India, can so become. Dr. Deshmukh's amendment causes a wider privilege and right. Although I am not keen on this amendment if the Drafting Committee is going to consider this, I would like them to bear in mind that there are other communities and merely to mention the Sikhs and Hindus would not I think be proper. That is the only point that I wanted to bring to the notice of the Drafting Committee. There are 12,000 Parsis who are professing the same faith as we here, but their grand-fathers are born in Iran and several of them come to Bombay and to other parts of India; they would like sometimes to make India their home. It is a far-fetched point that I am making, but if at all it is going to be considered, then my point is this that we need not mention necessarily 'any community'; if we do so it would look as if we are ignoring other communities which do require attention and therefore, I place this view-point before the House, if they at all want to take this amendment into consideration.

Then, Sir, I am coming to my own amendment which has a bearing on article 5A wherein it states, "notwithstanding anything contained in article 5 of the Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution". I want that the words "deemed to be" should be deleted. Sir, we are all very glad that the Drafting Committee has made no distinction between the citizens (original) of India and citizens who unfortunately on account of the division of India have come from Pakistan into India. So far so good: you are giving them equality of right. But why do you call them "deemed to be" and why do you give them a lower status? In the first paragraph, it is stated "he shall be a citizen of India." Why these refugees shall be "deemed to be" citizens of India and why a lower status, I rather fail to understand. Probably it has escaped the notice of the Drafting Committee and I would request them to bear this in mind seriously. We know that the refugees who have come to this country, wherever they are placed, they say that they are not wanted by the citizens either by a province or by a Government or by the people, and they always make a grievance that they are sometimes not wanted and wherever they are wanted, they are not rehabilitated and some are treated very badly. I do not share that view. I totally disagree with that view; I know that wherever they have gone, with open arms the citizens of that province have welcomed them: they are trying to rehabilitate them to the best of their ability and to give them all shelter and provide for them houses wherever is possible. But there are many refugees who take the view as mentioned by me. Why do you

[Shri R. K. Sidhva]

say in the Constitution "your status will be second, your status will not be first"? It is a very minor thing but we should remove that kind of sentiment in this Constitution. You have given them equality of right, but why do you say "deemed to be"? I therefore appeal to the Drafting Committee that they will kindly see that the words "deemed to be" are deleted. Mr. Kapoor has also explained this view-point elaborately but at the conclusion of his speech he said, "The Drafting Committee might consider this." I say "The Drafting Committee must consider this." Sir, why should they "might consider" this point on which you have agreed and you want to give equal right? But why do you want to say "You might consider"? I would request them to "do kindly consider" and remove these words. I desire that they must remove them and if they do not want to remove, it is their choice; we cannot force them. When they by this clause want to treat them as equals, I submit, we should not give them the slightest chance to feel that we treat them on a lower status. The refugees are having wrong notions in their minds; you do not give them a cause for complaint by putting these words in the Constitution and say that "you will have a second status in this matter of citizenship."

Then, Sir, coming to the so-called obnoxious clause, I welcome this clause, both the main clause and the proviso. Those honourable Members who have referred to this proviso are also justified in their complaint; I do not want to belittle their arguments. I want to state that this proviso is necessary. It is not a question of Mussalmans; there are hundreds of thousands of Parsis and Christians today in Pakistan who may like to come back—why should you close the door against them? They were born in India; they have everything to do with India; for certain reasons they are there. If at any time they want to come, this proviso gives them this right. I do not want that right to be taken away.

But, there is one danger which my honourable Friends Messrs. Jaspat Roy Kapoor and Thakur Das Bhargava rightly stated about evacuee property. Their grievance is a legitimate one. What they stated is this. Recently, the Government of India has issued an Ordinance on the question of evacuee property. This question was the subject of inter-dominion conferences for a number of months and they came to a certain settlement in the month of January this year. The whole thing has come to a fiasco only two months ago. Pakistan broke that agreement. Properties worth crores of rupees were left in the lurch. Our Government all along wanted to take up a persuasive attitude and hoped to bring them round. They made all efforts; but they failed. The point is that under this clause there are many grounds for apprehension. Parliament can make a law that a permit shall be necessary before a man comes here. After the promulgation of the Ordinance, there has been a stir in that community and the Secretariat office of the Bombay Government is being flooded by that class of people on the ground that these properties were left only temporarily, and that they want to come back. I also know of cases where a property was declared evacuee property by the Custodian, and after some influence, and not even compliance of the provisions of the Transfer of Property Act which was passed by this Constituent Assembly (Legislative) last April, that proclamation has been negatived to be evacuee property. This has created doubt and consternation. I do not say that there is any place in the law. The law is quite clear. The action of an official has created doubts in the minds of the people. Therefore, my friends say that these people, if they come, they may settle for three years, and after selling their property, they may go back to Pakistan. There should be caution against this. I feel, Sir, that in the proviso, this caution is there, permits are provided. Parliament will take note of this and see that the object is not nullified. I do not in the least deprecate the apprehension in the mind of my Friends, Thakur Das Bhargava and Jaspat Roy Kapoor; they have

their genuine dangers. But I do not want from this point of view that this proviso should be deleted. The reasons I have already explained, Sir. This proviso must remain for future eventualities. It may be in our own interests, it may be in the interests of those persons who are anxious honestly to come back to India.

This proviso also shows that the Drafting Committee is vigilant. Provision has also been made in article 5B for the persons who are now in foreign countries and who may feel at any time to come back. You know, recently there has been an agitation in Malaya. In the past, many Indians went to these Colonies as indentured labour, or for betterment of their future, or from the business point of view. There are lakhs of our brethren there. After attainment of freedom, if some people in these countries want to come back to India, thinking that India is free and their position and privileges would be better off in India, they should be welcomed. But, I do not share the arguments of my honourable Friend Pandit Thakur Das Bhargava, when he states that even his grand-parent was born there why should he be allowed to come here and acquire the Indian citizenship. You will have to remember the circumstances under which they went there. They are our countrymen. They are our own brethren. They had to go to foreign countries from the economic point of view. When India is free, they would like to come back. Why do you want to deny that right to them. I therefore say, not only the grand-father, but if the great grand father was born in India, and if they want to come back, let them come here. They should be welcome. They will be a great asset to us. After their experience in those countries, they will be very useful to us; they will be industrialists, businessmen and ardent labourers who will certainly be an asset to this country. I welcome this article also. We have Indians in South Africa and Ceylon where the new laws of citizenship, have made our Indians feel that they are being discriminated. In that even if they want to establish in India they must be permitted.

As I told you, Sir, such an eventually may not happen. But if it does, we have to make a provision. There are 10,000 Parsis in Iran. When they were ruling until the last Kingdom of Medezand Shariar they were happy. Subsequently, under the Muslim rule, they were driven away. They came to India. Remote as the case may be, in such an eventuality in future, if these people are driven away, why should you close the door against them? Their grand parents were born in Iran but by virtue of their being driven away, they may desire to come to India. Why should we close the door against them? Therefore, I contend that article 5B is a very helpful one. I think the Drafting Committee in framing this article has taken into consideration the recent agitation in Malaya, South Africa and probably the case of Indians in Iran has not come to their notice. Our nationals have spread all throughout the world. If their parents and grand parents went thereunder extraordinary circumstances and became citizens of that country, and subsequently and particularly after the attainment of freedom in India if they choose to settle in this country they should not be denied the entry. I feel such *bona fide* citizens should not be denied the right of coming and establishing themselves for the betterment of themselves and for the betterment of this country.

With these words, I support the amendment that I have moved.

Shri B. P. Jhunjhunwala (Bihar : General) : Mr. President, there are two amendments in my name Nos. 123 and 150. Regarding 123, a similar amendment has been moved here and sufficient has been said on this point and I would not take the time of the House much but I would only say a few words after reading it :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5A, for the words beginning with 'Notwithstanding anything'

[Shri B. P. Jhunjhunwala]

and ending 'at the date of commencement of this Constitution if', the following words be substituted :—

"Notwithstanding anything contained in article 5 of this Constitution, a person who on account of civil disturbances or the fear of such disturbances

(a) having the domicile of India, as defined in the Government of India Act, 1935 and being resident in India before the partition, has decided to reside permanently in India, or

(b) has migrated to the territory of India from the territory now included in Pakistan,

shall be deemed to be a citizen of India at the date of the commencement of this Constitution if.' "

The object of moving this amendment of mine is that article 5 contemplates the general principle of citizenship and we have given some concession in article 5A to persons who have come from Pakistan. Article 5 says :

"(a) Any person who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement,

shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State."

I want by my amendment to confine the right of acquiring citizenship just after residing for six months, at the date of commencement of this Constitution, only to displaced persons, and others who come under article 5A can very well acquire the right of citizenship after remaining in India for five years. I do not really understand the object of article 5A when it extends the right to persons other than those who have been refugees or who have been displaced or have come from Pakistan on account of civil disturbance or the fear of such disturbances. I do not understand where is the hurry about it. If the right of six months be confined only to such persons, then there is absolutely no difficulty, because after all we are not taking away the right of acquiring citizenship from any persons who come from Pakistan. The only thing we want to know is the real intention of the person who has come to India and is residing here, and we shall know it better during the period of five years, I have been told that from Eastern Pakistan people are infiltrating into Assam for some sinister motive *i.e.,* to increase their population. It is not my first-hand knowledge, but responsible reliable persons have told me like this. This has led me to move this amendment. They are going to Assam, not because they are inconvenienced in Pakistan, but simply with a view to remain in Assam and increase their population there. It is to avoid giving right to such persons that I am moving this amendment.

The other amendment I have proposed is No. 150 and similar amendment has been moved by my Friend Professor Shah and he has spoken a lot over it and I share his views. The amendment reads :

"That in amendment No. 6 of List I (Third Week) of Amendments to Amendments, after the proposed new clause (2) of article 5, the following proviso be added :—

'Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal right of citizenship to the nationals of India settled there and desirous of acquiring the local citizenship.' "

Shri S. Nagappa (Madras : General) : Sir, I beg to move :

"That in amendment No. 1 above, in sub-clause (ii) of clause (b) of the proposed new article 5A, for the words 'on an application made' the words 'on a statement or an application made' be substituted."

I also move :

"That in amendment No. 1 above, in the proviso to the proposed new article 5A, for the words 'the application' the words 'the statement or application' be substituted."

Sir, in moving this my intention is that the word "application" means it should be only a written one. In our country, literacy is very low and so the majority of the people who seek citizenship may not be educated and may not be in a position to make an application in writing. So I suggest that a man who is not in a position to make an application can merely make a statement. The statement should be given as much importance as is given to an application. I hope the Honourable Dr. Ambedkar and the House will concede this request

Sardar Bhopinder Singh Man (East Punjab : Sikh) : Since the time is limited, I request that I may be permitted to move my amendment formally and make my observations tomorrow or I may be permitted to move it tomorrow.

Mr. President : You may move it now and speak tomorrow.

Sardar Bhopinder Singh Man : Sir, I move :

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, the proposed proviso to the proposed new article 5AA be deleted."

This proviso which has now been incorporated by Dr. Ambedkar reads as follows .

> "Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948."

Sir I feel that this Proviso (and we are all agreed on it) is absolutely obnoxious and does injustice to the Hindu and Sikh refugees who have come here and are awaiting resettlement.

Mr. President : The honourable Member may continue his speech tomorrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 12th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 12th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*contd.*)

Articles 5 and 6– (*contd.*)

Sardar Bhopinder Singh Man (East Punjab : Sikh) : Sir, in the definition of 'citizenship' which covers fairly extensive ground the view-point of Hindu and Sikh refugees has been met to some extent by the Drafting Committee whom I congratulate on that account. But, as usual, a weak sort of secularism has crept in and an unfair partiality has been shown to those who least deserve it. I was saying that the Hindu and Sikh refugees view-point has been met to some extent, but not wholly. I do not understand why the 19th July 1948 has been prescribed for the purpose of citizenship. These unfortunate refugees could not have foreseen this date; otherwise they would have invited Pakistan knife earlier so that they might have come here earlier and acquired citizenship rights. It will be very cruel to shut our borders to those who are victimised after the 19th July 1948. They are as much sons of the soil as anyone else. This political mishap was not of their own seeking and now it will be very cruel to place these political impediments in their way and debar them from coming over to Bharat Mata. Our demand is that any person, who because of communal riots in Pakistan has come over to India and stays here at the commencement of this Constitution, should automatically be considered as a citizen of India and should on no account be made to go to a registering authority and plead before him and establish a qualification of six months domicile to claim rights of citizenship. There may be victims of communal frenzy in our neighbouring State hereafter; it is not only a possibility but a great probability in the present circumstances. Any failure of the evacuee property talks may lead to a flare-up against Hindus and Sikhs in Pakistan, and we must have a clause that these people will in no case be debarred from coming over and becoming citizens of this Union.

Article 5-AA lays down in the beginning.

"Notwithstanding anything contained in 5 and 5-A, a person who has after 1st of March 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India."

The purpose of this clause will be completely nullified, because we who are refugees, due to this exchange of population which necessarily involves exchange of property. will be put to serious trouble. This securing of permit from the Deputy High Commissioner's office, I can assure you, is a cheap affair in its actual working. Besides, these permits when they were issued, they were issued for various other purposes—commercial trade, visiting purposes etc.—and never at any rate for citizenship. We should not give citizenship merely on the ground that a person is in a position to produce this permit, which he can secure from the Deputy High Commissioner's office somehow or other. I feel that if at all the permit system was intended to confer benefits of citizenship, then a particular authority specifically constituted for that purpose should have been there and that authority should have realized at the time of giving the permit the implication that this is not simply a permit to enable a person to visit India for trade or commerce but that it will entail along with it citizenship rights also. Apart from

[Sardar Bhopinder Singh Man]

that, let us see how this will adversely affect evacuee property. Very recently, an Ordinance has been promulgated throughout India that the property of a person who has migrated to Pakistan after March 1947 will accrue to the Custodian-General of India and that property will be, to that extent, for the benefit of the rehabilitation of refugees. The Indian Government is already short of property as it is and it is unable to solve the rehabilitation problem. The difference of property left by Indian nationals in Pakistan and the one left behind by Muslims in India—this difference of property cannot be bridged. Pakistan has not given you a satisfactory answer how it is going to re-pay that difference. Naturally, our policy should have been to narrow down this difference of property. This clause, instead of narrowing down that difference, will widen it. Thus, while on the one hand we are unable to help refugees, on the other hand we are showing concession after concession to those people who least deserve it. I am told that these permits will be granted only in very rare cases. I am told that only 3,000 of them have been granted. Now, I do not know how much property will be restored back to those people who will come under this permit system—may be a crore or may be much less—a few lakhs. My point is this: that this property which will eventually go to these permit-holders will go out of the evacuee property and out of the hands of the Custodain-General and the very purpose of the Ordinance which you recently promulgated will be defeated.

The securing of a chance permit from the Deputy High Commissioner's office or any other authority should not carry with it such a prize thing as citizenship of India, or that the holders be considered to be sons of Bharat Mata. I will cite one instance. Meos from Gurgaon, Bharatpur and Alwar not very long time ago, on the instigation of the Muslim League, demanded Meostan and they were involved in very serious rioting against the Hindus—their neighbours—at the time of freedom. Right in 1947 a serious riot was going on by these Meos against their Hindu neighbours. These Meos, under this very lax permit system, are returning and demanding their property. On the one hand, we are short of property and on the other hand, concessions are being given to them. This is secularism no doubt, but a very one-sided and undesirable type of secularism which goes invariably against and to the prejudice of Sikh and Hindu refugees. I do not want to give rights of citizenship to those who so flagrantly dishonoured the integrity of India not so long ago. Yesterday Mr. Sidhva gave an argument that this proviso will not only cover Muslims who had gone to Pakistan and will return later on, but also other nationals, *e.g.*, Christians. But may I inform him that there is not a single Christian living in India who has gone over to Pakistan and who will come back later on?

It is only certain Christians now finding themselves living in a theocratic State and finding things were uncomfortable that will come in. It is not the case of those Christians who are gone over and then will come back, whereas this proviso relates to those people who were once nationals of India but at the inauguration of Pakistan went over to Pakistan for the love of it.

I certainly grudge this right and concession being given to those people who had flagrantly violated and dishonoured the integrity of India, but, however, if Mr. T. T. Krishnamachari, or the Chairman of the Drafting Committee, or better still, Mr. Ayyangar who daily carries on such protracted, patient and fruitless negotiations with Pakistan, can promise to us a certain strip of Pakistan territory to India in lieu of this increase of population and release of property, I will certainly not press my amendment.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim): Mr. President, Sir, there are three amendments which stand in my name, amendments Nos. 120, 125 and 126. The purpose of my amendment No. 125 is to deal with cases of displaced persons who have come from Pakistan to India and who may file their

applications after the commencement of this Constitution. The definition, as it has been placed before us, does not deal with the question of grant of citizenship to persons after the commencement of this Constitution except in the case of persons who are living overseas. But it has been stated by Dr. Ambedkar that this will be left to the Parliament. As has been pointed out by my honourable Friend Mr. Kapoor in between the date of the passing of this Constitution and the enactment by Parliament which might take five or ten years, there may be cases cropping up for decision whether a certain person is a citizen of India or not. The purpose of my amendment No. 125 also is similar. It is to give an opportunity to persons to file petitions for enrolment as citizens even after the passing of this Constitution.

Amendment No. 126 reads as follows :—

That in amendment No. 1 of List I (Third Week) of Amendments to Amendments for the proposed new article 5-C, the following be substituted :—

"Subject to the provisions of any law that may be passed by the Parliament in this behalf, the qualifications for citizenship mentioned in the foregoing provisions, shall apply *mutatis mutandis* to persons entitled to citizenship after the commencement of this Constitution"

Article 5-C deals with the question of continuation of the citizenship acquired on the date of the passing of this Constitution. I submit that 5-C is unnecessary. A man once declared a citizen on the date of passing of the Constitution will continue to be so unless Parliament disqualifies him. Therefore 5-C to my mind is unnecessary. On the other hand what is necessary is to say who would be entitled to citizenship after the passing of this Constitution. That is more important, that is necessary. For that purpose I have suggested amendment No. 126, in order to give a complete picture of citizenship not only on the date of the passing of this Constitution but even afterwards, until such time as the Parliament may pass a legislation abrogating it or varying it or doing whatever it wanted to do. I submit that this amendment is necessary in order that you might determine who will be the citizens even after the passing of this Constitution.

So, amendments Nos. 125 and 126 are meant to fill the lacuna which I find in this article. It is stated by Dr. Ambedkar that we are not legislating now for the future, that is why we are not laying down any qualifications to deal with cases of persons who might become citizens after the passing of this Constitution. My submission is that many persons who might, under the qualification laid down in this definition, become citizens or be entitled to citizenship, will be left out and we will not be in a position to help them until the Parliament passed an enactment.

Sir, with regard to amendment No. 120 I have suggested that the explanation to the proposed article 5 be deleted. The explanation reads :—

"For the purposes of this article, a person shall not be deemed to be a citizen of India if he has after the first day of April 1947 migrated to the territory now included in Pakistan.

The explanation is found in the amendment given notice of on 6-8-49. When subsequently Dr. Ambedkar moved a revised amendment to articles 5 and 6, although this explanation was deleted its place was taken by article 5-AA which is in effect the same thing as the explanation. Now, Sir, I wish that this explanation or this 5-AA is deleted altogether. I do not want that our dealing with the subject of displaced persons must be undignified. It is enough if we have stated what qualifications persons should have, who have been displaced. That has been dealt with in 5-A. That is enough. I do not see any reason why, we should make mention of displaced persons from India to Pakistan who might return. The other qualifications are there. In this respect I submit

[Mr. Mahboob Ali Baig Sahib]

that it must be noted that persons who migrated from one Dominion to another whether it is from Pakistan to India or India to Pakistan did so under very peculiar and tragic circumstances. If persons migrated from Pakistan to India, as has been suggested in many amendments, they did so on account of disturbances, civil disturbances or fear of disturbances. What applies to them might equally apply to persons who migrated from India to Pakistan. I do not see any reason why we should make such an invidious distinction.

Sir, now I would like to refer to two or three points discussed yesterday. Yesterday the discussion centered round two topics. The first was that the definition of citizenship was too easy and cheap, and Dr. Deshmukh even said that it was ridiculously cheap. Another Member remarked that it was commonplace and easy. Those were the remarks made by some honourable Members. It was Dr. Deshmukh who said if a foreign lady visiting India gives birth to a child say, in Bombay, her child will be eligible for citizenship of India. Such an interpretation, making the provision look ridiculous, is correct. The condition of domicile is very important. Domicile in the Indian territory is a pre-requisite for citizenship. The other conditions are that the claimant or his parents should have been born in India and been here for five years. Therefore the interpretation put upon the provision by Dr. Deshmukh is not at all correct. In support of his observations he quoted the instances of the United States of America, Australia and South Africa. He said. "Look at those countries. They do not give citizenship rights to Indians even when they have been in those countries for thirty or thirty-five years." May I put him the question whether we should follow their examples? Can we with any reason or pretence tell these persons: "Look here, you have not given citizenship right to Indians living in your countries for decades?" Can we complain against them if we are going to deny them citizenship rights here? Let us not follow those bad examples. There are persons in India owning dual citizenship. We in India are having dual citizenship. Whether it is possible or not, shall we now follow these retrograde countries like Australia in the matter of conferring citizenship rights and say that citizenship will not be available except on very very strict conditions? It is very strange that Dr. Deshmukh should contemplate giving citizenship rights only to persons who are Hindus or Sikhs by religion. He characterised the provision in the article granting citizenship rights as ridiculously cheap. I would say on the other hand that his conception is ridiculous. Therefore let us not follow the example of those countries which we are condemning everywhere, not only here but also in the United Nations and complaining that although Indians have been living in those countries they have not been granted citizenship rights there.

Now, Sir, my view is that I should congratulate the Drafting Committee for having brought out this article in this form. My criticism with regard to it is that it is not complete. In the first place, it does not deal with cases of persons who might claim citizenship after the passing of this Constitution till such time as Parliament decides the question.

My second point with regard to this is that in articles 5-A and 5-AA there are two defects. Article 5-A says that any person who has come to India from Pakistan must have a certificate. I ask, why? Why do you want a certificate. You have stated that if a person is born in India as defined in the 1935 Act he is a citizen of India. Why do you want a certificate from him when he returns to India?

Shri M. Ananthasayanam Ayyangar (Madras: General): *Why did he go to* **Pakistan?**

Mr. Mahboob Ali Baig Sahib: He did not go there. He was there. I am speaking of a person who was in Pakistan and is returning.

Shri M. Ananthasayanam Ayyangar: When did he return?

Mr. Mahboob Ali Baig Sahib : He was a citizen of India when Pakistan was included in India under the 1935 Act. I am speaking of a person who has been living in Pakistan which formed part of India and wants to return. Why do you want a certificate from him? Why do you want that he should reside here for six months? Why do you expect him to file a petition and be here for six months? He is an Indian and comes down here, not voluntarily, but under very tragic circumstances. He comes over to India because he could not live there on account of civil disturbances or for fear of civil disturbances. I do not want that any certificate should be produced by a person who comes from Pakistan to India.

The Honourable Shri K. Santhanam (Madras : General) : It is only from those who would return after 19th July 1948 that a certificate would be needed.

Mr. Mahboob Ali Baig Sahib : I know that. It does not make any difference at all. The question of a person who migrates from Pakistan to India is a very touchy question. People have become excited over it and also sentimental and aggressive. It is all unnecessary for us. Let us calmly consider this matter. What is the difference between a person who has gone away to Pakistan under the same and similar circumstances as those which compelled persons remaining in Pakistan to migrate to India? I can understand the cases where people went away to Pakistan or came back to India in order that they might live in Pakistan or Hindustan. There may be instances where for reasons of service, persons who are employed in the provinces of Pakistan coming back to India. There are cases of that kind. Sir, it is correct that when partition took place, when the June 3rd Agreement was entered into by both parties, it was expected that the minorities would remain where they were in the two Dominions and safeguards would be given to them. That was the honest expectation, that was the honest undertaking, but what happened was that after the transfer of power there was a holocaust, there were disturbances there were tragedies which compelled persons to migrate. Now, Sir, when these were the circumstances, is there any justification for us to draw any distinction—I would go to the length of saying any discrimination—between those persons who migrated to India and those who migrated to Pakistan under the same circumstances? Let us not forget what during his life-time Mahatma Gandhi was preaching. What did he say? He invited the persons who had gone to Pakistan to return to their homeland. So, Sir, let us look at this matter calmly. I know there are many persons who are affected in this Assembly, who have lost their houses, who have lost their property, who have lost their professions, their status, everything. I know they are really affected. They are really touchy about this matter, but let us calmly think over these matters. Let it not be said that because certain Members of this Assembly were hard hit on account of the Partition and were in a very-bad mood, in their bad mood they have passed this article 5-AA. So far as it goes, it is tolerable, as, if a person wants to resettle, he can made a citizen; but the real point is about those people who come back—I do not know whether people are coming back. I am very much surprised to hear that such persons who are coming back may be traitors. The arm of the law should be so strong that it must be able to get at any man who becomes a traitor. What would you do if one of your men becomes a traitor, a Communist and tries to overthrow the Government? So, to say those people coming to India might become traitors and therefore they should not be allowed to come back, that is no reason at all. With this temperament you will never become strong. That kind of psychology should be shunned, must be got rid of. Moreover, we are only legislating for the present. Parliament may in its discretion, if it thinks it to be necessary, deprive any person of his citizenship and expel him. Parliament is supreme in this matter. Therefore I do not see any reason why you should make a distinction between persons who go from here to Pakistan and persons who come from Pakistan.

[Mr. Mahboob Ali Baig Sahib]

This is based on pure sentiment and does not inspire confidence not only among those persons but also amongst others. I would conclude by saying, let us consider this matter calmly and if we think that Mahatma Gandhi's teachings were correct, let us not go against his teachings and legislate like this, making a distinction between these two sets of people.

Mr. President: There are one or two amendments. Notice of one of them was given rather late yesterday by Mr. Krishna Chandra Sharma, but I would permit Mr. Sharma to move it. There is another amendment, notice of which was given today by Mr. Jai Sukh Lal Hathi. I do not think I can allow it. It has come too late. Mr. Krishna Chandra Sharma.

Shri Krishna Chandra Sharma (United Provinces : General) : Sir, I do not propose to move it.

The Honourable Shri Jawaharlal Nehru (United Provinces : General) : Sir, I wish to support the proposals made by Dr. Ambedkar as well as the amendment which Mr. Gopalaswami Ayyangar has proposed. All these articles relating to citizenship have probably received far more thought and consideration during the last few months than any other article contained in this Constitution.

Now, these difficulties have arisen from two factors. One was of course the partition of the country. The other was the presence of a large number of Indians abroad, and it was difficult to decide about these Indians whether they should be considered as our citizens or not, and ultimately these articles were drafted with a view to providing for these two difficulties. Personally I think that the provision made has been on the whole very satisfactory. Inevitably no provision could be made, which provided for every possibility and provided for every case with justice and without any error being committed. We have millions of people in foreign parts and other countries. Some of those may be taken to be foreign nationals, although they are Indians in origin. Others still consider themselves to some extent as Indians and yet they have also got some kind of local nationality too, like for instance, in Malaya, Singapore, Fiji and Mauritius. If you deprive them of their local nationality, they become aliens there. So, all these difficulties arise and you will see that in this resolution we have tried to provide for them for the time being, leaving the choice to them and also leaving it to our Consul Generals there to register their names. It is not automatic. Our representatives can, if they know the applicants to be qualified for Indian citizenship, register their names.

Now I find that most of the arguments have taken place in regard to people who are the victims in some way or other of partition. I do not think it is possible for you to draft anything, whatever meticulous care you might exercise which could fit in with a very difficult and complicated situation that has arisen, namely the partition. One has inevitably to do something which involves the greatest amount of justice to our people and which is the most practical solution of the problem. You cannot in any such provision lay down more or less whom you like and whom you dislike; you have to lay down certain principles, but any principles that you may lay down is likely not to fit in with a number of cases. It cannot be helped in any event. Therefore you see that the principle fixed fits with a vast majority of cases, even though a very small number does not wholly fit in, and there may be some kind of difficulty in dealing with them. I think the drafters of these proposals have succeeded in a remarkable measure in producing something which really deals with 99.9 per cent. of cases with justice and practical commonsense; may be some people may not come in. As a matter of fact even in dealing with

naturalization proceednigs, it is very difficult to be dead sure about each individual and you may or you may not be taking all of them. But the chief objection, so far as I can see, has been to the amendment that Mr. Gopalaswami Ayyangar has moved to the effect that people who have returned here permanently and in possession of permanent permits shall be deemed to be citizens of India. They are rejected and presumably their presence is objected to because it is thought that they might take possession of some evacuee property which is thus far being considered as an evacuee property and thereby lessen the share of our refugees or displaced persons, who would otherwise take possession of it.

Now, I think there is a great deal of misunderstanding about this matter. Our general rule as you will see in regard to these partition consequences, is that we accept practically without demur or enquiry that great wave of migration which came from Pakistan to India. We accept them as citizens up to some time in July 1948. It is possible, of course that in the course of that year many wrong persons came over, whom we might not accept as citizens if we examine each one of them; but it is impossible to examine hundreds of thousands of such cases and we accept the whole lot. After July 1948, that is about a year ago, we put in some kind of enquiry and a magistrate who normally has *prima facie* evidence will register them; otherwise he will enquire further and ultimately not register or he will reject. Now all these rules naturally apply to Hindus, Muslims and Sikhs or Christians or anybody else. You cannot have rules for Hindus, for Muslims or for Christians only. It is absurd on the face of it; but in effect we say that we allow the first year's migration and obviously that huge migration was as a migration of Hindus and Sikhs from Pakistan. The others hardly come into the picture at all. It is possible that later, because of this permit system, some non-Hindus and non-Sikhs came in. How did they come in? How many came in? There are three types of permits, I am told. One is purely a temporary permit for a month or two, and whatever the period may be, a man comes and he has got to go back during that period. This does not come into the picture. The other type is a permit, not permanent but something like a permanent permit, which does not entitle a man to settle here, but entitles him to come here repeatedly on business. He comes and goes and he has a continuing permit. I may say; that, of course, does not come into the picture. The third type of permit is a permit given to a person to come here for permanent stay, that is return to Indian and settle down here.

Now, in the case of all these permits a great deal of care has been taken in the past before issuing them. In the case of those permits which are meant for permanent return to India and settling here again, a very great deal of care has been taken. The local officials of the place where the man came from and where he wants to go back are addressed; the local government is addressed, and it is only when sufficient reason is found by the local officials and the local Government that our High Commissioner in Karachi or Lahore, as the case may be, issues that kind of permit.

Shri Gopikrishna Vijayavargiya (Madhya Bharat): What is the number of such permits?

The Honourable Shri Jawaharlal Nehru: I have not got the numbers with me but just before I came here, I asked Mr. Gopalaswami Ayyangar; he did not know the exact figures and very roughly it may be 2,000 or 3,000.

Now, normally speaking these permits are issued to two types of persons. Of course, there may be others but generally the types of persons to whom these are given are these. One is usually when a family has been split up, when a part of the family has always remained here, a bit of it has gone away, the

[The Honourable Shri Jawaharlal Nehru]

husband has remained here but has sent his wife and children away because of trouble etc.; he thought it safer or whatever the reason, he continued to stay here while his wife and children want to come back, we have allowed them to come back where it is established that they will remain here throughout. Normally it is applied to cases of families being split up when we felt assured that the family has been here and have no intention of going away and owing to some extraordinary circumstances, a bit of that family went away and has wanted to come back. It is more or less such general principles which have been examined and the local government and the local officials have recommended that this should be done and it has been done. That is the main case. Then there are a number of cases of those people whom you might call the Nationalist Muslims, those people who had absolutely no desire to go away but who were simply pushed out by circumstances, who were driven out by circumstances and who having gone to the other side saw that they had no place there at all, because the other side did not like them at all; they considered them as opponents and enemies and made their lives miserable for them and right through from the beginning they expressed a desire to come back and some of them have come back. My point is that the number of cases involved considering everything, is an insignificant number, a small number. Each individual case, each single case has been examined by the local officials of the place where that man hails from; the local government, having examined, have come to a certain decision and allowed that permit to be given. Now, it just does not very much matter whether you pass this clause or not. Government having come to a decision, any person after he has returned, he is here; and having come here, he gets such rights and privileges, and all these naturally flow as a consequence of that Government's decision. It is merely clarifying matters. It does not make any rule. Suppose a question arose in regard to a very little or an insignificant property is concerned, not only because of the principles involved; but also because a certain family or a part of a family was split up but otherwise here held on to the property, so that the family that came back came to the property which is being held by the other members of the family, and no new property is involved. No new property is involved and if some new property is involved, it is infinitesimal. It makes no great difference to anybody. From a person coming here after full enquiry and permission by the Government, after getting a permit, etc., certain consequences flow even in regard to property. If these consequences flow, if he is entitled to certain property, it is because he is a citizen of India and the local Government has decided, whether it is the East Punjab Government or the Delhi Government or the U.P. Government. You do not stop them by not having this amendment or by having it. You can stop them, of course, by passing a law as a sovereign assembly. It is open to you to do that; but it does not follow from this. I would beg of you to consider how in a case like this, where after due enquiry Government consider that justice demands, that the rules and conventions demand that certain steps should be taken in regard to an individual,—I do not myself see how—without upsetting every cannon of justice and equity, you can go behind that. You may, of course, challenge a particular case, go into it and show that the decision is wrong and upset it, but you cannot attack it on some kind of principle.

One word has been thrown about a lot. I should like to register my strong protest against that word. I want the House to examine the word carefully and it is that this Government goes in for a policy of appeasement, appeasement of Pakistan, appeasement of Muslims, appeasement of this and that. I want to know clearly what that word means. Do the honourable Members who talk of appeasement think that some kind of rule should be applied when dealing with these people which has nothing to do with justice or equity? I want a clear answer to

that. If so, I would only plead for appeasement. This Government will not go by a hair's breadth to the right or to left from what they consider to be the right way of dealing with the situation, justice to the individual or the group.

Another word is thrown up a good deal, this secular State business. May I beg with all humility those gentlemen who use this word often to consult some dictionary before they use it? It is brought in at every conceivable step and at every conceivable stage. I just do not understand it. It has a great deal of importance, no doubt. But, it is brought in in all contexts, as if by saying that we are a secular State we have done something amazingly generous, given something out of our pocket to the rest of the world, something which we ought not to have done, so on and so forth. We have only done something which every country does except a very few misguided and backward countries in the world. Let us not refer to that word in the sense that we have done something very mighty.

I do not just understand how anybody possibly argue against the amendment that Mr. Gopalaswami Ayyangar has brought forward. To argue against that amendment is to argue definitely for injustice, definitely for discrimination, for not doing something which after full enquiry has been found to be rightly done, and for doing something which from the practical point of view of numbers or property, has no consequence. It is just dust in the pan. In order to satisfy yourself about that little thing, because your sense of property is so keen, because your vested interest is so keen that you do not wish one-millionth part of certain aggression of property to go outside the pool, or because of some other reason, you wish to upset the rule which we have tried to base on certain principles, on a certain sense of equity and justice. It will not be a good thing. I appeal to the House to consider that whether you pass this amendment of Mr. Gopalaswami Ayyangar or not, the fact remains that this policy of the Government has to be pursued and there is no way out without upsetting every assurance and every obligation on the part of the Government, every permit that has been issued after due enquiry. Again, so far as this matter is concerned, please remember that the whole permit system was started some time in July 1948, that is to say after large-scale migration was over completely. To that period, from July 1948 up till now, this amendment refers to in a particular way, that is to say, it refers to them in the sense that each such person will have to go to a District Magistrate or some like official and register himself. He cannot automatically become a citizen. He has to go there and produce some kind of *prima facie* proof, etc., so that there is a further sitting. He has to pass through another sieve. If he passes, well and good; if not, he can be rejected even at this stage. The proposals put forward before the House in Mr. Gopalaswami Ayyangar's amendment are eminently just and right and meet a very complicated situation in as practical a way as possible.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Mr. President, after the lucid exposition of the subject by Dr. Ambedkar in his introductory remarks and the very clear statement of policy and principles by the Prime Minister, I do not propose to take the time of the House with a long speech. I may explain briefly what I consider to be the main principles of the articles that have been placed before the House.

The object of these articles is not to place before the House anything like a code of nationality law. That has never been done in any State at the ushering in of a Constitution. A few principles have no doubt been laid down in the United States Constitution: but there is hardly any Constitution in the world in which a detailed attempt has been made in regard to the nationality law in the Constitution. But, as we have come to the conclusion that our Constitution

[Shri Alladi Krishnaswami Ayyar]

is to be a republican constitution and provision is made throughout the Constitution for election to the Houses of Parliament and to the various assemblies in the units, and for rights being exercised by citizens, it is necessary to have some provision as to citizenship at the commencement of the Constitution. Otherwise, there will be difficulties connected with the holding of particular offices, and even in the starting of representative institutions in the country under the republican constitution. The articles dealing with citizenship are, therefore, subject to any future nationality or citizenship law that may be passed by Parliament. Parliament has absolutely a free hand in enacting any law as to nationality or citizenship suited to the conditions of our country. It is not to be imagined that in a Constitution dealing with several subjects it is possible to deal with all the complicated prob'ems that arise out of citizenship. The question has been raised regarding what is to be the status of married women, what is to be the status of infants or in regard to double nationality and so on. It is impossible in the very nature of things to provide for all those contingencies in the Constitution as made by us.

Then one other point will have to be remembered regarding citizenship. Citizenship carries with it rights as well as obligations. There are obligations also upon the Government of India in regard to their citizens abroad.

Another point that will have to be remembered in this connection is this. While any law as to nationality or citizenship may carry with it certain international consequences, it is not easy to provide against what may be called double citizenship. The various International Conferences found it very difficult to formulate any principle which can remove altogether the principle of double citizenship. It arises out of the fact that primarily it is for each Nation to determine its nationality law and its law of citizenship. At the same time it has its international consequences *e.g.*, the Continental law as to citizenship is not the same as the English law and on account of that certain conflicts have arisen.

Therefore there is no use of our attempting in any Constitution and much less in the present Constitution which is now making a tentative proposal in regard to citizenship to deal with the problem of double citizenship or double nationality. All these considerations have been kept in view in these articles that have been placed before the House. I shall just briefly refer to the principles underlying each one of these articles.

As against article 5(1) a point has been made by some of the speakers that it concedes the right of citizenship to every person who is born in the territory of India and that is rather an anomalous principle. I am afraid the critics have not taken into account that our article is much stricter, for example, then the Constitution of the United States. Under the Constitution of the United States if any person is born in the United States he would be treated as a citizen of the United States irrespective of colour or of race. Difficulty has arisen only with regard to naturalisation law. We have added a further qualification *viz.*, that the person must have his permanent home in India. I am paraphrasing the word 'domicile' into 'permanent home' as a convenient phrase.

Then clause (c) of article 5 takes notes of the peculiar position of this country. There are outlying tracts in India like Goa, French Settlements and other places from where people have come to India and have settled down in this country, regarding India as a permanent home, and they have contributed to the richness of the life in this country. They have assisted commerce and they have regarded themselves as citizens of India. Therefore to provide for those classes

of cases it is stated in clause (c) that if a person is continuously resident for a period of five years and he has also his domicile under the opening part of article 5, he would be treated as a citizen of this country. Then towards the end it is stated that 'he shall not have voluntarily acquired the citizenship of any foreign State. If a citizenship is cast upon a person irrespective of his volition or his will, he is not to lose the rights of citizenship in this country but if on the other hand he has voluntarily acquired the citizenship of another State, then he cannot claim the right of citizenship in this country. That is the object of the latter part of article 5.

Article 5A is intended to provide for all cases of mass migration—if I may use that expression—from Pakistan into India and to provide for that class of persons who have made the present India as their home. Now they are in our country and want to make this their home. We do not in that article make any distinction between one community and another, between one sect and another. We make a general provision that if they migrated to this country and they were born in India as defined in the earlier Constitution, then they will be entitled to the benefits of Citizenship. That is the import of article 5A, clause (a). Clause (b) provides for registration of migrated people. Certain safeguards are provided for in clause (2) so as to make it quite clear that the authorities accept the migrated people as *bona fide* citizens of this country. That is the object of this clause. There is also a provision to the effect that no registration shall be made unless the person making the application has resided in the territory of India for at least 6 months. Therefore, there are two safeguards, (1) there will be registration and (2) no registration shall be made unless the applicant has resided in the territory of India for at least six months before the date of application. If article 5-A stood by itself it would mean that even if persons went to Pakistan with the deliberate intention of making Pakistan their permanent home, and re-migrated to India they might be entitled to the benefit of 5A. In order to provide against that contingency 5AA is proposed which reads as follows :—

'Notwithstanding anything contained in articles 5 and 5A of this Constitution, a person who has after the first day of March, 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India"

There is no use dealing with this in the abstract. If a person has deliberately and intentionally chosen to be the citizen of another country, after the question had arisen, after Pakistan had been declared territory independent form India, then there is no point in conceding citizenship right to such a person. But this proviso takes note of this important fact that the Government of India have permitted a certain number of people to come and settle down here after being satisfied that they want to take their abode here and in no other country, and that they look upon this country as their own. Having given that assurance, it would be the grossest injustice on the part of the Government of India now to say that they are not entitled to the rights of citizenship of India. The proviso safeguards the dignity, the honour and the plighted word of the Government of India by saying that such a person will be entitled to the benefits of citizenship. This is an exception to the general rule, under article 5AA, namely, that if a person deliberately, voluntarily and intentionally migrated to Pakistan, he shall not be entitled to claim the right of citizenship of our country. It is our duty to respect the plighted word of the Government of India. That is the object of the proviso.

There is some confusion in the minds of some people as if the rights to property were in some way related to citizenship. There is no connection whatsoever, either in international law or in municipal law between the rights of citizenship and the rights to property. A person has no particular rights to property, because

[Shri Alladi Krishnaswami Ayyar]

he belongs to a particular country. Many of our nationals have property in the United States, in Germany, in England and in several other countries, but these do not depend upon their being the nationals of those countries. Nationality or citizenship has nothing to do with the law of property. At the same time, the exigencies of a situation may require property to be controlled. For instance during a war, the conditions may require the State to exercise some control over enemy property or the property of foreigners. That is not to say that the property of the foreigners or the enemy has been confiscated. No principle of international law, no principle of comity of nations recognizes this principle.

In article 5-B, we have made provision for those of our nationals who are outside India, in the Strait Settlements and in other places. They are anxious to retain their connection with the mother-country. They may or may not have acquired some rights to qualify them for citizenship in those States but in those cases in which they are born in this country or if they are the children or grandchildren or persons born in his country, they are to be given the right of citizenship. They had left this country long ago and gone to another country, because we were not able to provide them the necessary means of livelihood— at least not under the British regime. (Let us hope that our record would be better). But they are anxious still to retain the links with the motherland, they have sentimental attachment to this country and are anxious to continue as citizens of our country. They also will be entitled to citizenship. That is the object of article 5-B.

As has been pointed out by the Prime Minister on more than one occasion, we have arrived at the present draft after a number of meetings, and a number of conferences at which different view-points were sought to be met. Of course, it is not possible to satisfy everyone, and it is not possible to arrive at a formula which will satisfy everyone affected.

We are plighted to the principles of a secular State. We may make a distinction between people who have voluntarily and deliberately chosen another country as their home and those who want to retain their connection with this country. But we cannot on any racial or religious or other grounds make a distinction between one kind of persons and another, or one sect of persons and another sect of persons, having regard to our commitments and the formulation of our policy on various occasions.

With these words, I support the articles as placed by Dr. Ambedkar and also the amendments moved by my Friends Shri Gopalaswami Ayyangar and Shri T. T. Krishnamachari.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to support the articles moved by Dr. Ambedkar; and I want especially to accord my hearty approval to the proviso moved by Shri T. T. Krishnamachari and accepted by Dr. Ambedkar now and which has been incorporated in the articles moved by Dr. Ambedkar. This article and especially that proviso is a tribute to the memory of the great Mahatma who worked for the establishment of good relations between Hindus and Muslims. Sir, the proviso invites all the Muslims who left this country, to come back and settle in this country, except those who are agent provocateurs, spies, fifth columnists and adventurers. I wish, the proviso had been more wide. I wish all the people of Pakistan should be invited to come and stay in this country, if they so like. And why do I say so? I am not an idealist. I say this because we are wedded to this principle, to this doctrine, to this ideal. Long before Mahatma Gandhi came into politics, centuries before recorded history. Hindus and Muslims in this country were one. We were

talking, during the time of Mahatma Gandhi that we are blood-brothers. May I know after partition, the e blood-brothers have become strangers and aliens? Sir, it has been an artificial partition. I think that the mischief of partition should not be allowed to spread beyond the legal fact of partition. I stand for common citizenship of all the peoples of Asia, and as a preliminary step, I want that the establishment of a common citizenship between India and Pakistan is of vital importance for the peace and progress of Asia as a whole.

Sir, the proviso has been attacked by Shri Jaspat Roy Kapoor on the ground that it will provide an opportunity for spies and adventurers to come to this country. But my view is that Muslims of this country are as loyal to the State as Hindus. On the other hand I agree with the statement made by the Prime Minister at a different place that the security of India today is menaced not by Muslims but by Hindus.

Another point that was raised by my Friend Shri Jaspat Roy Kapoor was that we must have proper regard for the economic consequences of the proviso. I wish this argument had not been raised. We are not a nation of shopkeepers; we cannot dethrone God and worship Mammon. Whatever the economic consequences may be we want to stand on certain principles. It is only by a strict adherence to certain moral principles that nations progress. The material development of life is no index to progress and civilization. I do not think it is politics or statesmanship to subordinate sound political principles to cheap economics. I see no reason why a Muslim who is a citizen of this country should be deprived of his citizenship at the commencement of this Constitution, specially when we are inviting Hindus who have come to India from Pakistan to become citizens of this country. People who have never been in India but have always lived in the Punjab and on the frontier have come and become citizens of this State; why cannot a Muhammadan of the frontier be so when we have always said that we are one?

It has also been asserted that it was the fact of partition that was responsible for mass migration. I do not agree with that proposition. The late lamented Mr. Jinnah stood for the principle of exchange of population. We disagreed. The implication of our rejection of that demand was that the fact of partition would have no bearing on the question of loyalty of Muslims of this country. Partition or no partition, the Muhammadan will remain loyal to this country. That was the meaning of the rejection of the demand of Mr. Jinnah. And how can we say that the fact of partition was responsible for mass migration? It must be realised that it was the riots and the disturbances in certain parts of the country which were responsible for mass migration. Even now the relations between the two Governments have not become stabilised; and it is only with the establishment of good relations between the two States that there can be security and people who belonged to this country and were citizens of this country would come back and settle in this country.

Maulana Mohd. Hifzur Rehaman (United Provinces: Muslim): *[Mr. President Sir, article 5 as amended by Dr. Ambedkar is before us in its present form. So far as I have seen and examined it I understand that sufficient efforts have been made to explain at considerable length the rights of citizenship which are due to a person in the capacity of a citizen. Two things have been kept in view. On one hand provision has been made that a citizen should be entitled to those rights which are due to him as a citizen. On the other hand the other thing has also been kept in view and it has been considered that in case

*Translation of Hindustani Speech.

[Maulana Mohd. Hifzur Rehaman]

any person tries to become a citizen by unlawful means, necessary safeguards must be provided against that. I think this step is praiseworthy and to me it appears desirable. In this connection the principle and policy which have been laid out by honourable the Prime Minister and honourable Shri Gopalaswami Ayyangar gives us great satisfaction. In spite of this I feel the absence of two things and I desire to draw the attention of the House towards these.

Of course details are not available regarding those people who have come with permanent permits. But it has also been explained now that those people who have come with permanent permits will be regarded as citizen in a certain way. The other thing which deserves our attention is that perhaps in the date which has been mentioned here no notice has been taken of the notification of the Government of India in which from time to time the government offered facilities to those coming from Pakistan. In article 5 three or four clauses have been made which do not impose restrictions and conditions, and these have been accepted and these four classes will be considered as citizens in this way. Further in 5A where it has been laid down as to who else will be considered as citizen, it has been said that those people who have come before 19th July, 1948, will be regarded as citizens. But those who have come later on have got to get themselves registered by applying. The condition of registration has been made necessary here. I want to say that the date which is mentioned in the notification issued by the Government of India is 10th September. It is made clear therein that they should also be regarded as citizens, provided the local authorities declare their permits as valid and recognize them. I would also say that, as regards those who have come with permanent permits or in any other capacity, this should have also been included in this amendment, if the Government of India in their notification have given this facility that those coming upto 10th of September shall be regarded as the citizens of India.

In the first amendment, instead of 1st August, 1948, 19th July, 1948, should not have been included. It would have been more just if 11th September should have replaced 19th July so that everybody should have availed of the utmost time for securing the right of citizenship. This would have meant that according to the date referred in the notification, issued by the Government of India, those people who would have come till 11th September should be regarded citizens without any condition.

The next question is this, that those who have come with permanent permits shall have to fulfil the condition of registration for their recognition as citizens. In this connection I submit that it has been made clear that the enquiries will be made about those people who have come here from the 19th July to the 11th September and after that they will be considered to be the citizens of India. In my opinion the restriction that has been imposed on them is quite unjust and that it goes against justice and fairplay. We know very well and the House also is aware of the fact, that those who are given permanent permits can be recognized citizens only when the bona-fides of the permit holders are enquired into and that conspirators and cheats or those who have come to consolidate their business are not among them. First of all, the local authorities enquire into their details and then given them permits. In other words the local authorities give a permit only when they are completely satisfied and in no way before it. If over and above all this, the restriction of registration is imposed on them I will say that it is far from just. Therefore, I say that it has not been made clear whether, to acquire the right to citizenship, such a person has only to apply for registration: or is this also essential, that after the submission of such application, the

local officials should make inquiries about it, and get him registered only if they are completely satisfied, otherwise they would have the right to reject his application? You know well that thousands of men have come back to Indian Union by now. A large number of them had come back soon after the disturbances. Of course there are people also who came back rather late, because they had difficulties in getting their permits. They were obliged to come late, for the simple reason that they could not get their permits in time. We have had experience that those persons who after coming back from Pakistan applied to the local officials for their permanent residence in Indian Union, and cancellation of their permit under the notification of the Government of India, were not made permanent residents and their permits were not cancelled within the fixed period.

It is our experience that the administration often creates such difficulties. Such people were assured in various ways by the District Magistrates concerned that their cases were under inquiry and that their applications were with the police for investigation and after receiving the report they would be informed about the acceptance or rejection of their applications. But what came out was this, that even after the lapse of three or four months they did not receive any reply. And when the Government of India issued another notification then the District Magistrates of various Provinces, without informing such persons about the acceptance or rejection of their applications, asked them to go back in view of this new notification. In this way the applications of those persons were rejected, who had come here with one, two or three months permit for the purpose of acquiring permanent citizenship; and instead of granting or rejecting their request, they were asked to go back at once. By doing so, not hundred, but thousands of people were put to difficulties and these people were not given even ten or fifteen days time. The result of this was that many persons in U.P., East Punjab and other Provinces were arrested on the ground that they were going back after the expiry of the fixed period. In fact no action was taken on the applications of those persons who had come here to acquire the right of citizenship and had stayed here for two or three months.

At last Government of India issued another notification. And after that these applicants were referred to this notification and were asked to go back. They requested for ten or fifteen days time, but they were not given even that much time. And any one who over stayed with a view to repeat the request was sent to jail. Some persons are still locked up in jails. In regard to those persons who have come here with permanent permits and registration is required only for the recognition of their citizenship, it seems reasonable to some extent if they are required to make any application only for their registration. But this thing should be clarified here, that they would be required only to apply for registration and thereupon they would be registered as citizens. This Constitution which you are framing here ought to be such that it should not create any difficulty for anybody.

If we do not clarify this point here and now, there may be injustice. Is it fair that after the submission of an application a second enquiry should be made and at the expiry of the enquiry the applicant should be informed as to whether he would be registered or not? I consider it against justice and I think that it would create good many difficulties for thousands of *bona fide* citizens.

By giving them permanent permits you have allowed them to come and live here. But in this Constitution which you are framing here, you are forcing them to apply for registration. On these applications local officials would make enquiry and after that they would tell them whether they are fit to be registered as citizens or not. Do you know that thousands of Meos who had left their houses on account of the disturbances have come back? If they are treated like that, would it be fair?

[Maulana Mohd. Hifzur Rehaman]

For this reason it ought to be clarified in 5-AA, and the condition for registration should be so fixed that local officials may not have the power to cancel it. After this article has been promulgated and this principle has been accepted a declaration, in most clear terms, should be made, and a notification issued to the effect that no registration would be cancelled. This formality would have to be undergone only for the sake of compliance with the rules. They should get them registered as they have come afterwards, but it, in that, a loop-hole for making an enquiry about them is left, then I am totally against it. Surely, it needs to be amended and revised to afford an opportunity to these people, who were residing here but due to disturbed conditions had gone away and have now returned back not to dispose of their property etc., but to settle down here again. All sorts of facilities in this respect should be given to the poor to the Meos, and to those, who were residing in different parts of India. These will include not only Muslims, but non-Muslims also—like Christians. If that is not done, then they would have to face many difficulties, they will have to suffer at the hands of local officials. Hence, I want that it should contain these two amendments to the article 5A which should be so amended that the last date fixed by the Government notification, *i.e.*, 19th July, should be changed to September 11, 1948. Though this change makes a different of only a month or a month and a half yet that would enable thousands of people to acquire the rights of citizenship, which they ought to get.]

My second amendment is :—

Mr. President : *[Maulana Sahib, no such amendment has been tabled.]

Maulana Mohd. Hifzur Rehaman : *[That is so. I did not put any such amendment, but I had drawn the attention of some Members of the Drafting Committee—Dr. Ambedkar and Shree Gopalaswami Ayyangar towards that. As a result, of my talk with them the present amended article regarding the permanent permit holders has been put forth in place of the previous one. I feel that lacuna in it, but now no other course is left open to me except this that I give vent to my feelings here and draw the attention of the Drafting Committee to it. If any legal course is yet left open then they ought to reconsider it.

However, about the other thing I would particularly say this much that if you have included these people in this article then they ought to be given the citizenship rights because they are citizens of India though they had gone away during the time of disturbances. The local government and local officials, after enquiry have accepted these men as Indian citizens according to their rules. Now, these men should not be bound by these conditions, *i.e.*, unless they get themselves registered they cannot become Indian citizens and they would lose their citizenship rights if they fail to get themselves registered within six months. What I want to emphasise is this that there are too many people, who are unaware of all these things. Surely, it is not incumbent upon everyone to be aware of all these things, yet here no opportunity has been given to such people to easily acquire citizenship rights.]

Pandit Thakur Das Bhargava (East Punjab : General) : *[Will Maulana Sahib say in what sense men, to whom permits have been given, are to be regarded as citizens ?]

Maulana Mohd. Hifzur Rehaman : *[Under the prevalent laws.]

Pandit Thakur Das Bhargava : *[No. Never in that.]

*Translation of Hindustani Speech.

Maulana Mohd. Hifzur Rehaman : [Surely, they have been accepted as such, and the District Magistrates have taken them to be Indian citizens.]

Pandit Thakur Das Bhargava : [They are not residents.]

Maulana Mohd. Hifzu Rehaman : [No. They are. I have got legal proofs with me, wherein it has been stated in writing that they are the citizens of the Indian Union, and that they have been accepted as such in accordance with the Government of India notification. District Magistrate have stated this in writing on the permit.

Therefore, I want you to see the difficulties which they have to face as Indian citizens. So far the residents of India are concernend, you have not fixed any condition as binding on them. However, if they are likely to migrate from here, there is a separate law for them. Otherwise ways have been provided for the cancellation of their citizenship rights. But local officials should in no case be vested with powers to cancel the citizenship rights of those, who through these permits have been accepted as citizens of India. I would regard that as against all canons of justice. I want these two rights should be given to the citizen.]

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, the question of citizenship has been before the Assembly since 1947. When the question was discussed in that year the tests laid down for the determination of citizenship were criticised by the Fundamental Rights Committee on two ground, namely that they were either too narrow or too wide. The Draft before us is much fuller than that which the Fundamental Rights Committee could lay before us in 1947, yet we find that it has been subjected to criticism on the same old grounds. Dr Ambedkar very lucidly explained yesterday the provisions of the final Draft laid before us. So far as I can judge from the discussion that has taken place, very little criticism has been urged against article 5. Similarly, with the exception of Prof. K. T. Shah, no speaker, or hardly any speaker has criticised the provisions of article 5B. Criticism has been concentrated on article 5A.

I shall briefly deal with the criticisms urged against articles 5 and 5B before dealing with the position of those who regard article 5A as making it too easy for people to be regarded as citizens of India. The first thing that I should like to say in this connection is that the Draft only lays down who shall be regarded as citizens of India at the commencement of this Constitution. There is nothing permanent about the qualifications laid down in the articles 5 to 5C. Article 6 makes it absolutely clear that notwithstanding the provisions of these articles, Parliament will have power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Any defects that experience may disclose can therefore be easily rectified.

With this preface I should like to refer very briefly to what was said in criticism of clause (a) of the proposed article 5. One of the speakers, I believe Dr. Deshmukh, said that if the article was retained as it was then the son of a person born while his mother was passing through India would become an Indian citizen. This is a complete misreading of this article. The very first condition laid down in the opening words of this article is that the subsequent provisions apply only to people who have their domicile in the territory of India. Consequently the son born to a traveller from abroad, who is passing through India cannot *ipso facto* become a citizen, cannot by virtue of his birth in India become a citizen of India. Can a man, by reason of his birth here, be supposed to have acquired the domicile of this country?

*[ ] Translation of Hindustani speech.

Dr. P. S. Deshmukh (C.P. & Berar : General) : Nobody said that.

Pandit Hirday Nath Kunzru : Well, one of the speakers said that.

Dr. P. S. Deshmukh : I never said that :

Pandit Hirday Nath Kunzru : Well, if Dr. Deshmukh is clear on that point or has modified his opinion on that point, I gladly concur in the view that he now holds on this point.

Dr. P. S. Deshmukh : I do not think my Friend listened to my speech with any care.

Pandit Hirday Nath Kunzru : I was in the House when the honourable Member spoke, but I may have misunderstood him, I may not have heard him correctly. In any case it seems from what Dr. Deshmukh has stated that there is nobody in this House that has anything to say against article 5.

Now I come to article 5C. Prof. K. T. Shah was probably thinking of the Indians in Malaya when he gave notice of the amendment that if the municipal law of any country did not require that a man should renounce the citizenship of the country to which his ancestors belonged before acquiring the rights of citizenship in that country, there was no reason why our law should prevent him from claiming Indian citizenship. I have taken a great deal of interest in the position of the Indians residing abroad since we got a copy of the Draft Constitution. It has been my endeavour since then to enable Indians living abroad living at least in certain places, to be regarded as Indian citizens without fulfilling difficult conditions. I can say with perfect confidence that article 5C has been so drafted as to take into account the rights of the people whom probably Prof. K. T. Shah had in mind when he sent in the amendment that I have just referred to. Obviously we cannot allow a man whose ancestors settled down in another country two hundred years ago, to be still regarded as an Indian citizen. There must be some limit to the time during which the descendants of people who were Indians could be regarded as Indians even though they were living outside India. Article 5C lays down that "any person who, or either of whose parents or any of whose grand parents, was born in India as defined in the Government of India Act, 1935, as originally enacted, and who is ordinarily residing in any territory outside India as so defined, shall be deemed to be a citizen of India" if he has fulfilled certain conditions. Now, the condition laid down is that he should get himself registered as a citizen of India by the diplomatic or Consular representative of India in the country where he is living. It thus seems to me that article 5C takes full account of the just rights of Indians living not merely in Malaya, but also in other countries where some doubt has been cast on the position of Indians who have been resident there for a long time. If there are among them any persons who still regard themselves as Indian citizens, they will have an opportunity of claiming Indian citizenship under article 5C. If anyone does not take advantage of the provisions of article 5C to get himself registered as an Indian citizen, then that ought to be a proof in the eyes of the authorities of the country where he is living that he is not an Indian citizen but a citizen of the country of his adoption.

I shall now come to article 5A. It is this article that has been occupying the attention of the Members since yesterday. It has been criticised on the ground that its provisions are undesirably wide and that it throws open the door of citizenship to people who have no moral right to be regarded as Indian citizens. I do not personally agree with the critics of this article. Let us consider calmly what article 5A lays down and the circumstances that require that such an article should form part of our Constitution. Article 5A and article 5AA contain extraordinary provisions arising out of the present extra-ordinary circumstances, arising out of the extraordinary situation created by the partition of India. You

will find no counterpart to them in the Constitution of any other country. We have to define clearly the position of those persons who had to leave Pakistan for some reason or other after the partition of India or about that time. There is such a large number of such persons here that their position had to be taken fully into consideration. The representatives of these people have made every effort to get these people recognised as citizens of India from the very start, without being required to fulfil any conditions. The Draft Constitution provided that people coming from outside India should get themselves registered as Indian citizens and that, in order to prove their domicile, they should show that they had been resident in India for a month before their registration. But these conditions were not acceptable to the representatives of the refugees. They wanted that these people should unconditionally be regarded as Indian citizens. Consequently, it has been laid down in article 5C that all those people who migrated to India permanently leaving their homes in Pakistan up to the 19th July 1948 will, without complying with any condition, be citizens of India, if they have been residing here since their migration.

Then, the next category of persons that article 5A takes account of is persons who have migrated to India since the 19th July 1948. Now, if we had listened to those who wanted that all the people, who had come from Pakistan up to the present time or up to the date of the coming into force of this Constitution, should, without any enquiry and without fulfilling any condition, regarded as citizens of India, I am sure this article would have been subjected to much severer criticism. It would then have been justly pointed out that it provided an opportunity for the acquisition of Indian citizenship by those who had no claim to it.

Sir, it has been said that we should consider whether as desired in an amendment of Pandit Thakur Das Bhargava, that the provisions of this article should not be made more restrictive, so that it may apply only to persons who had left their homes on account of civil disturbances or the fear of such disturbances It will be very strange if such a condition is laid down. How will it be possible for a person to prove that he left his home on account of the particular cause referred to above? And how would the registering officers be in a position to decide whether the claim was valid or not? There is an even more serious objection to Pandit Thakur Das Bhargava's amendment. He says that the citizenship of India should be open to persons who have not merely migrated to India on account of civil disturbances or fear of such disturbances, but also to persons who having the domicile of India as defined in the Government of India Act 1935 and being resident in India before the partition, have decided to reside permanently in India, or have migrated to the territory of India from the territory now included in Pakistan. Now, the first thing that requires attention in connection with his amendment is the words "having the domicile of India." We know that these words have created difficulties. We know what was said in this connection when the articles relating to the establishment of an Election Commission were placed before the House.

Pandit Thakur Das Bhargava: Sir, may I point out in article 5 also the same words occur "having the domicile of India". These are exactly the same words.

Pandit Hirday Nath Kunzru: This is true but as my honourable Friend knows, difficulties have cropped up in this connection. But there are other objections too to his amendment. Take the persons who did not leave Pakistan because of civil disturbances or the fear of such disturbances. Take the people who lived in Sylhet.....

Pandit Thakur Das Bhargava : Those persons mentioned in (a) are not to be registered as citizens, because they never migrated.

Pandit Hirday Nath Kunzru : "Migrated" means, as I understand it, that they have left their previous homes permanently and have now come to live in India. Suppose people who were living in Sylhet after the Radcliffe Award shifted to Assam or Bengal. What will their position be if Pandit Thakur Das Bhargava's amendment is accepted? Again, take the people who, say, entered a province after 1943, say in 1944 or 1945. They have not had the time to get naturalised in this country, and there will be a large number of such people. What will their position be if Pandit Thakur Das Bhargava's amendment is accepted? The amendment that he has proposed will raise many difficulties that he has not thought of. It will probably raise difficulties with regard to the position of the people who have migrated from East Bengal to West Bengal. It will be very difficult for these people to prove that they have left their homes in Eastern Pakistan because of civil disturbances or fear of such disturbances. There are millions of non-Muslims still living in Eastern Pakistan. How will these people then be able to prove that there was any justification for their fears that civil disturbances might break out. The House will thus see that Pandit Thakur Das Bhargava's amendment, instead of removing any real difficulty, will create many more difficulties of a more serious character. I do not think, therefore, that it can be accepted.

Sir, there is one other criticism brought against the Draft placed before us that requires consideration. Article 5AA has been criticised by persons holding opposite points of view. There are one or two Members who feel that people who had migrated from India to Pakistan should not be allowed to return to India and claim Indian citizenship except under stringent conditions. There are others who hold a different view and who think that all those persons who left this country after the partition should without any question be allowed to return to their former homes. As regards the people holding the first point of view, I should like to point out that advantage can be taken of article 5AA only by persons who have returned to India under a permit for resettlement or permanent return issued to them under any law. Such permit holders who return to India will be regarded as persons who had migrated to the territory of India after the 19th July 1948. This means that only the permit holders who return to India by the 25th July 1949 will be able to claim citizenship at the date of the commencement of this Constitution. The permit holders returning to India after the 25th July 1949 will not be able to show that they had been living in this country for six months since their return. Now, the permit holders, that is the people who have returned with a permit allowing them to resettle or reside permanently in India, are entitled to be regarded as citizens of India. They were in India and our Government, taking all things into account, taking into account all the fears expressed by Pandit Thakur Das Bhargava and others of his point of view, have allowed them to come back.

Can we in accordance with any canon of justice refuse to regard them as Indian citizens? It was open to the Government of India not to allow these people to return and it was also open to the Government of India not to allow them to settle permanently in this country; but permission having been given to them to return and settle down here by our Government, I do not think it will be honourable on our part now to go behind this permission and say that these people should be treated as strangers now. Besides their number is limited. There need therefore be no fear that their return will be detrimental to our interests. As regards the future, Parliament will by law decide the conditions under which a man can acquire and renounce Indian citizenship. I do not think, therefore, that however apprehensive anybody may be of the possible conse-

quences of article 5AA, it can be regarded as dangerous to the peace and security of India I think the conditions that I have referred to are of such a character as to take full account of the essential interests of this country.

Sir, the point of view of those who hold a different opinion from that just discussed by me is that people who migrated from India to Pakistan should be allowed to come back unconditionally if after living for sometime in Pakistan, they found that the conditions there would not suit them. I have listened very attentively to the appeal made by these persons, but I do not think that their claim is justified. We all know the circumstances in which certain people, or to be more explicit, a certain number of Muslims, left India and migrated to Pakistan and not all of them left India because of civil disturbances. A good many left India in order to settle down in Pakistan because they had supported the idea of the establishment of Pakistan when it was put forward and because they thought that they would be able to lead a fuller life in a Muslim country. Can we justifiably be asked to allow these people to come back without complying with any conditions? When they were in India they were against the maintenance of the integrity of India and they left India at the earliest opportunity that they could get in order to live in the country of their choice. They have no moral right in these circumstances to demand that they should be allowed to return unconditionally to this country. There are, however, Muslims, who wanted to live in India even after the Partition but they had to leave it under compulsion. Any one that remembers the conditions that prevailed, say, in Delhi, in September 1947 can easily visualize the state of mind of the members of the Muslim Community. If at that time thousands of Muslims left Delhi for Pakistan should we be justified in refusing to them the right of re-entry or the right of citizenship after a careful scrutiny of their antecedents? I do not think, Sir, that in the case of these people whom we by our conduct drove out of India we can object to their retention of the right of citizenship under the safeguards that I have mentioned. Fairness and morality require that their right to Indian citizenship should be fully recognised and article 5-AA does nothing more than this. I hope Sir, that I have shown that the objections urged against article 5-A and 5-AA are founded either on a misapprehension of the provisions contained in them or on an imperfect realization of the consequences that the amendments would lead to. If my argument is sound, it shows that the draft before us has pursued a middle course; it recognised the just rights of all people without losing sight of the essential condition that only those persons should be regarded as citizens of India who in their heart of hearts owe allegiance to it.

Mr. President: I may inform Members that I propose to close the discussion of these articles at a quarter past twelve, when I would call upon Dr. Ambedkar to reply and then the amendments will be put to vote.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir it is rather unfortunate for me that I should have come to speak at a moment when the debate has been raised to a very high level by my honourable Friends, Shri Brajeshwar Prasad and Pandit Hirday Nath Kunzru. They were speaking in terms of Hindu-Muslim unity. Indo-Pakistan unity and all the rest of it. But, I am here to state some plain facts without any fear, and without any desire for favour. I would ask the honourable Members of this House to judge for themselves after hearing the facts whether we have to support the amendment of Pandit Thakur Das Bhargava or not. The same amendment was also tabled by my honourable Friend Mr. Jhunjhunwala, (he spoke on it yesterday) and was tabled by me who is supposed to represent the Assamese Hindus, by my honourable Friend Mr. Basu Matari who represents the tribal people in Assam and by my Friend Mr. Laskar, who represents the Bengal Scheduled Castes of

[Shri Rohini Kumar Chaudhari]

Assam. These are the three different groups of persons who have supported Pandit Bhargava. I would, therefore, once more request the House to consider carefully the actual facts, not merely suppositions, not merely theories or wish as to how certain things ought to be done and to decide for themselves whether to support this amendment or the amendment of Dr. Ambedkar.

By this amendment, I want citizenship rights for those persons—I am particularly concerned with Assam—who had come from East Bengal because they found things impossible for them there. It may be argued in a narrow way that every one who has come from East Bengal was not really actuated by fear or disturbance or actually living in a place where disturbance had taken place. Can any one imagine for a moment that there is no fear of disturbance in the minds of these East Bengal people who had come over to West Bengal or Assam? Was there any sense of security in their minds? Has that sense of security, now after a period of two years, been enhanced by the fact that Pakistan has been converted into a theocratic State? I should say in answer to the criticism of Pandit Kunzru, that you need not insist in such cases that the man should be actuated by fear of disturbance or that disturbance should have taken place. The fear is latent in the mind of everybody. The moment any Hindu or a person of any minority community raises a protest against any action which is taken there, disturbances would immediately follow. Is there any doubt about that?

Therefore, Sir, in answer to Pandit Kunzru's criticism, I would say that this condition of fear, of disturbance should not at all be insisted in the case of a person coming from Pakistan over to West Bengal or Assam or any other place in India.

Secondly.....

Pandit Hirday Nath Kunzru: You can easily have a permit system there and control the influx of outsiders.

Pandit Thakur Das Bhargava: So far, it has not been done.

(*Interruption.*)

Shri Rohini Kumar Chaudhuri: Secondly, I want citizenship.....

Shri Raj Bahadur (United State of Matsya): Why not divide East Bengal?

Shri Rohini Kumar Chaudhuri: I want citizenship rights to this class of people, who have originally belonged to Sylhet in the province of Assam, who, long before the partition, have come to the Assam Valley as a citizen of that province and are staying in the present province of Assam. I ask, have they got citizenship or not? These people belonged to the province of Assam, Sylhet. They had come to Assam on some business or other; they had come as government servants or as employees of business-men. They had not migrated; no question of migration arose at that time.

They had come on business; they are now in Assam; they want to be in Assam. Have they got citizenship rights or not? I want citizenship rights for them.

I want to make it perfectly clear that I want citizenship rights for those people of East Bengal who had gone over to West Bengal or Assam out of fear of disturbance in the future or from a sense of insecurity and also for those

people who have come over from Sylhet, who at the time of coming had no fear of disturbance or anything of that kind, but who, on account of fear of disturbances now have decided to live here.

At the same time, I also have the temerity to say in this House that I would exclude those persons who came only three years ago, who set up the civil disobedience movement forcibly occupied land which was not meant for them, and forced the benevolent and benign Government to have recourse to the military to keep peace in the province I should be the last person to say, and I hope every one has honestly acknowledged that, that class of persons should be any mean be granted citizenship rights in the province I also make it quite plain that I desire to exclude those persons who surreptitiously introduced themselves into my province and who now have mixed themselves with their own brethren now desire to have citizenship rights, not out of any sense of insecurity on their part, in their own provinces but with a desire to exploit more from that province of Assam I desire to exclude these people because they had not long ago set up the struggle for Pakistan, they had not long before taken an active part in compelling the politicians of India to agree for Partition; they have their own property and are living peacefully on their own property; not only that, they have brought about such a state of things that they have been able to purchase property for mere nothing, property which belongs to the minority who had come out of fear.

Shri Mahavir Tyagi (United Provinces : General) : What is their number, please ?

Shri Rohini Kumar Chaudhuri : I do not know. I would ask the honourable Member to listen to me. I am making things quite plain for myself. There need not be any doubt or interruption of my speech.

I want make it quite clear that I do not want citizenship rights to be granted to those people who are not only enjoying their own property, but enjoying the property of the minority community who have come away, in some places paying nothing and in other cases paying only a nominal price. I do not want these persons to get citizenship rights at all.

I do not know how you have framed this amendment; how defective is the amendment of Pandit Thakur Das Bhargava or how beautiful is the amendment of Dr. Ambedkar. I do not want to waste the time of the House by an interpretation of that. I only want that those classes of persons whom I have mentioned should be included and should get citizenship rights and those classes of persons whom I want to exclude should not get rights of citizenship. If you adjust them in the light of the facts that I have mentioned, let me see after going through them whether these conditions are satisfied or not. It all depends upon the definition of the word 'migration'. Migration has been defined just now by my Friend who had preceded me. He said, migration means that a person leaves a particular place, having disposed of or having abandoned property which he has and has come and lived in some other place with a view to live there. If that definition is correct, as I am constrained to think that it is correct, if you read Dr. Ambedkar's amendment, you will find exactly that what I want shall not take place and what somebody else wants will take place.

Now if you define the word 'migration' according to Dictionary it means mere moving from one place to the other or in the case of birds it is moving in times of season from one place to the other. But to my mind the definition which has been given by Mr. Kunzru is the most reasonable definition. If you act upon that you will find the people from Sylhet when it was in the province of Assam and those who came to Assam either as Government servant or businessmen they had not migrated in the sense the word is understood. Therefore they will not fall under the definition of Dr. Ambedkar. They will be

[Shri Rohini Kumar Chaudhuri]

automatically excluded. It is for this reason that Pandit Bhargava has given this amendment that those people who were domiciled in India under the Government of India Act 1935 would automatically be included as citizens if they are prevented from going back now for fear. Those people who went to Assam for service or business long before Partition, they cannot be said to have migrated. Now they are unable to go back to their own homes for fear of disturbance. If they remain they will not get the citizenship rights under Dr. Ambedkar's amendments. Even as things stand at present they do not get admission for their children in the colleges as they do not fulfil certain conditions re domicile of the Province. In order to be domiciled in a province they have to live there for ten years and have their own house and land. What will be their condition now? If under this definition they would not get citizenship either, what will be their position?

Unless Dr. Ambedkar assures us on the authority of his knowledge of English words and English legal phraseology that the 'migration' will include also such persons, then I submit that this amendment of Pandit Bhargava will have to be accepted. Many persons belonging to Pakistan are coming who have no insecurity there and who can have their vocation and service. I am stating only facts. What is the position of minorities in East Bengal? They cannot get any Government Service. No person of minority community holds even a junior post there. Go to Assam and you will find high positions like the Secretary of Finance. Education etc. are held by minorities. Take the case of business organisations and insurance companies in East Bengal. Many insurance companies have closed their branches there and come away to India, and so where is the vocation for these minorities? Even doctors have been denied patronage. Even permits by which the majority of business is done are not given to the members of minority community in East Bengal. Then, what is the reason why the people of that majority community in East Bengal who have all these advantages should come to Assam? The reason is to exploit and get some advantages. Are you going to encourage this? You will be surprised to learn that the Government of Assam have requested the Government of India to give them the authority to issue permits to restrict such entries, but they have been denied. I stand corrected if my information is wrong. Honourable Friend Pandit Kunzru and other honourable Members of this House must have read in newspapers that in a meeting of the Muslim League at Dacca it was said with some regret - I hope it was with some real regret that about three lakhs of Muslims had migrated from East Bengal on account of some economic difficulty. Now, you imagine, if three lacs is the figure which is given by the Muslim League in East Bengal, what must have been the real figure of people who have been infiltrating like this. Every province would like to be prosperous but it should not be at the cost of other persons. If you wish to govern a province properly, you should always try to see that the balance of the population is not so much disturbed and you should see that you do not give citizenship to persons whose presence in that province would be undesirable and prejudicial to the interests of the Dominion of India. That is the test I would apply to these cases. The main condition which ought to be accepted to draw up an article of this kind is absolutely wasted if you are going to give citizenship right to each and everybody irrespective of the fact whether they are likely to be good citizens or not.

Sir, I have said things quite frankly, and I know some honourable Members will be dissatisfied with me. But I have no doubt at all in my mind that the people of all communities in my province, including Muslims who belong to Assam, will absolutely agree with me. Muslims who have made Assam their home will agree with me. But people who have newly come there, expecting

to be in a position to create a barrier to the proper and smooth administration of that province, I know, will resent the remarks which I have made. I quite see that I am subjected to a lot of misunderstanding. Some people have interpreted the amendment which I have tabled as an amendment which aims against the entry of Bengalee Hindus into Assam. That is the interpretation which some friends of mine have unfortunately put on the amendment. I may also remind you that in my own province a number of no-confidence resolutions have been passed against me, because as the adviser of the refugees I had advocated the cause of East Bengal Hindu refugees. And it will be of interest to note that most of these people who have no-confidence in me belong to ladies' associations. Of course my honourable friend Dr. Ambedkar will say that I should not worry, because women will always be woman: and I also console myself with that thought. I have never been a *persona grata* with the women of this country or with the women of any country; and at this age I can very easily endure the ordeal of being not a *persona grata* with the ladies section of the people of this country. But leaving aside the ladies organisations, I only wish that the reasonable men should consider this question in proper perspection. That is my purpose. I will be satisfied if reasonable men support me. If they support Pandit Thakur Das Bhargava, not only will the welfare of my province be safeguarded, not only will the interest of East Bengal refugees be safeguarded but also ultimately it will be to the general welfare of India. You will have a province which will be absolutely loyal, which will be absolutely faithful to the government of the Province and which will be unanimously faithful to the Dominion of India. If you do not accept Pandit Thakur Das Bhargava's amendment, and if you do not bring in any other amendment to the same effect, you will expose your frontier, you will expose that province and that province will become a source of great danger to you. Already I have been to Cachar and I have seen in that district, from which crossing the Barak river you come into India, there is trouble; and if this amendment of Dr. Ambedkar is accepted, this district of Cachar will be entirely one district of Pakistan, and who will be responsible for giving one district which should have been kept in our province and which was retained after a good deal of fight but which will be sent to Pakistan? It will be this amendment moved by Dr. Ambedkar.

The Honourable Shri N Gopalaswami Ayyangar (Madras: General): Sir, I do not think I would make a speech covering all the draft articles on this question of citizenship. They have been dealt with very fully by various speakers already. I would confine myself, only to two particular questions that have been the subject of much discussion in the course of this debate.

The first thing that I would take up is the question of persons who migrated from India to Pakistan and subsequently changed their mind and applied for coming back to India, to their own old homes and lands,—whether in cases of that description, they should be treated on the same footing as persons who have merely migrated from Pakistan to India. The general class of people who migrated from Pakistan to India, particularly in or about the time of the Partition were people who had their permanent homes originally in Pakistan and were squeezed out of their homes and had to find their permanent homes in India. With reference to that class, the draft article 5A provides that, if their migration from Pakistan to India took place before the 19th July, 1948, provided they had resided continuously from the time at which they migrated to India, in India, then they will automatically be regarded as citizens of India. In the case of such persons who migrated from Pakistan to India after the enactment of the Ordinance relating to the issue of permits for influx from Pakistan to India, in the case of those persons, we have restricted the acquisition of citizenship only to a small category which would come under the description that they applied for and obtained from the authorities of the Government of India permits enabling them permanently to return to India and resettle there. In the case of these

[The Honourable Shri N. Gopalaswami Ayyangar]

persons, they will not be automatically registered as citizens. They have to make applications to authorities who will be designated for the purpose, and those authorities will take the full history of each of these persons into consideration before they grant a recognition of citizenship.

Shri Mahavir Tyagi: Could you tell us what will be the approximate number of such persons ?

The Honourable Shri N. Gopalaswami Ayyangar: Some time back, the number that was given to me was about 2,000, say, about two months back. It could not now exceed 3,000; that is my present estimate—may be a few persons over this limit or under this limit.

Sardar Hukam Singh (East Punjab : Sikh) : What will be the value of their property ?

The Honourable Shri N. Gopalaswami Ayyangar: I am afraid I am not in a position to estimate the value of the property belonging to these persons. On this question of property, I want to make the position clear. People who migrated from India to Pakistan, even if they remained permanently in Pakistan, retain their title to properties which they have left behind. When subsequently they obtain permits for permanent return and resettlement in India they come back; and in addition to the ownership title in most cases, if they have been allowed to resettle, they regain possession of those properties. That being so, I do not see how in justice we can refuse recognition of their rights to apply for and obtain citizenship. Citizenship may be refused by the officer who has the right to grant that application on grounds other than these; but so far as property goes I do not see how we can go behind it. But there is of course the legal point which my honourable Friend Shri Alladi Krishnaswamy Iyer made that there is really no necessary connection between citizenship and property. It will be for us to decide what we shall do with the property,—whether having lost possession of their property we should allow them to get back to their property. As a matter of fact the grant of these permits for permanent return and resettlement implies their being allowed to resettle on their property. But there have been cases where this has not been found possible and some people who have returned on these permits have been settled on other property That is a matter of detail which we can settle independently of the question of citizenship. Now so far as this matter is concerned it is a matter of the solemn word of the Government of India, as more than one speaker has pointed out. Having allowed these people to return on the authority of inquiries made by our own officers and documents issued by authorities who were specially empowered for this purpose it would not be in keeping with honesty on the part of any Government to say, "We shall not give the recognition that is due to persons who possess these documents."

I do not wish to go further into this matter, but there were one or two points which were raised by one speaker. The first point was that people who come back on permits of this description should automatically get back their citizenship and should not be compelled to apply to an officer and await a grant by him of the right of citizenship to them. The point for us to consider is whether in the case of these people it is at all wise or necessary for us to put them on a higher level than people who owned property in Pakistan and have had to give up that property and come here after the 19th July 1948. Though their intention for permanently settling in this country is clear they have to apply to an officer for the purpose of obtaining rights of citizenship. I do not think that people who deliberately migrated from India to Pakistan should be put on a higher level than those people who were squeezed out of Pakistan out of

their properties and had to come here after the 19th July. That is one point which I would like the House to consider. They say that there were cases of a considerable number of people who, on account of statements made by certain persons or supposed notifications issued by people under some authority or other, have returned to this country without obtaining permits and they should not be prejudiced by the fact that they had not obtained these permits. I think, Sir, that so far as people who migrated to Pakistan from India are concerned, there is this definite fact that their first act was one of giving up their allegiance to India and owning their allegiance to a different State. Before we take them back into India and give them rights of citizenship we must have some definite method by which their intention to return to India is unequivocally expressed. Also we must have definite evidence of the fact that they come back to this country which the *imprimatur* of the Government of this country. And that is why in this article 5AA we have restricted this eligibility for citizenship to persons who have come back to India on permit, issued under the authority of a law issued by us and by our own officers.

If we travel out of this category of persons we shall have to consider the cases of a large number of persons whose title to anything like citizenship in this country is of the thinnest possible description. It is possible that some people who have come back to India have made India again their permanent home and want to be citizens of India and do not want to go back to Pakistan. Their cases must be left to be decided by laws which will be made by Parliament hereafter. Their cases are not so clear that we must include them in the Constitution itself. Therefore it is that I would earnestly beg the House to accept the position that we have translated into words in this article 5AA. It States the general proposition that a person who has migrated from India to Pakistan shall not be deemed to be a citizen of India. It has one proviso which gives the right to such a person to claim to be a citizen again of India if he applies for and obtains a permit from our own authorities which permits him to come and resettle in India permanently in his own home and on his own lands.

The other point I wish to refer to is one which has been raised by my honourable Friends from Assam. I must say that I have not been able clearly to follow the particular position that they take in regard to the matter which worries them. It is no doubt a fact that a substantial number of Muslims do go from East Bengal to Assam. But this kind of migration—from what little study I have made of things happening between East Bengal and Assam in the past is nothing new. The numbers vary a bit perhaps; but the question that is put to us is that under this particular provision in the draft we shall open the door for a very large number of Muslims who will come over to India from Pakistan and who will apply for registration and get registered, much to the detriment of the economy of Assam. Now, let us analyse the position. It is said, for instance, that Assam wanted a permit system to be applied as between East Bengal and Assam. The Assam Government and the Government of India have discussed the matter between themselves. They have held more than one conference for the purpose of arriving at a solution of this trouble. And I shall not be revealing a secret if I say that at the last conference we had on this subject, the general consensus of opinion amongst both representatives of the Government of India and the representatives of Assam was that it was not wise to introduce anything like a permit system between East Bengal and Assam on the same lines as obtain between West Pakistan and India. There are complications which perhaps it is unnecessary for me to go into in detail. One very big complication is the repercussion it will have as regards the movement of persons between East and West Bengal. Now, by permitting the extension of the permit system as it works between West Pakistan and India to the area between East Bengal and Assam, we shall be inviting Pakistan to introduce such a system.

[The Honourable Shri N. Gopalaswami Ayyangar]

as between East and West Bengal and I only mention this to people who are acquainted with both West Bengal and Assam for them to realize all the enormous complications, on the economy of West Bengal which it will entail. The last conference merely came to the conclusion that we should seek and apply other methods for preventing or mitigating the influx of a large number of Muslims from East Bengal to Assam, and this matter is being investigated and, for my own part, I think it will be possible to devise some kind of legislation which will enable Assam to stem the tide very substantially. I would not like that we should adopt any methods which would complicate the situation in the eastern borders of the country. I could realize what, for the time being, it does mean to Assam—a number of Muslims coming in who are not wanted there—but we should not altogether ignore the possibility that conditions being what they are in Assam, this kind of thing might be applied by over-zealous officials of the Assam Government so as to be prejudicial to, say, the Bengalis who have migrated from East Bengal to Assam and perhaps even from West Bengal to Assam. We have got to take into consideration all these things. Now, I would earnestly request the House that we should not complicate the solution of this problem of citizenship by bringing in this particular trouble between East Bengal and Assam for which we are devising other measures of solution.

Sardar Hukam Singh (East Punjab : Sikh) : Sir, we have been told that the Muslims, who left their property here and have come back, retain their titles to the property that was left here, and when they come back, it is simple justice to return them that property. Government cannot do anything else. This is very good. I want to know from the honourable Mover whether according to his logic, we, who have come from Pakistan and left our properties there, also retain our titles to those properties. Can he suggest us some court or tribunal before whom we can go and place those title deeds to get justice that is being accorded to these people here by this proviso ?

The Honourable Shri N. Gopalaswami Ayyangar : Sir, there is a slight inaccuracy in the honourable Member's statement of the position I took in regard to properties left behind in India by the Muslims who have migrated to Pakistan and returned permanently to reside in our own country. My position was that the migration itself did not extinguish their title to property in India. That title continues until a final settlement takes place between the two governments for the extinguishment of titles in both countries. Till then, the title of each person continues with him. The property might have vested in the Custodian, he may be managing it, he may be recovering rents from it, but when a particular person comes back and is allowed to resettle on his own land, the thing that ought to occur and for which, I believe, provision exists in our evacuee property law, is that when he gets the right to resume possession of his land and satisfies every authority here concerned that he has come back for permanently settling in this country, then what was treated as evacuee property could be restored to him. Similar law exists on the other side also. People who have left Pakistan and come to India retain their titles, but if they go back on anything like a permit, of the description that I have given, issued by the Pakistan Government, they will be entitled to the same kind of treatment as we contemplate in the case of Muslims who have returned to India.

Now, I do not want the House to go further and ask me whether this thing actually takes place. I am talking of the law on the subject. There is nothing which prevents us from going back and claiming the land or the property, whatever it may be. As a matter of fact, while we have had about three thousand persons who have obtained these permits and probably a very much larger number who have applied for them and not got them yet, I am afraid we shall be able to

count non Muslims who have come over from Pakistan to India and wishing to go back to Pakistan on our fingers' ends. There is no doubt of the fact that there is no desire, anything like a substantial desire, on the part of our own people who have come over as refugees to go back and resume possession of their lands, while it is a fact that a considerable number of Muslims who have gone over to the other side want to come back.

Dr. P. S. Deshmukh: What is the explanation?

Shri Mahavir Tyagi: We are prepared to go back in case the Military also accompanies us.

The Honourable Shri N. Gopalaswami Ayyangar: Yes, that is true, but you have not to account for the fact that the Muslims are coming back here without insist upon the military.

Shri Bikramlal Sondhi (East Punjab General): Because it is one-way traffic.

The Honourable Shri N. Gopalaswami Ayyangar: Well, the legal position is, I do not think, different in the two countries.

As for the other question which the honourable Member asked me as to which tribunal we can go to for the purpose of having this right to go back and resume possession of our properties on other side enforced, my only answer is that the legal jurisdiction are different. There is no Court of law to which you can go on this question. The only thing you can do is to worry our own Government to see that similar rights are conceded to our people on the other side, and that, as you know, is being done incessantly, constantly by this Government.

Shri Algu Rai Shastri (United Provinces: General): *[I beg to submit Sir, that the articles relating to citizenship which are under consideration at present are very important ones, and the nature of discussion so far held indicates that they require some further discussion. If we adopt them in a hurry, we may perhaps have to repent for it later on. Before we take any decision regarding these articles, we shall have to decide many important questions relating to them. In my opinion it would be better, Sir, that we consider them again in the next sitting of the Assembly. I beg to submit that if we adopt these articles in a hurry, it would be a grave injustice to such Members as want to express their opinion on it and have not so far got any opportunity to do so. It is necessary to consider the several other questions that are connected with this matter. I would, therefore, request that these important articles relating to citizenship should not be rushed through.]

Mr. President: *[We have already devoted more than nine hours to a discussion of this question.]

Dr. P. S. Deshmukh: May I ask a question? The real question which my Friend intended to ask was, to what extent there is reciprocity so far as admission of non-Muslims in the Pakistan areas was concerned, and I do not think any satisfactory answer was given to that question. What we want to know is to what extent has the Honourable Minister found the Pakistan Government reciprocating to the ideas and ideals that we hold, and propagate and the policies that we adopt?

The Honourable Shri N. Gopalaswami Ayyangar: I must confess in practice the response has not been as satisfactory as I should wish.

Shri Mahavir Tyagi: Let us not discuss the failure of our Government. Let us look into the Constitution.

The Honourable Shri N. Gopalaswami Ayyangar: That is true. The question is that two Governments meet together for settling a proposition. If there is

*[ ] Translation of Hindustani speech.

[The Honourable Shri N. Gopalaswami Ayyangar.]

no agreement there is a failure. But whether the failure attaches to one side or to both sides is a question.

Shri Phool Singh (United Provinces : General) : *[Mr. President, what is your decision about concluding the discussion on these articles today ?]

Mr. President : *[I am just putting the question.] I had thought that we had discussed these articles sufficiently during the nine hours that we had spent on them, and I would personally like to put the matter now to vote. As a desire has been expressed by some Members that they would like to speak and further discuss it, I would put it to the House.

The question is :

"That the question be now put."

The Assembly divided by show of hands.

Ayes—59 Noes—35

The motion was adopted.

Shri Algu Rai Shastri : Sir, although the number of votes for closure is greater, considering also the big number who want the discussion to go on, I crave your indulgence to allow more discussion on this point.

Mr. President : I do not think any useful purpose will be served by further speeches. The amendments are all there before the Members; they are free to vote in favour of any amendment they like.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, it has not been possible for me to note down every point that has been made by those who have criticised the draft articles which I have moved. I do not think it is necessary to pursue every line of criticism. It is enough if I take the more substantial points and meet them.

My Friend, Dr. Deshmukh said that by the draft articles we had made our citizenship a very cheap one. I should have thought that if he was aware of the rules which govern the law of citizenship, he would have realised that our citizenship is no cheaper than would have been made by laws laid down by other countries.

With regard to the point that has been made by my Friend Prof. K. T. Shah that there ought to be positive prohibition in these articles limiting Parliament's authority to make law under article 6 not to give citizenship to the residents of those countries who deny citizenship to Indians resident there, I think that is a matter which might well be left for Parliament to decide in accordance with the circumstances as and when they may arise.

The points of criticism with which I am mostly concerned are those which have been levelled against those parts of the articles which relate to immigrants from Pakistan to India and to immigrants from India to Pakistan. With regard to the first part of the provisions which relate to immigrants coming from Pakistan to India, the criticism has mainly come from the representatives of Assam particularly as voiced by my Friend Mr. Rohini Kumar Chaudhuri. If I understood him correctly, his contention was that these articles relating to immigrants from Pakistan to India have left the gates open both for Bengalis as well as Muslims coming from East Bengal into Assam and either disturbing their economy or disturbing the balance of communal proportions in that Province. I think, Sir, he has entirely misunderstood the purport of the articles which deal with immigrants from Pakistan to India.

*[ ] Translation of Hindustani speech.

If he will read the provisions again, he will find that it is only with regard to those who have entered Assam before 19th July 1948, that they have been declared, automatically so to say, citizens of Assam if they have resided within the territory of India. But with regard to those who have entered Assam, whether they are Hindu Bengalees or whether they are Muslims, after the 19th July 1948, he will find that citizenship is not an automatic business at all. There are three conditions laid down for persons who have entered Assam after the 19th July 1948. The first condition is that such a person must make an application for citizenship. He must prove that he has resided in Assam for six months and, thirdly, there is a very severe condition, namely that he must be registered by an officer appointed by the Government of the Dominion of India. I would like to state very categorically that this registration power is a plenary power. The mere fact that a man has made an application, the mere fact that he has resided for six months in Assam, would not involve any responsibility or duty or obligation on the registering officer to register him. Notwithstanding that there is an application, notwithstanding that he has resided for six months, the officer will still have enough discretion left in him to decide whether he should be registered or he should not be registered. In other words, the officer would be entitled to examine, on such material as he may have before him, the purport for which he has come, such as whether he has come with a *bona fide* motive of becoming a permanent citizen of India or whether he has come with any other purpose. Now, it seems to me that, having regard to these three limiting conditions which are made applicable to persons who enter Assam after 19th July 1948, any fear such as the one which has been expressed by my Friend Mr. Rohini Kumar Chaudhuri that the flood-gates will be opened to swamp the Assamese people either by Bengalees or by Muslims, seems to me to be utterly unfounded. If he has any objection to those who have entered Bengal before 19th July 1948—in this case on a showing that the man has resided in India, citizenship becomes automatic—no doubt that matter will be dealt with by Parliament under any law that may be made under article 6. If my friends from Assam will be able to convince Parliament that those who have entered Assam before 19th July 1948 should, for any reason that they may have in mind or they may like to put before Parliament, be disqualified, I have no doubt that Parliament will take that matter into consideration. Therefore, so far as the criticism of these articles relating to immigrants from Pakistan to Assam is concerned, I submit it is entirely unfounded.

Then I come to the criticism which has been levelled on the provisions which relate to immigrants from India to Pakistan. I think that those who have criticised these articles have again not clearly understood what exactly it is proposed to be done. I should like, therefore, to re-state what the articles say. According to the provisions which relate to those who are immigrants from India to Pakistan, any one who has left India after the first March 1947, barring one small exception, has been declared not to be citizens of India. That, I think, has got to be understood very carefully. It is a general and universal proposition which we have enunciated. It is necessary to enunciate this proposition, because on the rule of International Law that birth confers domicile, a person has not to acquire what is called domicile of origin by any special effort either by application or by some other method or by some kind of a grace. The origin of domicile goes with birth. It was felt that those persons who left India, but who were born in India, notwithstanding that they went to Pakistan, might, on the basis of the rule of International Law, still claim that their domicile of origin is intact. In order that they should not have any such defence, it is thought wise to make it absolutely clear that any one who has gone to Pakistan after the 1st March—you all know that we have taken 1st March very deliberately, because that was the date when the disturbances started and the exodus began and we thought that there would be no violation of any principle of International justice if we presumed

[The Honourable Dr. B. R. Ambedkar]

that any man who, as a result of the disturbances went to Pakistan with the intention of residing permanently there, loses his right of citizenship in India. It is to provide for these two things that we converted this natural assumption into a rule of law and laid down that anyone who has gone to Pakistan after 1st March shall not be entitled to say that he still has a domicile in India. According to article 5 where domicile is an essential ingredient in citizenship, those persons having gone to Pakistan lost their domicile and their citizenship.

Now I come to an exception. There are people who, having left India for Pakistan, have subsequently returned to India. Well, there again our rule is that anyone who returns to India is not to be deemed a citizen unles he satisfies certain special circumstances. Going to Pakistan and returning to India does not make any alteration in the general rule we have laid down, namely that such a person shall not be a citizen. The exception is this: as my honourable Friend Shri N. Gopalaswami Ayyangar said, in the course of the negotiations between the two Governments, the Government of India and the Government of Pakistan, they came to some arrangement whereby the Government of India agreed to permit certain persons who went from India to Pakistan to return to India and allowed them to return not merely as temporary travellers or as merchants or for some other purpose of a temporary character to visit a sick relation, but expressly permitted them to return to India and to settle permanently and to remain in India permanently. We have got such persons in India now. The question therefore is whether the rule which I have said we have enunciated in this article, not to permit anyone who has gone from India to Pakistan after the 1st March 1947, should have an exception or not. It was felt, and speaking for myself I submit very rightly felt that when a Government has given an undertaking to a person to permit him to return to his old domicile and to settle there permanently, it would not be right to take away from that person the eligibility to become a citizen. As my Friend, Mr. Gopalaswami Ayyangar has said, the class of people covered by this category, having regard to the very large population both of Hindus and Muslims we have, is very small, something between two to three thousand. It would, in my judgment look very invidious, it would in my judgment look a breach of faith if we now said that we should not allow these people whom our-own Government, whether rightly or wrongly, allowed to come away from Pakistan for the purpose of permanent residents here, to have this privilege. It would be quite open to this House to bring in a Bill to prevent the Government of India from continuing the permit system hereafter. That is within the privilege and power of this House, but I do not think that the House will be acting rightly or in accordance with what I call public conscience if it says that these people who, as I said, are so small, who have come on the assurance of our own Government to make their home here, should be denied the right of citizenship. Sir, I do not think therefore that there is any substance in the criticism that has been levelled against these articles and I hope the House will accept them as they are.

Mr. President: Now, I will have to put the various amendments to the vote. It is somewhat difficult to decide the order in which these amendments should be taken up.

The Honourable Dr. B. R. Ambedkar: Let all of them be withdrawn.

Mr. President: I will put the amendments to the vote in the order in which they were moved by the various speakers and if any honourable Member wishes to withdraw any amendment, he may express his desire to that effect. I will first take up the amendments moved by Dr. Deshmukh.

The question is :

"That in amendment No 1 above, for the proposed article 5, the following be substituted -

'5 (1) Every person residing in India—

(a) who is born of Indian parents; or

(b) who is naturalised under the law of naturalisation; and

(c) every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides shall be entitled to be a citizen of India'."

The amendment was negatived.

Dr. P. S. Deshmukh : I beg leave to withdraw amendments nos. 29, 116, 118 and 119.

Amendments Nos 29, 116, 118 and 119 were, by leave of the Assembly, withdrawn.

Mr. President : Then I will take up Amendment No. 120.

Shri T. T. Krishnamachari (Madras : General) : If amendment No. 130 is accepted this does not arise.

Mr. President : No. 120 goes out. Then the amendments moved by Mr. Naziruddin Ahmad. They are all of a verbal nature. No. 4.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : No reply has been given to this, but I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then amendment No. 18. These are all of a verbal nature and they might be left to the Drafting Committee for its consideration.

Mr. Naziruddin Ahmad : All my amendments may be considered by the Drafting Committee.

Mr. President : Mr. Naziruddin Ahmad leaves all his amendments to the Drafting Committee to consider. So, they are not to be put to the vote. Does the House permit him to withdraw his amendments in that sense ?

All the amendments of Mr. Naziruddin Ahmad were, by leave of the Assembly, withdrawn.

Mr. President : Then we come to the amendments moved by Mr. Jaspat Roy Kapoor. Amendment No. 5.

Shri Jaspat Roy Kapoor (United Provinces : General) : I want to spare my amendments the fate of being defeated. Therefore I would like to withdraw them.

All the amendments of Mr. Jaspat Roy Kapoor were, by leave of the Assembly, withdrawn.

Mr. President : Then amendment No. 203 by Professor Shah.

The question is :

"That in clause (a) of article 5, after the words 'grand-parents' the words 'on the paternal-side' be added."

The amendment was negatived.

Mr. President : The question is :

"that in clause (b) of article 5, after the words 'grand-parents' the words 'on the paternal-side' be added."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 above, in the proposed article 5—

(i) after the figure "5" the brackets and figure "(1)" be inserted;

(ii) before the Explanation, the following proviso be added :

'Provided further that the nationality by birth of any citizen of India shall not be affected in any other country whose Municipal Law permits the local citizenship of that country being acquired without prejudice to the nationality by birth of any of the citizens; and

Provided that where under the Municipal Law no citizen is compelled either to renounce his nationality by birth before acquiring the citizenship of that country, or where under the Municipal Law nationality by birth of any citizen does not cease automatically on the acquisition of the citizenship of that country.';

(iii) after the Explanation, the following new clause be added :—

'(2) Subject to this Constitution, Parliament shall regulate by law the grant or acquirement of the citizenship of India.'"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 6 above, after the proposed new clause (2) of article 5, the following proviso be added :—

'Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship.'"

The amendment was negatived.

Mr. President: Then we come to amendment No. 20 by Prof. K. T. Shah I think this is more or less of a drafting nature. Could it be left to the Drafting Committee ?

An Honourable Member: Yes.

Mr. President: I had better leave it to the Drafting Committee to consider this amendment.

Amendment No. 152. The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of sub-clause (i) of clause (b) of the proposed new article 5-A, but before the word "and", the following proviso be added :—

'provided that any person who has so migrated to the areas now included in Pakistan, but has returned from the area to the territory of India since the nineteenth day of July, 1948, shall produce such evidence, documentary or otherwise, as may be deemed necessary to prove his intention to be domiciled in India and reside permanently there."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 above, at the end of clause (c) of the proposed article 5, the words 'and subject to the jurisdiction thereof' be inserted."

The amendment was negatived.

Mr. President: Then there is amendment No. 12 by Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, for the words 'five years' the words 'ten years' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-A, for the words beginning with 'Notwithstanding anything' and ending 'at the date of commencement of this Constitution if, the following words be substituted :--

'Notwithstanding anything contained in article 5 of this Constitution a person who on account of civil disturbances or the fear of such disturbances—

(a) having the domicile of India, as defined in the Government of Indai Act, 1935, and being resident in India before the partition, has decided to reside permanently in India; or

(b) has migrated to the territory of India from the territory now included in Pakistan, shall be deemed to be a citizen of India at the date of the commencement of this Constitution if'."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments at the end of the proposed new article 5-A, the following words be added :—

'Or if he has before the date of commencement of this Constitution unequivocally declared his intention of acquiring the domicile of India by permanent residence in the territory of India or otherwise and established such intention to the satisfaction of the authority before whom the question of his citizenship arises'."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-AA—

(i) the words 'nothing in this article shall apply to' be deleted;

(ii) the words 'or permanent return' be deleted; and

(iii) for the words beginning with 'and every such person shall' and ending 'nineteenth day of July, 1948' the following words be substituted :—

'shall be entitled to count his period of residence after the nineteenth day of July, 1948, in the territory of India in the period required for qualification for naturalisation or acquisition of citizenship under any law made by Parliament.'"

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-AA—

(i) the words 'nothing in this article shall apply to' be deleted;

(ii) for the words beginning with 'and very such person shall' and ending 'nineteenth day of July, 1948' the following words be substituted :—

'shall be eligible for citizenship by naturalisation if he fulfils the condition laid down by law and his permit shall be liable to be cancelled on the grounds on which under the law relating to naturalisation the certificate of naturalisation can be cancelled.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-B, after the words 'any person' the words 'having his domicile in the territory of India' be inserted"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-B, for the words 'whether before or after' the word 'before' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-B, the words 'or the Government of India' occurring at the end of the article be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, at the end of the proposed new article 5-B, the following proviso be added:—

'Provided he has not abandoned his domicile by migrating to Pakistan after 1-4-1947 or acquired after leaving India the citizenship of any other State'"

The amendment was negatived.

Mr. President: The question is:

"That in Amendment No. 1 above, in the proposed new article 5-A, the words 'deemed to be' deleted."

The amendment was negatived.

Mr. President: Then there is amendment No. 123.

Shri B. P. Jhunjhunwala (Bihar: General): Sir. I beg leave to withdraw my amendment.

Mr. President: Amendment No. 150 also is in your name.

Shri B. P. Jhunjhunwala: I withdraw that also.

The Amendments were, by leave of the Assembly, withdrawn.

Mr. President: Then we come to amendment No. 21 by Shri S. Nagappa.

Shri S. Nagappa (Madras: General): Dr. Ambedkar has expressed his willingness to accept this amendment, Sir.

The Honourable Dr. B. R. Ambedkar: We shall consider it when we go over the whole thing if the language is appropriate.

Mr. President: It is a question of drafting more than anything else. So then it is left to the Drafting Committee.

The question is:

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, the proposed proviso to the proposed new article 5-AA be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in sub-clause (ii) of clause (b) of the proposed new article 5-A, after the word 'before' the words 'or after' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, for the proposed new article 5-C, the following be substituted :—

'Subject to the provisions of any law that may be passed by the Parliament in this behalf, the qualification for citizenship mentioned in the foregoing provisions, shall apply *mutatis mutandis* to persons entitled to citizenship after the commencement of this Constitution'."

The amendment was negatived.

Mr. President: I think this disposes of all the amendments. I shall now put the original proposition as moved by Dr. Ambedkar. Is it necessary to read it ?

Several Honourable Members: No. Not necessary.

Shri Jaspat Roy Kapoor: Mr. President, may I submit, Sir, that there are other amendments standing in the name of Dr. Ambedkar and Mr. T. T. Krishnamachari, and they might also be taken up as amendments.

Mr. President: I am putting the consolidated proposition incorporating all the amendments.

Shri Jaspat Roy Kapoor: With regard to that, I have to make one submission. With regard to amendment No. 132 moved by Mr. T. T. Krishnamachari, I would request Mr. Krishnamachari to consider the advisability of withdrawing it here and referring it to the Drafting Committee. It may be dropped here and referred to the Drafting Committee which might consider the advisability or otherwise of allowing these words to be omitted.

Mr. President: If it is only a question of drafting, the Drafting Committee has always the power. If it is a substantial matter, it cannot be left to the Drafting Committee.

Shri Jaspat Roy Kapoor: If amendment No. 132 is accepted here, we shall be tying down the hands of the Drafting Committee. I understand Mr. T. T. Krishnamachari himself has some doubts about the advisability or otherwise of retaining these words.

Mr. President: Mr. T. T. Krishnamachari will say whether he has any doubt about the wisdom of the amendment.

Shri T. T. Krishnamachari: I may explain, Sir, that my amendment was necessitated by the amendment to the wording of article 6. If necessary this matter will no doubt be examined further. I simply said I shall put Mr. Jaspat Roy Kapoor's views before the Drafting Committee. That does not mean that I have any doubts in the matter. We have provided for this contingency in article 6. Speaknig for myself I am prepared to examine practically every word of the entire set of articles 5, 5-A, 5-AA, 5-B, 5-C and 6 independently.

Mr. President: I now put the consolidated amendment as moved by Dr. Ambedkar, articles 5 and 6 which includes articles 5-A, 5-AA, 5-B, and 5-C.

The question is :

"That for articles 5 and 6, the following articles be substituted :—

Citizenship at the date of commencement of this Constitution.

'5. At the date of commencement of this Constitution, every person who has his domicile in the territory of India and—

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

[Mr. President]

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement, shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State

Rights of citizenship of certain persons who have migrated to India from Pakistan.

5-A. Notwithstanding anything contained in article 5 of this Constitution a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has ordinarily resided within the territory of India since the date of his migration, and

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

Rights of citizenship of certain migrants to Pakistan.

5-AA. Notwithstanding anything contained in articles 5 and 5-A of this Constitution, a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July, 1948

Rights of citizenship of certain persons of Indian origin residing outside India.

5-B. Notwithstanding anything contained in articles 5 and 5-A of this Constitution, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing in any territory outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

Continuance of the rights of citizenship.

5-C. Every person who is a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Parliament to regulate the right of citizenship by law.

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

The amendment was adopted.

Mr. President: The question is:

"That articles 5, 5-A, 5-AA, 5-B, 5-C and 6, as amended, stand part of the Constitution."

The motion was adopted.

Articles 5, 5-A, 5-AA, 5-B, 5-C and 6, as amended, were added to the Constitution.

Mr. President : We are now adjourning till Thursday next. Under the rules, the consent of the House has to be given if there is to be an adjournment for more than three days. As this happens to be an adjournment for five days, I take it that the House gives the leave.

Honourable Members : Yes.

Mr. President : We adjourn now till nine of the Clock on Thursday next

Shri Syamanandan Sahaya (Bihar : General) : May I suggest, Sir, that on the 18th we may assemble in the afternoon, in view of the fact that some trains come late ?

Mr. President : I have personally no objection if the Members so wish. Is that the general wish of the House ?

Honourable Members : Yes

Mr. President : We adjourn to Three P.M. on Thursday next.

The Assembly then adjourned till Three of the Clock in the afternoon on Thursday, the 18th August, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 18th August 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock in the afternoon, Mr. Vice-President (Shri V. T. Krishnamachari) in the Chair.

Mr. Vice-President (Shri V. T. Krishnamachari: : I have been asked by the Honourable the President to say how sorry he is that he is unable to attend the Assembly today as he has been advised medically to take complete rest. He hopes to be back on Sunday and attend the Assembly from Monday onwards. He trusts that the Members will excuse his absence. I am sure that all of us wish him a speedy recovery. (*Cheers*).

I call upon Shri N. Gopalaswami Ayyangar to move his Bill.

GOVERNMENT OF INDIA ACT, 1935 (AMENDMENT) BILL

Shri H. V. Kamath: (C.P. & Berar : General): On a point of Order, Sir, That point of Order is three-fold. Firstly, I would invite the attention of the House to Rule 38-A of the Constituent Assembly Rules of Procedure and Standing Orders as amended up to 31st May 1949. That rule refers to "any member desiring to propose any amendment to the Indian Independence Act, 1947, or any Order, Rule or other instrument made thereunder or to the Government of India Act 1935 as adapted under the said Act etc. etc.". I would appeal to the House to read closely the language and the wording of this rule. It refers to 'the Government of India Act, 1935, as adapted under the Independence Act, 1947'. Now the Bill before us which you just a few minutes ago called upon the Honourable N. Gopalaswamy Ayyangar to move before the House refers to sub-section (1A) of Section 8 of the Government of India Act, 1935. I have secured from the library a copy of the Government of India Act, 1935, as adapted under the Indian Independence Act, 1947.

Shri B. Das (Orissa : General): We have the precedence of Dr Syama Prasad Mookherjee's Bill which was introduced and passed in this House the same day.

Shri H. V. Kamath: Mr. B. Das may support or oppose me when he is called upon to speak. I have tried to find out what sub-section (1-A) of Section 8 . . . . . .

Shri S. Nagappa (Madras : General) : Mr. Vice-President, Sir, on a point of Order As the Honourable Mr. Gopalaswami Ayyangar has not moved the Bill yet, the point of Order cannot be raised before the Bill is moved.

Shri H. V. Kamath: My point of Order arose because you called upon him to move it.

Mr. Vice-President: Will Members resume their seats and let the Member proceed ?

Shri H. V. Kamath: I am raising the point of Order with regard to the introduction of a Bill in the House.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Surely there is no motion before the House.

Mr. Vice-President : Let Mr. Ayyangar move the motion.

Shri H. V. Kamath : I am objecting to the introduction itself.

The Honourable Shri N. Gopalaswami Ayyangar (Madras : General) : Mr Vice-President, my motion is a very brief one and I do not want my honourable Friend Mr. Kamath to wait longer at the rostrum than may be necessary. My motion is :

"That I beg to move for leave to introduce a Bill for further amending the Government of India Act, 1935, as adapted."

Maulana Hasrat Mohani (United Provinces : Muslim). Sir, I beg to oppose...

Mr. Vice-President : Mr. Kamath.

Shri H. V. Kamath : I thank you very much for having given me this opportunity of clarifying the point of Order that I have raised. The first point was that reference to sub-section (1-A) of Section 8 of the Government of India Act, 1935 is not at all clear. I have got a copy of the Act as adapted and I find there is no sub-section.....

The Honourable Shri N. Gopalaswami Ayyangar : May I ask the Member whether his contention is that there is no sub-section (1-A) ?

Shri H. V. Kamath : Yes.

The Honourable Shri N. Gopalaswami Ayyangar : May I supply him with an up to date copy of the Act ?

Shri H. V. Kamath : Mr. Ayyangar may supply me a copy, and I shall be grateful to him. I got this from the library.

Mr. Vice-President : Apparently Mr. Kamath's copy is not up to date.

Shri T. T. Krishnamachari (Madras : General) : This is a formal motion and it is customary according to Parliamentary practice not to oppose the motion.

Shri H. V. Kamath : I was not opposing. This is a point of Order. I hope there is only one Chairman in this House. I hope I shall not be interrupted or called to order by any other honourable Member.

The second part of the point of order is this, that rule 38(a), sub-rule(ii) lays down that the period of notice of a motion for leave to introduce a Bill under this rule shall be fifteen days, unless the President allows the motion to be made at shorter notice. But there is nothing in the Order Paper or in the foot-note thereto to show that the President has waived that rule and has allowed this motion to be made at shorter notice than fifteen days. I have got the Order Papers here and there is nothing in them or in the foot-note to say that the President has waived this rule.

Mr. Vice-President : I have allowed this motion to be made at shorter notice.

Shri H. V. Kamath : Then it is all right.

The third part of the point of Order is this. This Bill which Mr. Ayyangar has sought leave to introduce in the House comprises two entirely different matters. One relates to Section 8 (a) and the other to Section 291(a) evacuee property—and something about provincial legislatures, respectively. I think this is one Bill relating to two diametrically opposite matters, and so it should not be introduced as a single Bill in the House. Two separate Bills may be introduced and not one Bill comprising both these matters.

Shri T. T. Krishnamachari : Why, why ?

Shri H. V. Kamath : Why ? It is for Mr. Krishnamachari to say how it can be when he speaks later on. Well, Sir, this is the third part of my point of order. I have raised this three-fold point of order with regard to the motion for leave to introduce the Bill.

Shri R. K. Sidhva (C.P. & Berar General) : I want to reply to the point of order.

Mr. Vice-President : I am asking Mr Gopalaswami Ayyangar to do so.

The Honourable Shri N. Gopalaswami Ayyangar : The Honourable Mr. Kamath raised three objections. Two of them have been disposed of already. He was mistaken in thinking that there was no sub-section (1-A) of Section 8 of the Government of India Act, 1935, and I myself made him drop that objection like a hot potato

With regard to the second objection, that has been met by your saying that you have given permission for this motion even though fifteen days' notice has not been given; and you have got the right to give that permission, under the rules as they stand. So these two objections have been disposed of.

The third objection is familiar to those who have got to deal with courts, particularly criminal courts—misjoinder of charges. Unfortunately we are not now before a court of law where we can say the charges against the person are not properly made, or have been joined in a wrong way. The only thing that I have got to say is.....

Shri H. V. Kamath : On a point of order Sir, Mr. Gopalaswami Ayyangar is very far from correct.

The Honourable Shri N. Gopalaswami Ayyangar : I am afraid I did not quite catch what the honourable Member said just now, but that of course does not matter. I need only point out that the Bill is a Bill for amending one Act, and that is, the Government of India Act. Even if I had to amend one hundred Sections of that one Act, I am entitled to bring in one single Bill.

Mr. Vice-President : I rule out the point of order raised by Mr Kamath

The motion for leave to introduce the Bill is now before the House.

Maulana Hasrat Mohani : Sir, I have to oppose this motion.

Mr. Vice-President : The Member is not allowed to make a speech.

Maulana Hasrat Mohani : I request you to give me an opportunity to oppose this motion of giving leave to introduce the Bill.

Mr. Vice-President : The Member can say, "I oppose" and sit down. The question is :

"That leave be granted to introduce a Bill further to amend the Government of India Act, 1935"

Maulana Hasrat Mohani : I oppose that he should not be allowed to ....

Mr. Vice-President : I have already put the question.

Maulana Hasrat Mohani : Am I only to vote and not allowed to speak, and say what is my purpose in opposing it ?

Mr. Vice-President : You will get an opportunity later.

Maulana Hasrat Mohani: I do not want it to come to the stage of consideration. I want to oppose it now. I do not want leave to be given to him. This thing must be decided first.

Mr. Vice-President: The House will decide it. I want to put the motion to the House. The question is :

"That leave be granted to introduce a Bill further to amend the Government of India Act, 1935."

The motion was adopted.

Mr. Vice-President: Leave is granted. I now call upon Mr. Gopalaswami Ayyangar.

The Honourable Shri N. Gopalaswami Ayyangar: I introduce the Bill.

Mr. Vice-President: The Bill is introduced.

I hereby direct that the publication of the Bill in the *Gazette of India* as required by Rule 38(c) be dispensed with.

The Honourable Shri N. Gopalaswami Ayyangar: Sir, I beg to move that the Bill which has been introduced be taken into consideration.

The Bill is a simple one. It deals with two matters, broadly speaking. The first matter relates to evacuee property and the relief and rehabilitation of displaced persons. The second part relates to the taking of power to the Governor-General to issue orders, for regulating any general elections in a province that may be decided on before this Act, namely, the Government of India Act, 1935, gets repealed.

Now, with regard to the first subject, honourable Members must have been following the negotiations that have been taking place between India and Pakistan as regards the custody, management and disposal of property left by displaced persons in the Dominion in which they were residing originally and from which Dominion they have passed on to the other Dominion for permanently settling there.

Now, so far as evacuee property is concerned, the present law is that the legislation should be provincial. We have an Ordinance in force in the Centrally Administered Areas issued by the Central Government. In each province and in each of some of the States there are Ordinances or laws which have been enacted by the appropriate authority for dealing with this matter within their respective jurisdictions.

Now, this multiplicity of law-making authorities for dealing with a subject which requires uniformity of legislation is an inconvenience which this Bill seeks to rectify. We have hitherto had laws or Ordinances issued by the respective legislative authorities in order to get over the difficulty in the existing Government of India Act. We have addressed Provincial and State Governments to clothe the Central Government with authority by a resolution passed in accordance with Section 103 of the Government of India Act to enact legislation that may be necessary for dealing with this matter. Some of them have sent up resolutions from the appropriate legislature. Others have not. Some of them have issued ordinances; others have passed Acts of the Legislature. But we have not got a uniform law applying throughout the country so far as evacuee property is concerned. Evacuee property is to be found almost everywhere in the country because it is really property belonging to persons who on account of the setting up of the two Dominions have made up their minds to leave India to go to and settle down there.

There is also another aspect of the matter to be taken into consideration. Negotiations are carried on between the two Dominion Governments and it is desirable that the Dominion Government should be able legislatively to deal with this matter fully. As a matter of fact, Pakistan enacts all its legislation with regard to evacuee property at the Dominion level, and as honourable Members must have noticed Ordinances and orders under Ordinances have been issued in fairly quick succession in Pakistan during the last few weeks. It is necessary that one authority like the Dominion Government here should be in a position to deal with the situation created by such legislation on the other side with promptitude and with the assurance that that legislation will be implemented throughout India. Those are really the reasons why we wish to vest this power in the Dominion Government for the purpose of enacting the appropriate legislation.

We, however, recognise that, in regard to certain details of the administration of evacuee properties, it is desirable that provinces and States should have the discretion to enact legislation or issue orders which would supplement or fill lacunae in the legislation that may be enacted by the Centre. So it has been decided that this Bill to legislate in regard to the custody, management and disposal of evacuee property should be a subject for legislation which should be included in the Concurrent List of subjects and that you will find is provided for in clause 5(b) of this Bill—the last of the five clauses. It seeks to add to the Concurrent List the following two subjects:

"31B. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

31C. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan."

There is one other matter in connection with this particular part of the Bill to which I should like to draw the attention of the House. You will find that clause 3 of the Bill seeks to add two clauses to sub-section (1A) of Section 8 of the Government of India Act. It practically repeats what is contained in clause 5(b). The reason why we have to put these two items in sub-section (1A) of Section 8 is that in the legislation that we may decide to enact on this question we should be at liberty to provide for the exercise of central executive authority in relation to these subjects. If we entered these items in the Concurrent List alone, this executive authority will not be attracted to the Centre and, as you will remember, because this House itself passed the necessary amendments to Section 8 which enabled the Central Government to take power of this kind in regard to other subjects, it is necessary that we should include it in Section 8 in order to be able to provide for the exercise of central executive power even in the provinces in relation to these subjects. As honourable Members are aware we want uniformity even in the implementation of the law that we may enact. We want also the authority to exercise executive authority in regard to the implementation of schemes of relief and rehabilitation which my honourable Colleague, the Minister for Rehabilitation, wishes to see implemented in the various provinces and which are really financed from the Centre.

So much, as regards evacuee property and relief and rehabilitation.

The other part of the Bill refers to the substitution of a new section for Section 291 of the Government of India Act. As honourable Members are aware, the present Section 291 provides that, in case no other provision exists in the Government of India Act or has been made under the provisions of that Act, the Provincial Legislature is given the discretion to enact legislation in regard to a number of matters which are mentioned in existing Section 291. Now what we are attempting to do is this. I wish to make it clear at this stage that the introduction of this Bill and the inclusion of this particular clause in the Bill does not amount to the announcement of any decision as regards the holding of general elections in any province. We have got another four

[The Honourable Shri N. Gopalaswami Ayyangar]

or five months more before we shall bring the new Constitution into force. But during this interval situations might develop in a province or in more than one province for which an appropriate remedy might be the ordering of a general election even under the existing Government of India Act. In case such a contingency should arise, we wish to be in a position to hold those elections with the appropriate modifications as regards composition of the legislature, franchise, delimitation of constituencies, methods of voting and so on. We wish to take the power to enact these things by orders issued by the Governor-General, and that is why we are putting in this clause 4. If you compare this clause with Section 291 of the existing Act you will find that there are two differences, those being contained in item (a) relating to composition of the Chamber or Chambers of the Legislature, which I believe does not exist in Section 291, and in item (j) which relates to matters ancillary to any such matter as aforesaid. All the rest of the items is a repetition of what is contained in the existing Section 291.

I have already stated, and I have said in the Statement of Objects and Reasons, that no final decision has been taken in regard to the holding of general elections in any province up to now; but it is quite possible that such a decision might be taken or might in fact be forced on those who are responsible for looking after these things between now and for instance the 26th January 1950. If such a contingency should arise we wish to be in a position to make the necessary amendments in the existing rules and regulations, even it may be in the existing provisions of the Government of India Act itself, so that we might bring those elections into conformity with the state of things as it exists today.

If, for instance, we decide to hold general elections in West Bengal or East Punjab, it would be impossible for us to ignore the claims of people who have migrated from West Pakistan into East Punjab or from East Bengal into West Bengal for being included in the electoral rolls and for being considered for election to the legislature that might have to be constituted as a result of the general elections. It may also be necessary for us to carry out modifications in the delimitation of constituencies. As honourable Members are aware, we have constituencies based upon separate electorates in these provinces and it would not be right for us, after all the decisions we have taken on the Draft Constitution, to hold general elections even under the Government of India Act, 1935, on the basis of separate electorates. It may be necessary for us so to read just the electorates as to make them conform to the general principles we have agreed to already; and I wish to warn honourable Members that what is said in the Statement of Objects and Reasons about joint electorates with reservation of seats has only been said by way of illustration. There is no decision that joint electorates should be combined with reservation of seats; it will be a matter for consideration when the Governor-General comes to issue his amendments, rules and regulations, in what way the general principle of joint electorates could be given effect to without involving an amount of chaos and confusion that might result otherwise. So I wish honourable Members to take it from me that that particular reference to reservation of seats does not represent any decision of Government and it does not mean that when the Governor-General comes to issue his amendments, rules and regulations, this reservation of seats will be provided for. The greater likelihood is that every attempt will be made to give effect to the decision which has been taken by this Constituent Assembly as regards the new Constitution.

So with that explanation I think I have given sufficient indication as to why this legislation has become necessary. Both the matters provided for in this legislation are matters which cannot afford to wait; they have got to be implemented under the provisions of the present Government of India Act, 1935.

They cannot brook delay, and therefore it is that I am troubling this Constituent Assembly, this particular session of which will perhaps be the only one at which an amendment of this sort could be moved, before we find it necessary to give effect to what is contained in this legislation. It is for that reason that I am asking the House to take this Bill into consideration.

Dr. P. S. Deshmukh (C. P. & Berar : General) : Mr. Vice-President, I may say at the very outset that I do not wish to enter into any controversy so far as the provisions in the proposed clause 3 of this Bill are concerned. My remarks and observations are going to be confined to the proposed change in Section 291 of the Government of India Act. In spite of the fact that I changed my seat for the sake of hearing Shri Gopalaswami Ayyangar carefully—(I hope I have heard him at least to the extent of 75 per cent. and I hope also that I have been able to listen to most of what he had to say)—yet I do not feel convinced that it is necessary to take the House by surprise in the way the Bill seeks to do and to place such extensive and unheard-of powers in the hands of the Governor-General.

Here the proposal is to change Section 291 of the Government of India Act and to substitute it with the one that has been embodied in this Draft Bill. I do not know whether the persons who drafted this Bill were conscious of the existence of another section in the Act of 1935, *viz.*, Section 61. In the whole of the speech that was delivered by my honourable Friend I did not find any mention of what was going to be done to Section 61, which refers to the composition of the various chambers in the provinces. There is no suggestion in this Bill whether that section will go : there is no suggestion in the Bill whether this section is going to be altered in any way. This section is a very important section inasmuch as it not only refers to the composition of all the chambers in the provinces but it has as many as three extensive schedules which are governed by this particular section.

The first schedule that is governed by this section is Schedule 1. Schedule 5 is exclusively governed by section 61 and Schedule 6 which is based on and result of schedule 5 to 9 are very important provisions proceeding from Section 61. I do not know if it is the intention of this Bill to do away with every thing that exists in Section 61 as well as the schedules referred to by one and to give the Governor-General a blank cheque not only so far as elections are concerned—I am not at all concerned about the elections to which repeated reference was made by my friend : I do not mind if the decision with regard to West Bengal has not been taken. It would not worry me if it has. What matters to me and should matter to the House is what is the exact position so far as these schedules are concerned : whether they are considered to be wiped out : whether the Governor-General after the passing of this Bill will or will not have the authority to alter the composition of any of the existing legislatures including both the chambers wherever they exist; whether he can without any further reference to the Parliament issue an order so as to alter anything that forms part and parcel of the schedule. That is one question which I would like to ask my honourable Friend. I would also like to tell him that the structure of Section 291 has been so completely altered from the one that existed before and still exists up to this moment as part of the Government of India Act, 1935, and I would ask him whether it excepts and renders nugatory all the provisions so far as Section 61 is concerned.

In this particular Bill which is before the House the beginning sentence of Section 4 reads :

"The Governor-General may at any time by order make such amendments as he considers necessary, whether by way of addition, modification, or repeal, in the provisions of this Act or of any Order made thereunder in relation to any Provincial Legislature with respect to any of the following matters . "

[Dr. P. S. Deshmukh.]

Then the various categories are mentioned. The beginning portion of Section 291 as it stands reads :

"In so far as provision with respect to the matters hereinafter mentioned is not made by this Act."

That is to say the original Section 291 gives residuary power to His Majesty in Council for supplying those omissions and making such orders so as to fulfil the other purposes of the Act. As against this, the section is going to be altered in such a way as to make the existence of Section 61 absolutely meaningless and if the section goes the schedules also cannot remain. Therefore I want to ask what is the contingency, what is the crisis or emergency that has arisen on account of which the Governor-General is going to be empowered to interfere with the composition or the very existence of the chambers in the provinces and all the various matters that have been mentioned here. I would like to ask my honourable Friend this question, because he has made no mention of Section 61. He has not mentioned why it is necessary to clothe the Governor-General with all these powers. My submission to the House is that the dignity of the House and the esteem in which it has been held by people is already suffering a great deal. We are passing all manner of legislation and making and passing many amendments to Acts or moving Bills with much less consideration than the public think they deserve. It will be in the fitness of things if I respectfully ask the honourable Members of this House to see that we do not give more powers to the Governor-General than are absolutely necessary unless the honourable Member will convince us that unless this Bill is passed some great calamity is likely to befall. So far as the elections are concerned, even supposing we are faced with a crisis in West Bengal and elections are necessary, I do not think there will be any difficulty in holding the elections. But is it necessary for that only purpose to threaten even the composition or the very existence of the provincial legislative chambers and leave them to the sweet-will and good intentions of the Governor-General himself ?

What is the crisis or emergency that is making us do this ? I do not think that there is such a crisis or emergency that it is necessary that Section 61 should not be there, that the schedules should be replaced by anything that the Executive Government of the country will propose at any time. Instead of this, why not examine the whole position and frame the new schedules and then place them before the Members of this House ? I believe the honourable Members of this House are entitled to be taken into greater confidence than has been the case in this matter. Mr. Gopalaswami Ayyangar merely said that no decision has been taken regarding the elections. That makes us ask all the more as to what then is your intention in placing all these powers in the hands of the Governor-General. If you are going to interfere with the schedules, with all the electioneering rules that are in existence today, why not say so and give some indication to the House and to the country as to the exact change you propose ? Why keep us and the country in the dark and give us a surprise and take to yourself every possible power ? The constitution and composition of the chambers of the provincial legislature are not small matters. They are matters over which years were spent. It is down on record that the Round Table Conference was not prepared to leave it to the sweet-will of the members of the Parliament. They wanted those schedules to be drafted before them. They were not prepared to leave it to His Majesty's Orders in Council. The schedules were drafted in collaboration, in the Round Table Conference in the select committees and other committees. Those schedules were not prepared by one single individual. They took months and years; and here you are by one stroke of the pen wanting to take the authority to alter them in any manner whatever. Even the composition of the chambers is not sacred to you.

I am prepared to give another instance as to why my apprehensions are thoroughly justified. This Government, Sir, is being carried on in the most arbitrary manner possible. We have had hasty legislation brought in and rushed through because we have a majority in the House and we, humble Members, could not withstand the majority opinion.

There are also so many other things that are being done. I have been searching for the last three days to find if there has been any Bill or other measure brought before this Assembly by which dozens of nominated members from the Indian States can be made members of the respective Provincial Legislatures. As many as 37 per cent. of the Members of the Bombay Legislative Assembly are now to be nominated members.

Mr. Vice-President: Will the honourable Member confine his remarks to the motion on the Paper?

Dr. P. S. Deshmukh: Yes Sir. But if I may point out respectively I am speaking strictly on the motion. I am submitting that the wide powers are absolutely unnecessary. The nominations that have been made on behalf of the Deccan States and Baroda are not based either on the popularity or the character, qualifications or the position of those people in society. Even though no regular election was held for selecting members to represent the merged States like the Chattisgarh States in C. P. on this Constituent Assembly, an electoral college consisting of the members of the municipalities, the local boards or Janapadas was formed. In this case there was at least a show of election for the purpose of representation of those areas on this Assembly. Even this system is not being made use of for the selection of members of the Legislative Assembly from the Central Provinces and Berar. Neither such a show of elections is being made so far as Kolhapur, Baroda etc. are concerned. Under what section of the Government of India Act these arbitrary powers of un-fettered nominations are being exercised nobody knows. An item of news appeared in the papers recently to the effect that 27 members have been already nominated on behalf of Baroda. If that is the way things are done without any provision therefor, I looked in vain in the Constituent Assembly Act, I of 1949, for a provision—how can we agree to give the Governor-General or other authority power to nominate members to the full-fledged Legislatures of Provinces? My submission therefore is that after the way in which we are acting and utilising the powers conferred or not conferred, I think we are entitled to look with apprehension at a Bill of this nature trying to take every possible power so far as election, franchise, qualification of candidates etc., are concerned. Even the Orders-in-Council, promulgated by His Majesty the King not in his individual judgment but after careful consideration and in conformity with the recommendations of the Joint Select Committee of Parliament of Great Britain, may be replaced in any way that the Governor-General likes. Please see the Orders issued under Section 291 of the Act of 1935, as it stood. I do not agree that by one Act we should take away the entire power conferred by the Government of India Act and leave it all in the hands of the Governor-General. I do not think the country is faced with any grave situation in this respect necessitating an Act of this kind. We have not been told about the urgency of this measure or even about its necessity. If my honourable Friend convinces me that such an emergency has arisen, that all these rules must be thrown into the melting pot and the Governor-General must be made the sole repository of all power, I would consent to this measure.

Sir, I do not propose to move my motion. But if honourable Members think that without moving my motion I should not have offered my views on this measure, which after all may not be accepted by the honourable Member in charge, I would move my motion.

Mr. Vice-President: The honourable Member may move his motion.

Dr. P. S. Deshmukh: Then I move :

"That the Bill further to amend the Government of India Act, 1935, be referred to a Select Committee consisting of :

The Hon'ble Dr. B. R. Ambedkar,
The Hon'ble Shri N. Gopalaswami Ayyangar,
Shri K. M. Munshi,
Pandit Hirday Nath Kunzru,
Pandit Thakur Das Bhargava,
Shri M. Ananthasayanam Ayyangar,
Shri B. M. Gupte,
Pandit Lakshmi Kanta Maitra,
Shri H. V. Kamath,
The Hon'ble Shri Mohan Lal Saksena,
Shri Rohini Kumar Chaudhury,
Shri Jagat Narain Lal,
Shri K. Hanumanthaiya,
Dr. Bakhshi Tek Chand,
Dr. P. K. Sen,
Shri B. Das and
the Mover."

I would also like to suggest that the Committee may be directed to report on or before the 22nd August 1949. I would be glad if this motion is accepted. The Bill deals with many fundamental points which ought to be considered more carefully. I will be happy if this motion is agreed to.

Mr. Vice-President: Shri B. Das may move his motion. I see that the honourable Member is not in the House. The motion is not therefore moved.

The next motion stands in the name of Mr. B. Pocker.

Kazi Syed Karimuddin (C. P. & Berar : Muslim) : My amendment is there, Sir.

Mr. Vice-President: The amendment of Syed Karimuddin is a dilatory motion. It is therefore out of order.

Mr. Pocker may move his alternative amendment. His main amendment is out of order because there is no provision in the Constituent Assembly Rules for circulating Bills for eliciting public opinion. He may therefore move his alternative amendment.

Mr. B. Pocker Sahib (Madras : Muslim) : Sir, of course I have to bow to your ruling whether the motion is out of order or not. But I submit.....

Mr. Vice-President: Your motion is out of order under rule 38-D. Will you please move your alternative amendment ?

Mr. B. Pocker Sahib: I am just submitting, Sir, that these rules of the Constituent Assembly are not exhaustive. Therefore on the ground that the rules do not provide for circulating Bills for eliciting public opinion, this motion of mine cannot be said to be of order. Sir, in the absence of any express provision it is the fundamental principles which governs parliamentary procedure that you have to apply and allow me to move that amendment and not rule it out of order on the ground merely that the rules do not make any express provision for it. The rules, as I said, are not exhaustive, and you know, Sir, that the Constituent Assembly has been constituted for passing the Constitution and that the provision in the rules thereof for moving of Bills and such other matters are not so exhaustive as are generally provided for by rules of procedure in Parliament. Therefore, in so far as the rules are not exhaustive, general principles should govern this case. I would appeal to you to reconsider the matter and allow me to move the first part of my amendment also.

Mr. Vice-President : I am afraid I cannot reconsider the matter. The rules are quite clear.

Mr. B. Pocker Sahib : If that is so, I bow to your ruling. I have only to make a few remarks so far as the Bill is concerned, before formally moving the motion for referring it to a Select Committee. I am rather surprised why Government should have taken to this course of springing on this august body a Bill which practically provides for an Interim Constitution before the Constitution is framed. In my opinion, Sir, the Bill is uncalled for and unnecessary and it is an autocratic measure which ought not to be passed by this House. I ask, what is the justification for bringing in a Bill of this nature at such short notice and without giving any opportunity for the people of the country to know what is going to be done here with reference to this matter ?

The Bill consists of two parts; the first portion is intended to make a uniform law as regards the management and disposal of evacuee property, but the more important portion of the Bill is Section 4 which practically imposes an interim Constitution of a very autocratic nature on the country behind the back of the people, without their knowing what is going to be done here and without making any provision for giving an opportunity to the public to express their views on a matter which vitally affects them. The provision is that Section 291 of the Government of India Act should be substituted by this new section and this new section has the effect of transferring all the powers which Section 291 gave to the provincial legislatures, to the Governor-General. In fact, it seeks to make the Governor-General the Czar of India in the interim Period before the Constitution is passed. There is nothing which he cannot do with this power vested in him. I submit that no occasion has arisen for giving such autocratic powers to the Governor-General and depriving the legislature of the power which was given to it by the Government of India Act. Now, what I ask is what are the reasons which have prompted the Government in bringing a measure of this autocratic nature. The objects and reasons are laconic; nor was the speech of the Honourable Mr. Gopalaswami Ayyangar, who is generally very lucid, very convincing to justify the passing of this autocratic measure. Why should all the legislative powers which vest in the provincial legislatures be vested in the Governor-General at present ? He has not stated any reason which justifies such a measure. He made a passing reference to West Bengal. We are all aware of the state of affairs in West Bengal and we do hope that the Government will with an iron hand put down such tendencies and retrieve all this havoc which is being done by the Communist Party there. If the Government manage things properly, they can control the situation and I do hope that they will control the situation in West Bengal and in any other part of India where it might arise, but no such crisis has arisen in any other part of the country. Now, the question is why should a measure like this be passed ? Well, there is a saying in Malayalam which says—

"Elikku vendi Illum chuduka."

which means, "Burn the house in order to destroy the rat". The rat is doing mischief and therefore burn the house so that the rat also may be burnt. This is not wise and it is unbecoming of this Government to resort to a measure like this. What I would ask is, has the Government considered the public opinion in this matter which purports to substitute an interim Constitution before the new Constitution is passed by this House, by making not merely any modification in the powers of the legislature but transferring the whole power from the legislature to the Governor-General, that is the executive. Is this justifiable ? Has the Government taken any steps to find out what the public opinion is on this matter ? Is this a matter in which the Government

[Mr. B. Pocker Sahib.]

will be justified in acting in this autocratic manner? As has already been pointed out by the previous speaker, it is not merely the powers mentioned in Section 291 that are conferred on the Governor-General but also the very constitution of the legislative chambers, as to whether it should be one or two, or how it should be constituted. Everything rests with the Governor-General. This is a step which the Government will not be justified in taking particularly without taking any steps to elicit public opinion. It is for that purpose that I gave the first part of my motion but you have ruled it out of order and I bow to your ruling. All the same I cannot but say that the Government is not in the least justified in bringing a measure like this without giving an opportunity to the public to express their opinion, and that too in a sudden manner like this.

Of late I have noticed a particular attitude on the part of the Government. They forget that they are there to govern the people on democratic basis. They have thrown to the winds all democratic principles and they think that they can do as they like because for the present they have got the backing of a majority in the legislatures. This is a false idea that the Government is entertaining. The Government ought not to forget that they have to respect democratic principles and they should not behave in a manner which throws to the winds all democratic principles. They should take the public into their confidence and they should take the members of the legislature into their confidence before resorting to a measure like this. Therefore, Sir, I submit that there is no necessity, no justification for passing a measure like this, by which the powers of the provincial legislatures are bodily transferred to the Governor-General. This is absolutely uncalled for and autocratic.

As regards the second part of the motion, you know that a motion to that effect has already been made and therefore I do not wish to propose further names. I support that motion.

Shri H. V. Kamath: Mr. Vice-President, Sir, I have no hesitation whatever in saying that clauses 4 and 5(a) of the Bill before the House are a constitutional monstrosity. I repeat, Sir, bearing in mind all that is happening around us today and in spite of what is happening in the country today, that this part of the Bill is nothing short of a constitutional monstrosity. I would like to sound a note of warning, a note of caution to this Sovereign Assembly. It is with deep regret that I have to say so, and the House will pardon me when I tell them and remind them that this sovereign body is being treated with scant regard by those in power. It is not at all pleasant for me to say so. I have noticed during the last few months the manner in which our Constitution, our Draft Constitution has been sought to be dealt with, sought to be revised and altered and in some places retrogressed. This Bill before the House today bears the very same impress, the impress of the man in power caring little or nothing at all for those that legislate, not merely legislate, for those that are called the founding fathers of a country. It is, Sir, a very poignant and regrettable day for me today to resist with all the power at my command, to resist with all the resources that I am capable of, the last two sections of the Bill, namely Sections 4 and 5(a) of the Bill moved by my honourable Friend, Mr. Gopalaswami Ayyangar.

The House will bear with me when I remind them when I bring to their notice in what ways and in what manner this part of the Bill strikes a retrograde note, a reactionary note, even as compared with that piece of legislation—the Government of India Act, 1935,—which was at that time and even later on, condemned, not merely by those leaders of ours today but by many others too in our country. My honourable Friend, Dr. Deshmukh has laid his finger

on Sections 61 and 291 of this Act. Even this reactionary Government of India Act—it was dubbed reactionary by most progressive thinkers, by most progressive leaders in our country—and even this Section 291 of this Act does not divest the Provincial Legislatures of any power with respect to those matters specified in that section.

Now Section 291 is sought to be amended by clause 4 of the Bill moved by Mr. Ayyangar. Clause 4 includes besides the matters mentioned in Section 291 the composition of the chambers of a legislature, and the crux of the matter is this. The vital point which honourable Members should note is that the men in power have no regard for the dignity of this House, they have no regard for the sovereignty of this House. I would invite them to look closely on this aspect of the measure before us : not merely have the Provincial Legislatures been divested of any right with regard to those matters mentioned in Section 291, not merely has this Constituent Assembly been divested of all power with regard to the above matters concerned in Section 291 of the Government of India Act, not merely that, we are going not one step backward, but perhaps one hundred steps backward and our men in power do not realise that they are going backward and that is what pains me. Mr. Ayyangar's speech was cold and lifeless.

The Honourable Shri N. Gopalaswami Ayyangar : I thought the honourable Member did not hear it.

Shri H. V. Kamath : The reason for it is that only the vibrations of a warmer body could have reached me. The cold vibrations were not powerful enough or were not long enough to reach me. I wish to state that I am labouring under a handicap because many of the precious things that he said were unheard by me, at any rate. Heard melodies are sweet, but what was unheard was perhaps sweeter than what was heard, and the speech that he made in while moving this Bill was absolutely unconvincing. There was not even a note of apology for what the Government of the day decide to do today, not even trying to excuse themselves on the score either of an emergency or lack of time, and not even trying to excuse themselves for good or for ill—I believe more for ill than for good, they are trying to go back and trying to enact a retrograde measure. Perhaps Mr. Ayyangar, who is in charge of the Bill is not aware in his heart, may be he is aware in his head, of the fierce movement that raged in this country against the Government of India Act; and it does not occur to him, to his heart, to at least sound a note of apology, to come before this House and say : "There is such and such a thing. We have no other go; I am sorry for this". I however do not expect that, because he was one of those persons who was not immediately affected by the movements for freedom in this country.

Now let us persue the Statement of Objects and Reasons. The paragraphs are unnumbered and therefore I cannot quote the number of the paragraph : it is perhaps just an omission or slip or an over-sight; I shall only refer to the paragraph which deals with this part of the Bill before us. The House will see that it speaks of a hypothetical case. From first to last, it is a hypothetical case laid before us. If you pursue the language of this paragraph which as I have already said is hypothetical, you will see that these clauses are an insult to this House, are an insult to the sovereignty and dignity of this House. I do not want to mince my words; the language of even the Statement of Objects and Reasons is absolutely derogatory to the dignity and sovereignty of this Assembly. "Should it become necessary", it may be perhaps, probably, etc. etc.... Hardly, Sir, have I come across not merely in this country, but in other countries which have professed to be democratic, a Bill of this nature, a vital Bill of a fundamental character being rushed through the legislature in this

[Shri H. V. Kamath]

fashion. It is a day of sadness for me, when we in this House are being trifled with in this fashion by the men in power. I hope better counsel will dawn upon the men in power and I hope wisdom will dawn even upon the wise men. I hope even now the so-called wise men will see better sense and mend their ways.

Coming to the other aspects of this Bill, I would only like to say that the men in power seek to convert or rather treat this House as a legislature whenever it suits their convenience; and whenever it is not needed for their purposes, they go in their own way. The other day, I had occasion to point out that an Ordinance which lapsed after six months, might have been easily brought before this House which was then sitting and enacted into law, and should not have been renewed. With great regret, I have to say, on many occasions the British observed better standards. I am sorry to say that we, Sir, with all our professions of democracy—and this touches my heart most profess to treat the Legislature as a sovereign Body and when it does not suit us, it is nothing at all. That is the worst part of it. That Ordinance was renewed without reference to us. The House was sitting then it could have been converted into a legislature and we could have been asked to consider that and pass a law; it could have been done within an hour or so. But today, because there is some other purpose they have come before us with this Bill. It is a sad episode. I do not know how other Members feel about it; but I, Sir, feel very sad indeed.

Then, I think, Dr. Deshmukh has referred to the power being vested in the Governor-General, with regard to the altering of the composition of the Chamber or Chambers of any provincial legislature. Mr. Gopalaswami Ayyangar, if I heard him aright when he moved the Bill, referred to West Bengal, and to the things that are happening in West Bengal. The Statement of Objects and Reasons refers not merely to West Bengal, but to any other province. It is disgusting that such a language of a purely hypothetical or casual nature should be used in a Bill of this nature, in the Statement of Objects and Reasons. Are we not entitled to more regard from these men in power? If they do not want to give better regard and respect, I personally would like the Assembly to be wound up and the men in power take all the power into their own hands, the Governor-General or his Cabinet, whoever it is. I do not want this body to be mocked at. The men in power make a mockery of this body; this is what pains, angers us. But what avails anger? What can we do? The men in power are callous, impervious to our protest, to our indignation; there seems to be no way out. I am sorry that I have used strong language; but my heart has been deeply stirred and I cannot but use the language that I am using. The composition of the Chamber or Chambers which even Sir Samuel Hoare did not include in Section 291 and which was included in separate sections, Section 61 and the 5th schedule,—all that has been included in this jumble of powers that is sought to be vested in the Governor-General. I hope there is no ulterior motive behind it. I hope that the Governor-General or the Government is not seeking to pack or unpack the provincial legislatures to suit their own ends and their own requirements.

Then, Sir, I would have liked very much that every one of the matters that is referred to in this Section 291 might have been brought before the House for its approval. But that was not to be. Right from the franchise, the qualifications for election as a member, up to the apex, the composition of the Chamber or Chambers, powers are vested in the Governor-General. Government's intention may be very good in bringing this Bill before the House. I do not question the intention of Mr. Ayyangar. But, as the adage goes, the way to Hell is paved with good intentions: intention may be good, but if the intentions are not implemented in the proper spirit, I for one, cannot foresee what is in store

for our country. Slowly we are going down the slippery slope, whether to perdition, or perhaps disaster, or the sabotage of democracy, I cannot say. But, the way in which we are going stirs me deeply and I hope we in this House will be awake to the realities of the situation and stop the rot before it is too late. I would plead with Mr. Ayyangar and the men in power,—though of course in this House they are not Ministers and every one is a member in this House,—and the men in power . . .

An Honourable Member : Today.

Shri H. V. Kamath : Yes, today they are men in power here—to revise the Bill, to refer it to a Select Committee and to see that at least the powers vested in the Governor-General are not arbitrarily exercised, or at least as a safeguard that any changes made in the Government of India Act be brought before this House for its approval. That at least would preserve the facade of democracy—that is I suppose the aim of our Government. The spirit, the kernel of democracy is being discarded leaving the empty shell behind, and I hope that Government will not continue in their ways and will be wise—they are today wise in their own conceit,—but I hope they will be wise before tragedy overtakes us and they will treat this House with greater dignity, regard and with due consideration for its sovereignty.

There is another point. The Governor-General has been invested with the power in regard to the delimitation of territorial constituencies for the purpose of election under this Act. The Parliament or this Assembly will have no control over whatever the Governor-General might do in this regard. I am very much concerned over these matters included in clause 4. It may be that today in a particular province you have some trouble and you have some difficulty, but what is happening today is not the only thing which a Constitution does contemplate. The Constitution lays down that the President may proclaim, before assuming extraordinary powers, an emergency. Now without a Proclamation of Emergency the Governor-General is assuming today various powers to himself which were not envisaged by the framers of the Government of India Act. There is no indication in the Bill that even the major alterations that might be made regarding these matters will be brought before this House for approval. If that were done it would have been something, because otherwise the suspicion is natural in the minds of many if this were passed as it is, that Government might so alter the composition of the Chambers and so gerrymander the constituencies as to suit their own purpose. I for one look upon this with great anxiety, and the House will be seriously mistaken and will be failing in its duty if at least they do not register their protest at the passing of such a constitutional monstrosity. I refer only to clauses 4 and 5(a) of the Bill.

One last point and I have done. I hope that this House has got an eye on the welfare of our country. I hope we are acting or moving in this Assembly in that spirit, that we are representatives of the whole nation and considerations of party will not weigh so much with us. I do not know how other honourable Members feel about this, but at least I hope, and pray to God that we may be enabled to act in this spirit, that we stand for the nation and not for a party, and I hope the House will so move in this matter that the world outside—our own compatriots outside will say of us that none here was for a party but all were for the nation. I therefore appeal to the House, and to Mr. Ayyangar who is piloting this Bill to bestow more consideration on this measure, to have greater regard for the House and enact such legislation that we, who are framing the Constitution for a Sovereign Democratic Republic will not be falsified or will not go out with a lie in our soul and we may not be exposed to the contempt and mockery of our fellow-men.

I would only say in the end that the Preamble to the Constitution tells us definitely that the Constitution is for a Sovereign Democratic Republic, but the way I see things being done lately tells me that there is something wrong,

[Shri H. V. Kamath]

somewhere, something rotting somewhere. Either we stick to the one or to the other. If we try to continue our profession of building a Sovereign Democratic India and also try to go in the way we are going today, I think that all will not be well with us, and our nation will not attain that prosperity, that dignity in the comity of nations which all of us here have at heart. I appeal finally to the House not to pass this measure in such a hasty manner and—if it is sought to be rushed—at least to register its protest against clauses 4 and 5(a) of the Bill.

Kazi Syed Karimuddin: Mr. Vice-President, the Bill is presented by Mr. Gopalaswami Ayyangar for whom I have the greatest respect, who is known for mathematical accuracy, sincerity of purpose and fairness. But in this Bill I find everything is indefinite, everything is vague and we do not know where we are going and for what purpose we are enacting the Bill. It is very surprising that this Bill has been presented by a man who is known for mathematical accuracy as I have said. In the Statement of Objects and Reasons it is stated that—

> "Should it become necessary that a general election under the Government of India Act, 1935 in West Bengal or any other province has to be ordered at any time, special provision may have to be made for the extension of the franchise to those displaced persons from Pakistan who have settled or intend to settle permanently in India. It may be that these elections would have to be held on the basis of joint electorates with reservation of seats."

On the preliminary speech made at the time of moving this motion and at the time of consideration of this motion the honourable Member did not state at all why there is an occasion for holding election in West Bengal or where is the occasion for joint electorates with reservation of seats when this Assembly has already decided that there will be no reservation of seats except in the case of Scheduled Castes. I do not know why, if the Government thinks that this principle of reservation of seats is a pernicious principle, it wants to introduce this principle, especially when this Constituent Assembly has already decided that there shall not be any reservations for any community, except the Scheduled Castes. Further it is stated that no decision has been taken about an election in West Bengal. I know that crimes of violence and. . . .

The Honourable Shri N. Gopalaswami Ayyangar: May I draw the attention of the honourable Member to what I said in the course of my speech, so far as that particular matter is concerned? I think it is too late in the day for him to say that the Government or myself have blessed this idea of joint electorates with reservations.

Kazi Syed Karimuddin: But in the Statement of Objects and Reasons, there is the mention. I will read it again . . .

The Honourable Shri N. Gopalaswami Ayyangar: May I say that there is no need to read it? I read it out and explained why it was put in there.

Kazi Syed Karimuddin: It is there said—"Should it be necessary to hold elections in West Bengal. . . .". I know crimes of violence and dastardly attacks are rampant in West Bengal. But is that the only reason for holding the election? Is it because of these crimes that the elections are to be held? Mr. Gopalaswami Ayyangar has not stated before us where is the occasion for investing these powers regarding elections, and for what purpose are the elections to be held. Now it should be stated on the floor of the House as to whether the Government of West Bengal is bungling and the elections are to be held for placing a new government in place of the present government, or whether the Government of India wants to test popular opinion there, to see whether it is faithful to the Congress party and the Congress Government or to any other

party. If the first proposition is correct, that it is only because of the crimes of violence and dastardly attacks which are being made on the peaceful citizens of Bengal, then the remedy is not the holding of elections, but to put down the anarchy that is prevailing. If, on the other hand the holding of elections is to test popular opinion in West Bengal, whether it has faith in the present system of government or not, then you have to introduce election based on adult franchise, and not . . .

The Honourable Shri N. Gopalaswami Ayyangar: May I rise to a point of order, Sir? I do not think a debate on this Bill should be converted into a debate on the West Bengal political situation. After all, what is contained here is simply to take power for it, in case it became at any time necessary to hold general elections. I have clearly explained the position and it is premature for us to discuss that situation here.

Kazi Syed Karimuddin: There is a reference made in the Statement of Objects and Reasons, and it is very necessary to see if such powers should be invested in the Governor-General or not. So, my submission is that the taking of powers to hold elections in West Bengal is premature, unless the reasons are placed before this sovereign body. If you want to test popular opinion, why make hurry and hold the election on a limited basis, when the Government of India has assured us that general elections will take place in 1950? Holding the elections now is only to defeat the popular cry, and there can be no other possible reason why elections are to be rushed; unless, of course, it is admitted that the present government is bungling and it has to be removed, in Bengal.

The Honourable Shri N. Gopalaswami Ayyanger: I have never said that elections are to be held.

Kazi Syed Karimuddin: You say. "In case....."

Now, the second thing is this. Section 291 gives such absolute powers to the Governor-General that even the emergency powers that you have given to the President are nothing compared to these. Under the Government of India Act, the Governor-General is only a constitutional head. It has been stated that there is no emergency, there is no crisis and there is no urgency. Then why, instead of enacting laws under Section 93 and the enactments regarding elections why all these powers are being given to the Governor-General, it is difficult to understand. The power to amend, to repeal, and modify any provision of this Act or any order passed under this Act is to be given to the Governor-General. I say such a provision is most undemocratic. Any Act of the Parliament will always be amendable by the Governor-General and any order passed in this House can be repealed, modified or amended by the Governor-General. In other words, it will mean that the Governor-General can over-ride any order and he can make any amendment. Therefore, my submission is that before clause 4 is accepted by this House, we should know why all these powers are assigned to the Governor-General.

Regarding clause 3 of this Bill, I have nothing to say. Displaced persons who have come from Pakistan have suffered terribly, and those who have left India cannot have it both ways, of living there and also deriving the benefits from the property left in India. But one defect of investing the executive Government with powers is exhibited in the recent Ordinance in the United Provinces. In twelve districts in the U.P. property of all Muslims is inalienable. There is a ban on the alienation of the property of those who have made India their home. This is one of the defects of authorising the executive to the extreme, and this is my main objection. When you authorise the executive to amend or repeal the laws made by Parliament, then what happens is seen in the U.P. Whatever laws you pass, whatever orders you make, whatever restrictions you lay on the property of those who have left India—and I hold no brief

[Kazi Syed Karimuddin]

for them—, but for those who have made India their home, are such laws to be passed as have been passed by the executive in the U.P.? Can it be said that with regard to the attitude of Pakistan and in view of the property left by Muslims here, will you treat the Muslims here as a guarantee for the property left over there? The powers you want to invest the Governor-General which are of a very sweeping character, are unprecedented and undemocratic. Such powers should not be given and I am entirely opposed to this Bill, and I oppose it.

Mr. Vice-President: Mr. Biswanath Das.

Dr. P. S. Deshmukh: May I move my other amendment before Mr. Biswanath Das speaks?

Mr. Vice-President: That will come up when the individual clauses are taken up.

Shri Biswanath Das (Orissa: General): Sir, I am amazed and upset at the speeches and the way in which the discussion is being carried on, over this Bill. Sir, we have been told that the Bill is vague. I do not know how it is so. The Bill proposes to make provisions under two heads. The first relates to evacuee property, and the second to any anticipated election in West Bengal. On these questions, the provisions are clear, distinct and are quite normal. I do not see any abnormality in any of these provisions that are set out and that are sought to be amended, in the Government of India Act, 1935, as adapted. Sir, it specially pains me to hear from my honourable Friend Dr. Deshmukh that we are functioning as a single party. True it is mainly so. But is it a sin? Is it a sin, after all to have a House mostly of one party? That is the natural course of things in democracy and democratic institutions. The very fact that we ourselves are running the Government and playing the role of opposition goes to prove the highest democratic traditions maintained by the Congress. Sir, even a casual look into the proceedings of the Constituent Assembly, either in framing the Constitution, or on the parliamentary side, will prove beyond doubt the highest traditions of such democracy maintained by the Congress Party. The very fact that my honourable Friends Mr. Kamath and Dr. Deshmukh always raise their voice of protest, though Congress members, without being interfered or hindered by the party goes to prove the highest traditions of democracy maintained by the Congress and its official section who today run the Government. Under these circumstances, I do not see how my honourable Friends would be justified in speaking of one-party rule. At least this aspect of the criticisms comes with the least fairness to themselves and to the party to which they have the honour to belong.

Sir, my honourable Friend Mr. Kamath, for whom I have always have affection, speaks of the monstrosity of the provisions of the Bill. I pause to hear from him wherein lies the monstrosity of the proposals.

Shri H. V. Kamath: Clause 4; nothing else.

Shri Biswanath Das: I am thankful to him, if it is his view that the teeming millions of evacuees who have been uprooted and migrated from Pakistan should have no representation or franchise; if that is so, certainly it is a monstrosity! But I think the opposite holds true in this case.

I recollect what has been done in Pakistan. This change has already been done in Pakistan both in the Centre as well as in the West Punjab. Therefore, there is nothing to call it a monstrosity of the Constitution. I hope my honourable Friends will not hereafter use similar expression, because the very fact that we have declared, that our leaders have thought of declaring themselves to abide by the wishes of the popular verdict goes to confirm the opinion, namely, that the Congress is the greatest democratic body and the greatest democratic institution that you have in the world.

Sir, much has been said about the elections in West Bengal. I do not agree with my honourable Friends' declaration that they would dissolve the Bengal Ministry and have fresh elections. I do not see any basis, much less any justification for the same. One single bye-election is not a test of the confidence or non-confidence of the people. If the confidence of the people in the Congress organisation is the test, I think we have amply demonstrated it. In my own province we have, soon after the election in Bengal shown to the world that even today we carry the confidence of the rural masses, the millions and crores of rural masses who constitute the people of India. Sir, not only in the Assembly bye-election . . .

Dr. P. S. Deshmukh : Nobody ever questioned it.

Shri Biswanath Das : The general election in one district and bye-election in several district boards have demonstrated beyond any semblance of doubt that the Congress still carries the confidence of the masses.

Mr. Vice-President : I do not think these remarks are relevant in view of what the honourable Member has said—that no decision has been taken on that point.

Shri Biswanath Das : I am glad if no decision has been taken regarding Bengal bye-election, but the statement issued by the Honourable the Prime Minister soon after his visit to Calcutta goes to show that they are at least thinking loudly in terms of dissolving the Assembly and ordering elections. That is why it is a relevant point. I shall, however, be brief in my remarks in regard to that matter. Furthermore, the recent district board elections in Madras have proved to the hilt that even in the province of Madras Congressmen have not at all lost the confidence of the people. Under these circumstances, I do not at all agree with our leaders and I am very glad now to be assured that that decision is not final.

Sir, much has been said about democracy. I do not know wherein anything has been done in the course of the Bill to affect the democratic notions of the people, or the democratic notions as they are realised an dunderstood by Congressmen. If composition of differences and leaving everything to the will of the people means democracy, both these are being satisfied in full within the four corners of the Bill.

Sir, regarding evacuee property the Government have been negotiating with the Pakistan Government. Sub-clause (1) of paragraph I reads: "Property has been left behind in either Dominion by those who have migrated to the other. This is being called evacuee property. It has to be taken over managed and disposed of according to any agreement reached between the two Dominions". They propose to have further negotiations in this regard. There cannot, therefore, be any objection in this regard from any quarter. I for myself feel that strong measures in this regard are necessary to ensure rehabilitation of evacuees who have migrated from Pakistan. To me it seems that the Bill is a necessity and that it should be passed without much discussion, and the sooner you do it the better for all.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. Vice-President, Sir, this House has been treated to a number of shocks, but this is the rudest shock that I have so far experienced. This Bill has raised all this controversy because it has mixed up two independent points—one good and the other thoroughly bad. So far as evacuee property clauses are concerned, nothing need be said. So clause 3 and the second part of clause 5 may be accepted.

Now we come to clause 4 and the consequential part of clause 5. Clause 4 seeks to give extraordinary powers to the Governor-General, in support of which unusual reasons were given by the honourable Member in Charge. I

[Mr. Naziruddin Ahmad]

thought urgency alone would call for haphazard and vacant clause like this. But we are now told that there is no urgency and there is no election in contemplation. If so, clause 4 and the consequential provision in clause 5 can wait. The Honourable the Prime Minister went to West Bengal and later made a declaration that there will be an election in West Bengal, a declaration which was accepted with mixed feelings in different parts of the country. The Ministers in Bengal thought they would have a chance of rehabilitating themselves, but I hear there is an attempt in West Bengal to postpone the election by hook or by crook. I submit that the passing of this clause here in this undigested and incomplete form will lead to considerable speculation and suspicion about the motives of Government. Admittedly there is no urgency and hence no immediate need for this clause 4. As pointed out by Dr. Deshmukh this clause which seeks to replace Section 291 of the Government of India Act goes directly against Section 61 of that Act under which the constituencies in the various Provinces should be as laid down in the Sixth Schedule, whereas under the new proposed Section 291 the entire structure may be broken up. I do not know why on the threshold of democracy it should be thought necessary to arm the Governor-General with these extraordinary powers when there is no urgency. The best thing would be for Government to find out what is needed in West Bengal or elsewhere as regards delimitation of constituencies, preparation of voters' lists, adult franchise, etc. These should be clearly ascertained and concrete proposals placed before the House.

As it is, the House is asked to sign a blank cheque on the understanding that the Governor-General will do the needful. If we could utilise the Governor-General like this the Legislatures and the Constituent Assembly would be useless. I submit that the name of the Governor-General should not be introduced like this to lend weight to an absurdity. The House has the greatest respect for the intellectual and moral qualities of the Governor-General. But he will act on the decision and advice of his Ministry which may ultimately mean the advice of a Departmental Secretary. When we consider the tremendous constitutional implications of the drastic powers which are sought to be conferred on the Governor-General we should shudder at giving these powers to him. I think he will have to enact a new Government of India Act for interim elections : in fact he will have to think of a new definition of citizenship,—whether refugees are citizens and should be given votes, etc. All this would take time, and in the meantime mischief-makers will be inclined to argue that this is one way of shelving the election which was announced by the Prime Minister after so much deliberation.

If there is to be election in West Bengal I think it should be held without delay. This is not a general election but an interim one. If the Ministry has lost public confidence the best thing is to let them go to the electorate and stay or quit according to the result. As this would be an emergency election, it should be carried on with the existing voters' lists in the usual manner. If any changes are thought necessary or desirable the House should be told in what way they are necessary and should be given an indication about electoral rolls, joint or separate electorates, reservation of seats, whether there should be fresh voters' lists, etc. There is no harm in allowing this matter to wait till the House is given something concrete so as to enable it to come to a proper and correct decision in the matter.

The powers asked for are of a very revolutionary character. I do not wish any more to take up the time of the House over this but I should think that this procedure of asking for powers without any necessity would create a very bad impression and would supply some amount of justification for adverse criticism of the government. The best way to establish democracy is to allow people to make mistakes and to learn from experience.

In those circumstances, as is now admitted there is no urgency about clause 4. This clause—the most debated one—should be withdrawn. It has received opposition from different sections of the House and I believe even those honourable Members who are not taking part in the debate are mentally not satisfied with the justice or propriety of this clause. In view of the fact, that there is no urgency, I believe no action is contemplated. Everything is in the air and this clause also should be left in the air. I submit that there is plenty of feeling outside the House that all is not well in the House and therefore in order to allay their fears, which may not be fully justified, we should be allowed to proceed in a systematic and constitutional manner and not be asked to say ditto.

The Honourable Shri Satyanarayan Sinha (Bihar : General) : Sir, the question may now be put.

Dr. P. S. Deshmukh : Sir, on a point of order, may I point out that the amendments have not yet been moved.

Mr. Vice-President : The amendments are for the clauses. The question is :

"That the question be now put."

The motion was adopted.

The Honourable Shri N. Gopalaswami Ayyangar : Sir, during the debate on this motion several honourable Members have concentrated their attention on clauses 4 and 5 of the Bill, and even in respect of clause 5 the brunt of their opposition is to item (a) of that clause. The main charge levelled against the provisions contained in these clauses is that an ostensibly democratic government has adopted the most undemocratic method for trying to get legislation through this House, which really confers autocratic powers on some individual. That is not the way in which this particular Bill should be viewed. These clauses provide for a state of things which may emerge and which may justify the dissolution of an existing provincial legislature and the ordering of a fresh election to get new members into that legislature to take the place of those that are now there. Now what will be the justification for the dissolution of that particular legislature ?

Honourable Members have so often referred to West Bengal in the course of their speeches that I would only refer to one particular circumstances which perhaps more than any other might justify the dissolution of that provincial legislature, and that is that that legislature is not functioning in an honest democratic way, perhaps. This is only the kind of thing that could be said by those who are in favour of the dissolution. That democratic legislature is broken into groups which are warring with each other and the administration of the province has been endangered by the fact that it is not functioning in the proper democratic way. Let us suppose that dissolution is ordered. The motive for that dissolution can only be that in the place of a legislature, which is not functioning in a proper democratic way, we want to get together a legislature which will be less undemocratic or perhaps more democratic than the present one. The only way in which such a new democratic legislature can be constituted is to base it on the votes of the electors. This electorate has undergone several changes after the Government of India Act, 1935, as adapted, came into operation. If we are going to hold a general election it is necessary that certain changes will have to be made in particular matters connected with the holding of elections. Such matters may even relate to the composition of the legislature. Let me draw the attention of the House to the fact that after the Government of India Act, 1935, was enacted, and elections were held and legislatures came into being, we have changed the composition for instance, of the West Bengal Legislature. That was done by the power that was vested in the Governor-General of the time for adapting the Government of India

[The Honourable Shri N. Gopalaswami Ayyangar]

Act, 1935. That was the first attempt at changing what was put into the constitution in a Schedule. Now after having made that change power was given to the Governor-General to make modifications or amendments even in what was put into the adapted Act.

Let me also refer to the fact that before the Act was adapted there was a provision in the original Act of 1935 which vested power in His Majesty by Orders in Council to make modifications in these various schedules relating to the composition, franchise, holding of elections, etc., in the schedules to the Act. What are we doing now? We have got now a legislature which has got to function until, say, the 26th January next, and you will remember that in the Draft Constitution there is a provision that the provincial legislature in being at the time of the commencement of the new Constitution will continue to function as the provincial legislature during the transitory period between the coming into force of the Constitution and the holding of regular elections under the new Constitution. We must have a legislature if we want to act in a democratic way in the coming year, even in West Bengal, by the time we, for instance, bring the new Constitution into force. That has got to be done somewhere between the date on which the dissolution is ordered and 26th January next.

If changes have to be made in the Schedule for the purpose of holding the elections, there ought to be power in the hands of somebody to make the changes. We are vesting the power in the hands of the Governor-General. This is not a new thing. Under the Government of India Act this sort of thing is being done. It is only following what we put into the Act when it was adapted and what we have been acquiescing in all these months. What is there after all wrong in putting these powers into the hands of the Governor-General? The Governor-General has to act on advice. All Members are aware of that fact. If that advice has to be given, it is preferable in the circumstances which exist in West Bengal or which may come to exist in other provinces that that advice is given to the Governor-General by the Centre and not by the provincial Ministers to their Governor, the legislature which has got to be dissolved. Therefore it is, I think, justifiable that these powers should be vested in the Governor-General rather than in anybody else.

I was rather struck by the strong language which my honourable Friend Mr. Kamath allowed himself to use I can understand the strength of that language. But I am afraid he was rather inclined to look at the thing from a level which had no relation to existing facts or facts as they will exist between now and the 26th January. I would be at once with him if we were going to make this the normal feature of the Constitution. It will be a very wicked thing to do so. But we have got to recognise the fact that, if elections have to be held, these changes have to be made and it is not easy to convoke the Assembly again in its constitution-making aspect for the purpose of making these amendments in time to allow of electoral rolls being prepared on the basis of these amendments and elections being held.

Shri H. V. Kamath: May I know, Sir, what is the difficulty in bringing such amendments before the Assembly for the consideration of the Governor-General? We can sit for some time longer to consider them.

The Honourable Shri N. Gopalaswami Ayyangar: The honourable Member is perhaps not aware as to how things are done. We cannot put amendments before the House unless we consult responsible people in West Bengal as to what should be done. That is the democratic way of doing things.

Shri H. V. Kamath: You may take your own time.

The Honourable Shri N. Gopalaswami Ayyangar : If the honourable Member wishes me to put a series of amendments before him out of my own brain, that will not be democratic.

Shri H. V. Kamath : I am sorry I have been misunderstood. I did not mean that. I wanted to ask him what difficulty there is in the way of bringing up this measure for consideration of the House at a later date when the matter has been finalized.

The Honourable Shri N. Gopalaswami Ayyangar : The only difficulty is that this House is a constitution-making body. If the programme we have all in view is carried out, we will cease functioning for constitution-making purposes practically finally within the next fortnight and we shall be meeting again only for the purpose of passing the third reading. I cannot say whether this will be in October or even in January. We cannot afford to take the risk of its not meeting for the purpose of holding an election which may, on political grounds, be absolutely necessary to hold in time for the purpose of creating a legislature which will be in existence on 26th January. That is the reason why we have come to this meeting for the purpose of getting the power to do so. That is the real answer to Mr. Naziruddin Ahmad.

There were points which Dr. Deshmukh made for which I have the greatest respect. His main point was that there is a fundamental proposition embodied in Section 61 of the Government of India Act and that under this Bill we are taking power to do something which might enable the Governor-General to over-ride the provisions of that section. Now let me point this out : Section 61, when it was enacted in 1935, referred to the composition of each provincial legislature in Schedule V. That composition had to be changed when Partition took place. The method that was then adopted was that the Governor-General adapted Schedule V. This involved very substantial changes and the altered Schedule came to be identified with the provisions of Section 61. There was a change in Section 61 as originally enacted in the then Constitution. Now what are we proposing to do? It may be that it will become necessary for us to change that composition once again. We are giving power to the Governor-General to make such changes as may be necessary in the Constitution by an amendment of Section 61 and Schedule V if he is advised that that is the proper course to take. There is nothing in it which can justify its being characterised as a constitutional monstrosity—language which my honourable Friend Mr. Kamath too often indulges in. There is nothing unconstitutional about it. We want a change. We adopt the best method, the proper method, the method in the circumstances which would be fully justified if we vest this power in the Governor-General.

Now, the other point that he mentioned was : 'What is to become of the Schedules ?' When the Governor-General issues these orders he will take the provisions of the existing section 61 and of the Schedules into consideration and see what changes are necessary in them. Those changes could be brought about merely by amending them. If they are to be brought about by repealing them or portions of them, we will repeal them and substitute other things. It is only a question of how the thing will be drafted in order to make the changes that may be necessary.

The other point he made was that in certain cases where the composition of this Assembly has to be changed, power has been taken to nominate persons instead of providing for elections. I suppose he also meant that this kind of thing has been done in regard to the Bombay legislature also. That may be so. The point for consideration so far as we are concerned is this : We give power to the Governor-General to amend the rules and regulations

[The Honourable Shri N. Gopalaswami Ayyangar]

relating to elections, to constituencies, to the method of election, to the franchise and so on. There is nothing which dictates to the Governor-General that he should not do this or that. If you have any confidence in your own Government then you ought to see to it that they do not adopt methods which are not acceptable to you. If they do adopt such methods you must adopt such measures as will make them do what you really want them to do in such circumstances.

That is no argument against vesting these powers in the Governor-General. There is no direction that he should nominate persons to the legislature. There is no direction either way. As a matter of fact, nomination is not mentioned in this clause. It refers mostly to elections. The only thing it does is it puts it in the power of the Governor-General to determine the composition of the legislature.

Now, I think I have answered the main points, but there is one thing which, I am afraid, honourable Members are a little touchy about and it is this : they do not want the Governor-General, advised by the Executive, to do this without reference to the legislature at all, and I think I agree with them that whatever is done under the powers that are now being taken should be placed before the legislature so that it may have an opportunity of seeing whether these powers have been properly exercised, and from this point of view I am willing to accept Dr. Deshmukh's other amendment, if it is slightly modified in this form :

"Every Order made under sub-section (1) of this section shall, as soon as may be after it is made, be laid before the Dominion Legislature."

If this is acceptable to Dr. Deshmukh, I am prepared, if he moves it, to accept it. I think that in the circumstances the House will not insist on this Bill—which is a simple Bill—being sent to a Select Committee and more time of this Honourable House being unnecessarily spent on this, time which could probably be better devoted to our dealing with the main Constitution.

Dr. P. S. Deshmukh : I would beg leave to withdraw my motion.

The motion was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is :

"That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

The motion was adopted.

Mr. Vice-President : Now we will consider the Bill clause by clause.

The question is :

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

Mr. Vice-President : The question is :

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Mr. Vice-President : The question is :

"That clause 3 stand part of the Bill."

Prof. Shibban Lal Saksena (United Provinces : General) : I want to speak on clause 3.

An Honourable Member: The question has already been put. He cannot speak now.

Pandit Hirday Nath Kunzru (United Provinces: General): It is only fair that you should allow Mr. Shibban Lal Saksena to speak. He got up in his seat before the question was put.

Mr. Vice-President: I am sorry, I did not notice the Member. I shall be very glad to permit him to speak.

Prof. Shibban Lal Saksena: I thank you very much for having given me an opportunity to speak on this clause. Sir, this clause makes provision.....

Shri S. Nagappa: How can the honourable Member speak when you have put the question and the motion has been adopted by the House? If he wants, he can speak at the third reading stage.

Mr. Vice-President: I gave him permission to speak.

Prof. Shibban Lal Saksena: This clause makes an amendment to the Government of India Act to provide for the solution of the Refugee problem which is a consequence of the Partition. Everyone knows that the most explosive problem, before the country, is the relief and rehabilitation of the refugees and the restoration of or compensation for the property left by them in Pakistan which is known as evacuee property there. I am glad that this amendment has come even at this late hour. In fact it ought to have come at the very beginning after the Partition was effected. Still, I am glad that the amendment has come. I wish to point out, Sir, that so far as the problem of the refugees is concerned, the problem is still unsolved and is practically where it was. Although crores of rupees have been spent and are still being spent for its solution, anybody who goes out in this city or anywhere in the country will be sorry to see that the problem of the refugees has not been tackled properly. I do not mean that any one particular person is responsible for it. The problem is a huge one. I only want to say that we have not succeeded in solving it. These two new amendments will in fact bring the problem into the Concurrent List. Last year we impressed upon the Ministry for Relief and Rehabilitation the need for empowering the Central Government to carry out their schemes according to their plans. They always complained that whatever plans they made they were not able to carry out because the provinces were unwilling to carry out their suggestions. The provinces tried to put a limit on the numbers of refugees they would take and so on and so forth, with the result that this most explosive problem is still not on the way to solution.

I therefore think, Sir, that now that we have taken powers for the Central Government in this regard and have put it in the Concurrent List, the Centre will evolve some plans by which they can tackle this problem, so that this will very soon become a problem of the past. The refugees have no shelter; nor have they employment. Eighty lakhs of people uprooted from their homes and coming to this land of hope and promise have raised a big problem. It requires effort which is commensurate with it. I only hope that this problem will now be tackled with a determination to solve it in the shortest possible time. Let us make a plan according to which this problem will be solved in six months or nine months. I think that this provision in the Bill is a very welcome provision. I do hope that no provincial government will stand in the way and that this problem will very soon become a problem of the past.

Then, Sir, I come to clause 3 of the Bill dealing with the Evacuee property. This is a most difficult problem and a problem also of great delicacy. I wish our Government had taken a stronger attitude in the matter. I do not want to repeat all that has appeared in the Press about what is called

[Prof. Shibban Lal Saksena]

the weakness of our Government in this matter, but I wish to voice the sentiments of the millions of people in this country and they are not satisfied with the manner in which the problem is being tackled. According to available figures, while about two hundred crores worth of property has been left by people who have gone to Pakistan, about fourteen hundred crores worth of property has been left by our nationals on the other side in Pakistan and yet we do not know how we are going to get back that property. I am glad that this item is going to be included in the Concurrent List which I treat as an assurance that Government will make some plans by which it will be possible for us to get back the property. But that inclusion is not sufficient. I hope when the Parliament meets, we shall see some Bill which shall be in fulfilment of the promise and hope which this amendment in the Constitution raises among the minds of the people. I hope that this will only be a prelude to the solution of the problem. I have always held the view that we have been trying to appease Pakistan a little too much and we have even sacrificed the interests of our people who have come from there and we have not done what we ought to have done for them up to now. I know that our refugee friends have become destitute in these two years and they have spent the last penny which they had brought with them and if we do not go about trying to settle this question of the property left by them in Pakistan seriously, it will become a problem which will become almost insoluble. I hope these amendments in the Constitution which are already very late in coming, will fulfil the hopes raised in the public mind. I only hope that the honourable Minister who is in-charge of this Bill with the help of the honourable Member in-charge of this Department will see to it that this big problem is solved without further avoidable delay.

(Shri Mahavir Tyagi rose to speak.)

Prof. N. G. Ranga: (Madras: General): How long is this to be prolonged?

Shri Mahavir Tyagi (United Provinces: General): I will not take long. Mr. Ranga need not be afraid of me. I agree with the main clauses of the Bill. Sir, I only want to emphasise that while these subjects are being centralised and powers are now being taken by the Centre, it was time that the Honourable Minister had thrown some light as to what the scheme was. In fact I only want to bring on record that there is a feeling in the country, which I think is quite justified, that all those persons who have come from Pakistan, they have not come of their own choice or of their own free-will. They are here because as a result of freedom and partition and were subjected to all sorts of hardships. The politicians here on this side of the country had agreed for Partition and for exchange of population. Everybody knows it. It is therefore the liability moral and legal of the people residing here in this part of the country, that they must make good the losses of those who had to come from Pakistan. Now it is no use taking to the Centre the work of rehabilitation or relief unless you come out with some plans of rehabilitation, and say whether you are going to give them only the loafer's bread or give them a daily dole or give them a fair compensation. If the Centre fails to realize the values of the property left in Pakistan, it is a failure of the Government and not of the individual. I would suggest, even though in the present financial circumstances of the Government the suggestion may look ridiculous—but oftentimes truth looks ridiculous, but all the same it remains a truth—I feel that even if 50 per cent. of the losses were made good by the Government, if they take the liability upon themselves to make good the

losses of the refugees or displaced persons who have come here, the Government would have done their duty. In cases of war, Governments have undergone heavier debts. Why should this Government not bear this debt both moral, human and legal? This debt is the price of freedom; and should the refugees or the displaced persons be made to pay the price of India's freedom, or should India pay the price? The refugees have dearly paid the price of India's freedom in the shape of their property. In the beginning the leaders raised slogans in this very House and appealed to the displaced hordes: "Do not kill. Do not create a riot. Do not create disturbances; let the matter be decided on the higher level, the ministerial level, on Governmental level; we promise to take up the issue for you". But, now when peace has been established all promises seem to be going into a drift. No result has come so far. I do not accuse the Central Government for that. May be that the Pakistan Government did not keep its word or there are other reasons which we do not know. Pakistan obviously does not intend to fulfil any promise and even if they make further promises, they will not fulfil them. It is their plan and policy; then, why should we subject ourselves to their policy? I therefore wish to bring on record the demand of the people that the properties of those refugees or displaced persons who have come to India must be estimated and the Government must give their word or the Constituent Assembly must give its verdict that the Nation will shoulder the liability to make good the losses. If not to the fullest extent at least to the extent of 50 per cent. of their losses immediate payment should be made either in cash or in bonds. This is the demand of the people who are displaced and I think morally it is a right demand and absolutely a justified demand. Whatever the financial condition of the Government may be, as the subjects relating to evacuee properties and rehabilitation are now being centralized. let the Centre give an assurance that they intend to make good all the assets left in Pakistan. It is for this Government to realise the value of these assets from Pakistan, and settle the accounts with them. The Pakistan could take from us as heavy a sum as fifty-five crores of rupees even during their fight with us in Kashmere. In the same manner we must shoulder this liability which is ours and ours alone. I think this is very justified and when the Centre is taking over the subject, they must finally decide as to whether they are prepared to take over the liability. We cannot depend on the promises made by Pakistan.

My honourable Friend Mr. Gopalaswami Ayyangar is universally respected for his sincerity and his truthfulness here in this House though I know that he is a diplomat of the biggest diplomats and he would never give full expression to what he feels or what he is really doing, but we have full trust in his negotiations. He could never let us down. What could he do? The other party is cleverer still. I do not want to attribute any motive to Mr. Ayyangar. The Government have probably done their best; but no rents are forthcoming. We, from this side, have been sending rents on the properties, even of their Premier every month or year. We did it because we want to show off to the world that we are honest and that we will keep our promises. It is all quite right. But, even then, in spite of all our profession and practice the world knows us to be dishonest, because Pakistan's propaganda has dominated, and our truth has been over shadowed by their untruth. This is the position today.

That apart, Sir, I wish to once again repeat and emphasize that the Government must come forward and fulfil their moral duty by these displaced persons, must share their losses and must make them good either in cash or in bonds to these people who have left their properties in Pakistan, and must realise it from Pakistan either through force of negotiations, or through

[Shri Mahavir Tyagi]

force of sword or bullet. If the neighbour goes dishonest, it is not for us to look blank and say; "you are dishonest". Our Flag could be pulled down by them; they might commit any kind of excesses or any breaches of faith with us, we are always behaving like international gentlemen. We do not want to be international gentlemen; we are better as ordinary men at home. My submission is having all these things in view, we must now make it clear. The whole situation will be eased if the Honourable Minister for Relief and Rehabilitation now says that the Government takes all property, over, and it will later on make it good from Pakistan when their trade balance is adjusted. If that is the position, I whole-heartedly support Mr. Ayyangar.

Mr. Vice-President: The question is :

"That clause 3 stand pat of the Bill."

The motion was adopted.

Clause 3 was added to the Mill.

Mr. Vice-President: The motion is :

"That clause 4 form part of the Bill."

Amendment No. 1 of Mr. K. Hanumanthaiya is ruled out as a negative amendment. I call amendment No. 2 by Mr. S. V. Krishnamurthy Rao.

(Amendment No. 2 was not moved.)

Kazi Karimuddin: Mr. Vice-President, I move :

"That in clause 4, in the proposed Section 291, after the words 'any of the following matters' the words 'subject to confirmation by the Parliament within two months of the date of addition, modification or repeal referred to above' be inserted."

Sir, I have no desire to repeat the arguments which I had advanced at the time of the consideration of the Bill. I have only to say that the arguments advanced by the Honourable the Minister Mr. Gopalaswami Ayyangar in regard to investing the powers on the Viceroy, are not very convincing. After these powers are given to His Excellency the Governor-General, is there anything in the Bill by virtue of which he is responsible to the legislature or to the people? Clause 4 does not lay down, if he uses these powers rightly or wrongly or in case any abuse is made, what is the remedy upon to Parliament or to anybody. By this amendment, I have to submit, the Governor-General has to report for confirmation to Parliament when Parliament meets after these powers are used. Therefore, I submit, Sir, that this amendment be accepted.

Dr. P. S. Deshmukh: Mr. Vice-President, Sir, I do not propose to move amendment No. 4; but I will move amendment No. 5. The amendment of which I had given notice stands as follows :

"That in clause 4, in the proposed Section 291, the following be added at the end :—

'All orders issued by the Governor-General under this Section shall be placed before the Constituent Assembly of India (Legislative) in due course.'"

I would beg your permission, Sir, to alter it so as to read as follows . . . It is only a verbal alteration and I hope you will kindly permit it.....

"That in clause 4, the proposed Section 291 be regarded as sub-section (1) of section 291, and after sub-section (1) as so re-numbered, the following be added :—

'(2) Every order made under sub-section (1) of this section shall, as soon as may be after it is made, be laid before the Dominion Legislature.'"

I am very glad that the Honourable Mr. Gopalaswami Ayyangar has at least been pleased to accept this amendment. This will at least give an opportunity to the legislature to review it and to express its views on whatever orders are passed by the Governor-General in respect of the matters that have been mentioned in Section 291 as now proposed. The criticism, as he (Shri Gopalaswami Ayyangar) has admitted, is quite relevant and correct that the powers are certainly most extensive. It may be that there is no intention probably of utilising them. But, it is quite possible for instance, for the Governor-General to say on any fine morning that all the provincial legislatures shall hereafter be composed of only nominated members. There is nothing to stop him from issuing an order like this which will have the effect of abolishing all the chambers of legislature in the provinces, and of removing all the elected members from their seats and from their positions and substituting in their places any people that the Governor-General, or anybody to whom he may delegate these powers, may choose. The Deputy Commissioner of a District may be asked to nominate the representatives who will sit as members of the legislature. Anything could be done. The power is so wide; it is tantamount to saying that all the powers under the Government of India Act are handed over to the Governor-General so that there will be no necessity for any debate to take place, or for any legislature to exist. If some Members of this House are angry about it, I think that anger is not absolutely unjustifiable. I do not want to take the time of the House on this any longer as the whole position is clear to every Member of the House. I move this amendment and since I have already been given an assurance by the Honourable Mr. Ayyangar, that he approves of it, I hope the House will also accept it.

Prof. Shibban Lal Saksena: Mr. Vice-President, Sir, I am glad that the Honourable Mr. Ayyangar has agreed to accept the amendment of Dr. Deshmukh. But, I do not think that it satisfies all the objections that have been raised in this House.

First of all, I am not quite clear as to what is the meaning of laying before the Parliament. Will the Parliament be able to discuss those orders, amend them or to revise them in any manner? That is the main problem. Secondly, what will happen if they disapprove of them?

Then, Sir, in his reply to the objection raised by my honourable Friend, Mr. Kamath, and others why he could not bring forward a Bill at a later stage, after having a conference with the Ministers of West Bengal and other province, incorporating only those amendments to the Constitution as are necessary, he said that this Assembly will finish the second reading of the Constitution in September, and it may not meet till January for the third reading. Even if that be so, I am sure the Assembly will meet as Parliament sometime in November and there is no reason why it cannot be converted for a day in the beginning, or in the middle of the session, into the Constituent Assembly to amend the Government of India Act. My only objection is this. I know the Government can get through this House any Bill that they bring forward; but, that would at least remove the criticism against them that it has not been discussed by the House.

By giving the Governor-General these powers which are almost dictatorial, he can alter the composition of the chambers, he can delimit the constituencies, he can disqualify persons and alter election rules in some manner. Such powers should not be given to any individual as a matter of principle even though it may be expedient at the present moment. This will be a bad precedent. Besides, we as Members of the Constituent Assembly are thereby depriving ourselves of the fundamental powers which the nation has reposed in

[Prof. Shibban Lal Saksena]

us. I knew there might not be any great difference between the Governor-General's actions and ours, but it creates a bad precedent. I have never heard such a Bill being presented before any House, and I therefore think that this is something which must be resisted. Still if the honourable Minister tells us that Dr. Deshmukh's amendment means that this House will be empowered to discuss, to vary and amend the orders passed by the Governor-General as they are laid before the House, then I think that will be something at least to take the sting out of it; but if even that is note done, then I think I must oppose this clause and I would wish that this does not form part of the Constitution.

Prof. K. T. Shah (Bihar : General) : Mr. Vice-President, Sir, I feel it necessary to raise my voice in strong protest against this clause. The honourable the Mover has taken exception to the description of this clause as a "constitutional monstrosity." I bow to his great mastery of the mysteries of English etymology, and therefore accept what he has said may be justified in his own knowledge. Speaking for myself, Sir, I would like to characterise this clause as a constitutional absurdity, an intellectual dishonesty, and a moral inequity. For, every word of this clause, and every item and sub-items enumerated below amount only to this : that the constitutional rights and authority of the Legislature are to be destroyed, and in their place the authority of the Governor-General who, as I said, is only a facade is to be put up. The Governor-General is only for the sake of the name. There would be somebody else,—perhaps his Advisers,—presumably the Prime Minister, or the colleagues of the Prime Minister, or perhaps some secretary of any of these exalted gentlemen, who will draft the actual Order, even if the policy underlying it be that of the Government. The Governor-General according to this section will take the place of the entire Legislative body in reference to the items mentioned in this article. He may *at any time* pass any such order. I do not know what is meant by the term 'at any time'. If by 'at any time' is meant the intervening period between now and the date when this Constitution comes into operation—and I would be charitable and assume that there is no intention of denying the operation of the Constitution, or precluding its coming into operation—why is it not stated explicitly? I want to know what is meant by the term 'at any time'. If you wish to restrict it to the interval or the transition period under which we are at present and the date when this Constitution will formally come into operation, why do you not state so in this article a clear limitation of the time during which only such an order can take place?

Because you have omitted to give any clear limitation, I feel it necessary to give the characterisation I have given of this article. There seems to be a certain mental reservation about the operation of this article, which cannot but be regarded as lacking in intellectual honesty.

The Honourable Shri N. Gopalaswami Ayyangar : May I say one word? I think as the honourable Member has thrown doubts on the intellectual honesty of the persons responsible for this measure, it is necessary that I should say a word of personal explanation. That is the only way in which I can intervene so that this thing might be scotched immediately. What is the mental reservation that anybody could have about the use of the words 'at any time'. Mr. K. T. Shah knows as well as I do that the Government of India Act, 1935, will be repealed by the new Constitution; and if that new Constitution is going to come into force on the 26th January next or it may be earlier or a few days later, the fact will remain that this 1935 Act could not continue in force after the new Constitution comes into force unless the House by a vote, keeps it in force—that is a different matter. But the Government cannot keep it in

force. So for the words "at any time" in this particular Bill, the outside limit for it is the 26th January next or some date on which the new Constitution comes into force. What mental reservation could there be and how dare he attack the intellectual honesty of the authors?

Shri Jaspat Roy Kapoor (United Provinces : General) : Professor Shah never sees the obvious!

Prof. K. T. Shah : Yes, Mr. Shah is physically short-sighted, but he is able to see meanings which are not visible to others.

I accept the explanation the honourable Mover has given with regard to the date. But I still maintain that in that case it would have been much more clear is it had been stated 'pending the coming into operation of this Constitution'; and to that extent then we would be quite aware that this is only for the transitional period, and would be judged by its transitional character. That not being stated I feel it necessary to point out an omission that there is something improper. The Constitution itself has said in more than one place 'either on the date this Constitution comes into force', or some such phrase which makes the time-factor perfectly clear. We would then be fully aware of the time as to when that particular provision will come into operation.

I now go on further to give illustration of my argument, of my general thesis in connection with this article, and show how the article is likely to operate—perhaps unintentionally and inadvertantly—in a manner that may not have been intended by the authors and sponsors of this proposition.

The first item on which the Governor-General may make any order in relation to any legislature of any province seems to me to suggest, for instance, that all that we are trying to do by this Constitution to evolve a common pattern of the Constitution may be broken. Let it be even for the transitional period; but even so the uniformity, the unity even of the constitutional organisation of this country may be impeded and interrupted. If it is for the transitional period the evil will be during that period but it will be still evil all the same.

Then it goes on to say that the order may relate to the "composition of the chamber or chambers of the legislatures." I do not understand what is meant by the composition of the chambers. Do you mean by composition, the various representative capacity of the members of the Chambers?

An Honourable Member : Their strength.

Prof. K. T. Shah : Well, if it is the strength, then I am afraid it would go much farther than may be intended by the authors of this clause. If "everything" is to be included in composition, even strength of the legislature, it may even amount to the denying of the representative fullness of the population of that province, or of those provinces to which the order may relate. And if that be the intention, then I urge in all humility that it cannot be constitutionally proper.

Then supposing that it relates only to the various ways in which the present provincial legislatures have been constituted, the various interests that are represented therein, the various sections of the population which are almost cross-represented there, if these are to be meant, and if any order is to relate to the altering of that composition, then, I am afraid some fundamental alteration will be made by order of the Government, and not by the legislature. This in itself is objectionable to me. This fundamental change may be, for instance, that the composition may become class composition and not popular composition. The basic principle as I have understood it, of the present Constitution that we are drafting in this body is that there should be as far as

[Prof. K. T. Shah.]

possible, one vote for one man and that there should be uniform popular representation, at least in the lower chamber. If that is the principle, and if this order can go to the extent of altering that position, so that the entire body can be made only representative of certain interests and certain elements and not all the population, then I think it would be taking away the very basic idea of the new Constitution we are drafting, and even if that is confined only to the transitional period—though that is not clear in this legislation—even then it would be, at the time the Constitution is being completed, almost on the eve of the Constitution coming into operation, it may deny the very basic idea of the Constitution, and to that extent, it seems to me that it is an absurd proposition to put forward at this meeting in this House. It seems to me constitutionally highly absurd to make any such change at this time of the day.

It may also affect the qualifications of the voters and of the candidates. What action is meant therein, I fail to understand. Is it proposed that even the existing very limited franchise should be altered by the order of the Governor-General? Is it intended that the ten or twenty per cent. that are at present enfranchised amongst the adult population to vote would be denied the right to vote, by a simple executive order of the Governor-General, an order which is neither considered by the Legislature nor approved by it, and certainly not with the authority of the people behind it? I consider the language of this sub-clause to be much too sweeping, I consider the implications of this sub-clause much too widespread and too far-reaching for us to pass it light-heartedly, as if it means nothing more than a change in qualification of residence or location or something of that kind. Unless this sub-clause is clarified by an explanatory paragraph being added to it, there seems to be the possibility of mischief which I trust the authors of this clause will seek in time to avoid.

It has been said, Sir, that the new Constitution we are drafting is likely to prove a paradise for lawyers. Here is another illustration of it. Even in the transitional period to which alone we are assured on such high authority it relates, even during this period, there are going to be provisions which will provide ample occupation and fortune to lawyers. I hope it is not the intention of the Drafting Committee to put in language which may be twisted and changed and made to mean something which they themselves did not mean at the time that they drafted the clause.

There is also suggestion that the order may relate to the qualifications of the candidates. What is meant by that, I do not know. This again is very wide and very general and as such I hesitate to accept it. I very strongly apprehend that any order of this character even during the transitional period may quite possibly go far beyond the intentions of the Draftsmen. I know that one need not reduce it to such absurdities as to suggest that by laying down qualifications of the candidates, the Governor-General by order may refuse permission or a candidate to stand. I take it is not the intention to enable orders to be passed imposing new restrictions, new conditions and qualifications which are not in accordance with the basic idea of the Constitution we are now drafting. I trust it is not also the intention of the authors to make provisions even for the transitional period which may run fundamentally counter to the basic ideals of this new Constitution; for the basic ideal of this Constitution is the ideal of equality and that the new governmental machinery and the various constitutional organs will be founded on what is called adult franchise. If that is so, then any attempt by the back-door so to speak, by the order of the Governor-General or the Governor even during the transitional period to restrict the qualifications or in any way touch the qualifications of the voters and of the candidates is not proper. If you wish to indicate any

particular qualifications, if you wish, for instance to abolish the separate communal electorates, why not say so quite openly? Why not make it perfectly clear, that what is intended is not anything that would reduce the scope of representation, not to put any limitation on the voting public, but to remove a particular evil which has caused so much misery and which has cost so dearly to this country, that it shall be eliminated even during the transitional period by order of this character. I repeat that the expression used should be such as would convey the intentions quite clearly.

Amendments have been suggested, that the order should be placed before Parliament for approval or for some kind of post-mortem examination. I do not feel satisfied with such attempts at bringing in Parliament. It is the basic and inherent right of Parliament to pass legislation and Parliament should never abdicate this right in favour of the Governor-General or anybody else. I do not think a fundamental provision of this character should, at this day when we are all sitting to draft a liberal Constitution be accepted, because it denies the authority of the legislature and makes the executive sacrosanct and gives it powers which may even touch the life of the legislature. I mention this point particularly because although we are assured on very high authority that this is only for the transitional period, still it may be quite possible that the very life of the new legislature in any province might also come under restriction of this order. Provisions of this character empowering the executive will be an abdication of the authority of the legislature of the country. As I said the whole plan of uniformity, the pattern of standardisation and unity of the country may be imperilled by legislation of this kind and our apprehensions cannot be removed by the plea that it is only a temporary measure. The whole idea, to my mind, is inimical to the fundamental ideals and concept of the Constitution.

I know these are remarks which may not be very palatable; these are points I know which have been made, from one angle or another, time and again in this House and have not met with the approval of this House. Therefore, even if it is a cry in the wilderness, I think it my duty to raise my voice of protest against this Bill.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I find from the speeches to which I have listened so far that there is a great deal of misunderstanding as to what this particular Bill, particularly clause 4 of it, proposes to do. I think it is desirable at the outset to tell the House what exactly is intended to be done by clause 4.

In order to put the House in a proper frame of mind—if I may say so without meaning any offence—I should like to draw the attention of the House to the wording of Section 291 of the Government of India Act as it was in operation before it was adapted after the Independence Act. Now I shall read just a few lines of that Section 291.

> "In so far as provision with respect to matters hereinafter mentioned is not made by this Act His Majesty in Council (and I want to emphasise these words His Majesty in Council) may from time to time make provision with respect to those matters or any of them, etc., etc."

The first thing that I would like to draw the attention of the House is this that in clause 4 of this Bill the matters which are enumerated from (b) to (j) are exactly the matters which are enumerated in the old Section 291. Therefore, it has to be understood at the outset that this clause, clause 4, is not making any fundamental change in the provisions contained in the original Section 291. The matters for which the Governor-General is going to be given powers by the provisions of the new Section 291, as embodied in this Bill, are the same which were given by the original Section 291 to His Majesty in

[The Honourable Dr. B. R. Ambedkar.]

Council. (An Honourable Member : No.) I hope that this will be now clear to everybody and I do not think there can be any doubt on it, for anyone who compares the different clauses in this Bill and in the original Section 291 will have all his doubts removed.

The question, therefore, may be asked as to why is it that we are now, giving the power to the Governor-General. The difficulty, if I may say so, is this. Somehow when the Government of India Act, 1935, came to be adapted after the Independence Act, there was, in my judgment, at any rate, a slip that took place and that slip was this, that this power which originally vested in His Majesty in Council, logically speaking, ought to have been transferred to the Governor-General, because the Governor-General under the Dominion law stepped into the shoes of His Majesty in Council. But, unfortunately, as I said, what happened was this that in adapting this Section 291, the power which we are now giving to the Governor-General was given to the local Legislature, I will read that adapted Section 291. I ask my friends who have been agitating over this to read the section as adapted. This is how it reads :

> "In so far as provision with respect to matters herein mentioned is not made in this Act in relation to any Provincial Legislature, provision may be made by Act of that Legislature with respect to those matters or any of them, etc., etc."

It has now been discovered that that was an error, that really speaking, when the section was adapted at that stage, the Governor-General should have been endowed with those powers, because those powers under the provisions of Section 291 were vested in His Majesty in Council and not in any local legislature. What we are doing by this Bill is merely to restore the old position as it existed under the unadapted Section 291. I, therefore, want to submit that any criticism which has been levelled by any Member of the Assembly that there was some kind of a deep-laid game in order to upset the constitution for political motives is absolutely unwarranted. All that we are trying to do is to correct a slip that had taken place then.

I come to the next point, namely, the addition of the words "the composition of the Chamber or Chambers of the legislature." I quite agree.....

Dr. P. S. Deshmukh : May I ask one question, Sir? Does not the alteration of the words "in so far as provision with respect to matters hereinafter mentioned is not made by this Act", the omission of these words and making of these provisions applicable to.....

The Honourable Dr. B. R. Ambedkar : That is what exactly I am explaining. As I said, the only difference that will now be found between the original article 291 as unadapted and the proposed new clause is this that it is proposed by this new article to give power to the Governor-General to alter the provisions with regard to the composition of the Legislature. I admit that that is a change.

Dr. P. S. Deshmukh : Which includes schedules 5 and 6.

The Honourable Dr. B. R. Ambedkar : Oh, yes; that is quite true. I admit without any kind of reservation that that is a change which is being made. Now the question is why should we make that change. The reason why we have to make the change in order to give the Governor-General the power even to alter the composition is to be found in the situation in which we find ourselves. Honourable Members will remember that there has been a considerable shifting of the population on account of partition. The population of East Punjab is surely not in any stereotyped condition. Refugees are coming

and going. On the 1st April the population numbered so much, six months thereafter it may number something quite different from what it was then. Similarly with regard to West Bengal and many other provinces where refugees have been taken by the Government of India under their scheme of rehabilitation or the refugees themselves have voluntarily travelled from one area to another. Obviously you cannot allow the provisions contained in the Fifth and Sixth Schedules with regard to the numbers in the legislature to remain what they were when we know as a matter of fact that the population has lost all relation to the numbers then prescribed in the Schedules. It is therefore in order to take into account the shifting of the population that power is given to the Governor-General to alter even the Schedules which deal with the composition of the legislature.

I hope my honourable Friends will now understand that in giving this additional power of making an order with regard to the composition of the Chamber or Chambers the intention is to permit the Governor-General to make an order which will bring the strength of the different legislatures in the provinces affected to suit the numbers in those provinces. There is no nefarious purpose.

Dr. P. S. Deshmukh : You had two full years to rectify this position.

The Honourable Dr. B. R. Ambedkar : That is a different matter. I am only explaining why these provisions are being introduced by this new clause.

I have said that the other provisions are merely reproductions of what is contained in the original Section 291. This power is not being taken for a wanton or an unnecessary purpose nor is it intended to be used for anything other than a *bona fide* purpose. Therefore having regard to these circumstances my submission is that clause 4 is a perfectly justifiable proposal, both from the point of view of conferring these powers, which originally vested in His Majesty in Council, to be vested in the Governor-General who is his successor and to give him additional power to alter the composition, because the pattern of the numbers in the different provinces have changed from the 15th August 1947. I quite realise that there has been an error in the Statement of Objects and Reasons where unfortunately a particular reference has been made to West Bengal. I should like to assert that this clause has been intended as a general provision which may be used by the Governor-General for rectifying any of the matters with regard to any province, not particularly West Bengal; and I think that was again somehow a slip which ought not to have taken place. Members of the House have picked up that particular wording of that particular clause where a pointed reference has been made to West Bengal in order to charge the Government with *malafide*, with having some kind of a bad motive towards the legislature in West Bengal. As I said, it is nothing of the kind. These clauses are general; they may be used if a situation arises which calls for their use in West Bengal. They may be used for my province of Bombay where probably today, at any rate, no such circumstance appears. Therefore from that unfortunate statement—if I may say so—no conclusion ought to be drawn that there is any kind of underhand dealing so far as this clause is concerned.

Shri Suresh Chandra Majumdar (West Bengal : General) : Is it not possible to drop the words "West Bengal" ?

The Honourable Dr. B. R. Ambedkar : I have been telling my honourable Friends that the Statement of Objects and Reasons is not a part of the Act and therefore there can be no amendment moved to the deletion of any word or clause or sentence in the Statement of Objects and Reasons. As soon as this Bill becomes an Act, that Statement of Objects and Reasons will be thrown

[The Honourable Dr. B. R. Ambedkar]

into the dustbin. It is different from a Preamble and I want Members of the House to concentrate on the Preamble where there is no such reference to West Bengal. Therefore my submission is that there is really nothing to quarrel with in this particular clause. In the first place it restores the original provision as it existed in the Government of India Act, 1935. in its unadapted condition, and secondly it proposes to give power which it has become necessary to give because of the altered position in the provinces.

An Honourable Member: Sir, I move that the question be now put.

Shri H. V. Kamath: Sir, on a point of order, Dr. Ambedkar has raised fresh points which we wish to discuss, and under rule 33 of our Rules you may hold that there has not been sufficient debate, and so refuse to accept this motion for closure.

Dr. P. S. Deshmukh: But Dr. Ambedkar is not the Minister in charge.

Mr. Vice-President: Yes, that is so; and the Honourable Member Mr. Kamath has had ample opportunity to speak on this clause. I therefore accept the motion for closure.

The question is :

"That the question be now put."

The motion was adopted.

The Honourable Shri N. Gopalaswami Ayyangar: Sir, I do not think I need make any elaborate reply to the debate on this particular clause. Dr. Ambedkar has very fully explained the wording of this particular clause *vis-a-vis* the terms of Section 291 of the Government of India Act, 1935, as unadapted, as well as with the terms of Section 291 of the Act as adapted. So far as that particular matter is concerned, if we look at the old Government of India Act, His Majesty in Council under Section 308 was also given the power to make amendments of the same nature as are contemplated in this new Section 291. It is unnecessary for me at this late stage to elaborate this particular point. The fact that remains is that an unduly excited view has been taken of the danger to democratic principles that this particular clause is supposed to involve. I am afraid that all the fears that have been expressed are absolutely and unduly exaggerated.

As for the mention of West Bengal I quite agree that we might have omitted the reference to West Bengal. But if West Bengal has been referred to in the Statement of Objects and Reasons it is only by way of illustration. I think in one place it is said "Should an election be ordered in West Bengal Legislature or any other province" and in another place it is said that if something is done in connection with, for example, West Bengal and so forth. But it is perfectly clear even from the Statement of Objects and Reasons, apart from the terms of the Bill itself, that the Bill does not apply to West Bengal in particular. It is a Bill which, both by the Statement of Objects and Reasons and the terms of the Bill itself, refers to provinces in general. Wherever in any province conditions develop which require the holding of general elections these powers will come into play and I do not see why the conditions of West Bengal, whether today or as they may develop in the near future, should be taken as being specifically referred to by this particular Bill and that this Bill is intended to apply to West Bengal and no other province.

So far as the amendment of Dr. Deshmukh is concerned, that every order made under this particular clause should be laid before the legislature, I have already accepted it in the altered terms in which he has moved it.

I only wish to say one word as regards another edition of this amendment which was moved by my Friend Kazi Karimuddin. He said that any order passed under this section should get the affirmative approval of the legislature within two months before it can become operative. If we accept that amendment we might as well give up this Bill, because what is intended is a provision for a period which is not likely to exceed five or five and a half months and it we are going to place an order which the Governor-General may pass two months hence and wait for another two months to get the affirmative approval of the legislature before it becomes operative, then practically there will be no time either for the preparation of electoral rolls, much less for the holding of any election before the new Constitution comes into force. Sir, I would ask my honourable Friend who moved that amendment not to press it. I think the purpose is served by my acceptance of Dr. Deshmukh's amendment.

As to how the legislature can make its own views known or effective the only thing that I can say in reply is that when an order of that kind is placed before the legislature it is open to any member of the legislature to make a motion or move a resolution as regards the content of that order and the House is at liberty to express whatever it considers its views to be. That is the only thing that could be done in the circumstances of the present situation. We may take it that after an order is passed by the Governor-General, say in September or October, if it ever comes to be passed at all, then it will be placed before the legislature during the November session and if it happens to be passed later, it would come before the January session. I think that is the utmost that could be done for the purpose of saitsfying that particular principle.

Shri Mahavir Tyagi: Sir, may I put one question? How do they intend to apply the law to one province or another? How does Bengal come in? What fault has it committed so as to have been brought into this Bill?

The Honourable Shri N. Gopalaswami Ayyangar: Bengal is not mentioned in the Bill at all.

Mr. Vice-President: The question is :

"That in clause 4, in the proopsed Section 291, after the words 'any of the following matters' the words 'subject to confirmation by the Parliament within two months of the date of addition, modification or repeal referred to above' be inserted"

The amendment was negatived.

Mr. Vice-President: The question is :

"That in clause 4, the proposed Section 291 be re-numbered as sub-section (1) of Section 291, and after sub-section (1) as so renumbered, the following be added :—

'Every order made under sub-section (1) of this section shall, as soon as may be after it is made, be laid before the Dominion Legislature'"

The amendment was adopted.

Mr. Vice-President: The question is :

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5, was added to the Bill.

The Title and Preamble were added to the Bill

The Honourable Shri N. Gopalaswami Ayyangar : Sir, I move :

"That the Bill, as amended, be passed."

Shri H. V. Kamath : Sir, on a point of Order, I invite your attention and that of the House to rule 38 (S) sub-rule (2) of the Constituent Assembly Rules as amended on the 31st May 1949. That sub-rule provides that if any amendment to the Bill is made any Member may object to any motion being made on the same day "that the Bill be passed." Under this rule I object to the motion (*interruption*) unless the President of course allows the motion to be moved.

Mr. Vice-President : The amendment adopted is a very formal one. I allow the motion to be placed before the House as made by the Mover.

Shri H. V. Kamath : Sir, the speech of my honourable Friend Mr. Gopalaswami Ayyangar in reply to the debate has left me completely unrepentant and unconvinced. The amendment that has been adopted by the House mellows, to a very infinitesimal extent, the monstrosity of this part of the measure, namely Section 4 of the Bill before the House. Dr. Ambedkar has come to the rescue of his colleague Mr. Ayyangar as, I am sure, he is in honour and duty bound to do. After all our Government is a united team. One Minister must help another in weal or woe, and in joy or sorrow. But Dr. Ambedkar's defence of the measure has raised fresh difficulties and doubts in my mind. Referring to Section 291, the unamended 291, he pleaded before us that we have merely restored the status *quo ante* of this provision. That is to say, instead of His Majesty's Government which obtained before the adaptation of the Government of India Act, we have now got the Governor-General, with of course the Cabinet or the executive. But I wonder whether Dr. Ambedkar with his eye for details and nuances overlooked a certain portion of Section 291. We have been told that it was a slip. With the reputed efficiency of the Law Department it has taken two years for them to detect this slip, and only when the West Bengal problem came to the force and they were worried as to what is to be done in this contingency. Anyway there has been one slip another slip and still another slip; and I am confirmed in my view that we are standing on a slippery slope.

Now coming to this Section 291 I would invite Dr. Ambedkar's vigilant attention to its wording as it stood before the adaptation and to Section 4 which we have adopted today.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, on a point of order, may I know if it is open at the third reading to go into the merits of a particular section ? And the honourable Member is repeating what he said at the second reading.

Shri H. V. Kamath : I am sorry Mr. Ayyangar did not listen to me when I was speaking on the second reading. Otherwise I daresay he would not have said that I am repeating my arguments.

Shri M. Ananthasayanam Ayyangar : He ought not to repeat the arguments of others also.

Shri H. V. Kamath : I would only tell Mr. Ayyangar, 'Physician, heal thyself.' Dr. Ambedkar mentioned that this is on a par with the adapted Section 291. But Section 291 specifically stated : 'In so far as with respect to .....' So the provision there is, 'so far as provision is not made.....His Majesty can by order in Council do.....' But this new clause gives unfettered power to the Governor-General. "The Governor-General may at any time by order make such amendments as he considers necessary by or under

the provisions of this Act." There is nothing in it which says "In so far as provision is not made....." This is a very serious omission. I do not know how one can defend that slip. The other slip was with reference to West Bengal in the Statement of Objects and Reasons. I am sure the Bill, before it came before the House, must have been scrutinized by the Law Ministry I wonder whether Dr. Ambedkar scrutinized it or some Under Secretary did so. Anyway the responsibility is that of the Law Minister. The argument adopted by him with regard to Section 291 and with regard to the Statement of Objects and Reasons, has no meaning It is not an argument which should weigh with the House. He has put that argument forward to give succour to his colleague. Government does not seem to be working as a team. Somebody drafts a Bill and when it comes before the House, but not earlier, Dr. Ambedkar puts forward a laboured defence. This is not the way a Cabinet should function. They must work like a team. Otherwise they will have no face to show to the world. I hope in future they will put up a better show in this House so that the world may think better of them.

The last thing I would like to say is that the amendment moved by Dr. Deshmukh and accepted by the House provides that the Orders made by the Governor-General shall be laid before the Legislature as soon as may be. Mr. Ayyangar in his reply to the debate said that the difficulty is because we cannot get the Assembly to meet often or long enough to consider the orders of the Governor-General. That is a very lame argument. The other day, when a particular article relating to the summoning of the Assembly in the future set-up was being discussed, Dr. Ambedkar gave the assurance, when we raised the objection regarding the interval of not more than six months that should elapse between the sessions—that six months was too long an interval and then the maximum laid down might become the minimum,—Dr. Ambedkar gave the assurance that the Assembly in future would meet more often. If that could be done I see no reason why, soon after the second reading, we cannot convert ourselves into a legislature and by that time the Law Department could get busy with the Governor-General's orders, etc. Unless there is some sort of cussedness or refractory attitude on the part of some people towards the House, this could easily be arranged.

Lastly, I urge that whatever comes before the Dominion legislature under this Act in due course, I hope the Assembly will have the power not merely to say Okay to a *fait accompli* but also to consider and approve and amend or reject whatever orders have made by the Governor-General. If this Parliament is going to be divested of that power, I for one will not be a party to such a wicked transaction. I hope this will be borne in mind. The amendment is silent on that point. It says : The amendment will be placed before Parliament. For what purpose, God alone knows. I hope Parliament will have full power to consider the whole matter at every stage and accept or reject it as it likes. I feel that this Bill has been rushed through, and Section 4 adopted after only a sight modification. It mellows the monstrosity somewhat but it does not remove the odious nature of the provision. I hope that, when the matter comes up before the House in a month or two, this Assembly will have full power to scrutinise all the Orders made by the Governor-General under this Act, and amend or reject them.

Shri T. T. Krishnamachari : I move that the question be put.

Mr. Vice-President : Does Mr. Kopalaswami Ayyangar wish to say anything ?

The Honourable Shri N. Gopalaswami Ayyangar : I do not think I have anything to say.

Mr. Vice-President: The question is :

"That the Bill further to amend the Government of India Act, 1935, as settled by the Assembly, be passed"

The motion was adopted.

The Bill, as settled by the Assembly, was passed

Mr. Vice-President: The House will now adjourn till 9 o'clock tomorrow morning.

The Constituent Assembly then adjourned till Nine of the Clock on Friday, the 19th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 19th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock. Mr. Vice-President (Shri V. T. Krishnamachari) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 150—(*Contd.*)

Mr. Vice-President (Shri V. T. Krishnamachari). Today we begin with article 150. The House will remember that there was a debate on this article as it originally stood and after three amendments were moved, the article was recommitted to the Drafting Committee. Dr. Ambedkar has now given notice of a new article. I request him to move that article, amendment No. 1 of List I (Fourth Week).

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I have a point of Order. Shall I move it just now or after the amendment is moved?

Mr. Vice-President: You may move it just now.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, as I have been observing for some time that the Drafting Committee has been springing surprise after surprise on the Members. I do not blame the eminent members of the Drafting Committee for this attitude. I know that their hands are tied. I speak with deep respect for the Drafting Committee and when I offer any comments about them, it is because we have to look to the Drafting Committee for the praise or blame that must attach to the amendments. Every day new amendments of a sweeping character are being sent in by the Drafting Committee. They come in all of a sudden like Air Raids.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Where is the point of order?

Mr. Vice-President: May I remind the honourable Member that this amendment has been brought before the House by Dr. Ambedkar and the Drafting Committee in response to the desire universally expressed in the House. For this reason, I rule out this point of Order. I now ask Dr. Ambedkar to move his amendment.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I move:

"That for article 150, the following be substituted:—

Composition of the Legislative Councils.

'150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-fourth of the total number of members in the Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament may by law otherwise provide, the composition of the Legislative Council of a State shall be as provided in clause (3) of this article.

(3) Of the total number of members in the Legislative Council of a State—

[The Honourable Dr B. R. Ambedkar]

(a) as nearly as may be one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years graduates of any university in the State and persons possessing for at least three years qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in the manner provided in clause (5) of this article.

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) of this article shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :—

literature, science, art, co-operative movement and social services.'"

As you have said, Sir, this article in a different form was before the House last time. The article as it then stood, merely said that the composition of the Upper Chamber shall be as may be prescribed by law made by Parliament. The House thought that that was not the proper way of dealing with an important part of the constitutional structure of a provincial legislature, and that there shall be something concrete and specific in the matter of the constitution of the Upper Chamber. The President of the Constituent Assembly said that he shared the feelings of those Members of the House who took that view, and suggested that the matter may be further considered by the Drafting Committee with a view to presenting a draft which might be more acceptable to those Members who had taken that line of criticism. As honourable Members will see, the draft presented here is a compromise between the two points of view. This draft sets out in concrete terms the composition of the Upper Chamber in the different provinces. The only thing it does is that it also provides that Parliament may by law alter at any time the composition laid down in this new article 150. I hope that this compromise will be acceptable to the House and that the House will be in a position to accept this amendment.

Mr. Vice-President: Amendment No. 3. Mr. Kamath.

Shri H. V. Kamath (C.P. & Berar: General): I have moved it already.

Mr. Vice-President: Amendment No. 66, List II (Fourth Week).

Shri H. V. Kamath: What about the amendments in the Printed List of Amendments, Vol. I, Sir?

Mr. Vice-President: After finishing these, those in Vol. I will be taken up.

(Amendments Nos. 66, 67 and 68 were not moved.)

Dr. Monomohon Das (West Bengal : General) . Mr. Vice President, Sir, I move :

"That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clause (b) of clause (3) of the proposed article 150, the words 'for at least three years' wherever they occur, be deleted"

Sir, in clause 3 (b) of the proposed article 150 as moved by our Honourable Dr. Ambedkar, it has been suggested that for the election of one-twelfth of the total members of the Upper Chamber, the electorate will consist of persons who have been for at least three years graduates of any university in the State and persons possessing for at least three years qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university. For registration as a voter under this clause, two conditions have been imposed : one, educational qualification of the standard of a graduate, and second, this educational qualification should be at least of three years standing. If the sponsors of this article intend that for being registered in the voters' list, the minimum educational qualification of a graduateship should be there, I do not find any reason for imposing another condition that the graduateship should be at least of three years standing. I fail to understand what difference there will be between a graduate who has taken a degree yesterday or a few days back and a graduate of three years standing. If the sponsors of this article think that for maturity of the educational qualifications, an experience of at least three years should be there, I think three years experience will be insufficient and inadequate. There should be at least five years experience for the maturity of the qualification of graduateship. My amendment suggests that this imposition of three years standing for being registered in the voters' list under this clause 3 (b) should be deleted. I think the House will accept the amendment and revise the clause accordingly.

Shri V. I. Muniswamy Pillay (Madras : General): Mr. Vice-President, Sir, I beg to move the amendment that I have given notice of :

"That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clause (d) of clause (3) of the proposed article 150, after the word, 'one-third' the words 'including seats reserved for Scheduled Castes as may be prescribed' be inserted."

Sir, the object of my moving this amendment is to get representation for the Scheduled Castes in the Upper Chamber. This House has been good enough to reserve seats for the Scheduled Castes in all the legislatures; but I fail to see any mention of representation for Scheduled Castes in the amendment so ably moved by the Honourable Dr. Ambedkar. It is true that members of the Scheduled Castes that are sent to the Lower Chamber, in the popular House, will have a chance of voting for representatives to come to the Upper Chamber. But, unless seats are reserved in the Upper House, I fail to see how it will be possible for the members of the Scheduled Castes in the Lower House to get a number of seats or adequate representation in the Upper House. Moreover, it has been said on account of the system of proportional representation by means of the single transferable vote, it will be possible for the minority community, especially the Scheduled Castes to get adequate representation in the Upper Chamber. I feel, Sir, it must be statutorily made possible, and whatever representation has been accepted by this August Assembly must be provided in the amendment so that the fear of the Scheduled Castes may not be there. This is the chief object with which I move this amendment and I hope the Honourable Dr. Ambedkar will accept it.

Mr. Vice-President : Amendment 71 is not moved. There are amendments in the printed lists. I do not know whether any Member would like to move any of those amendments.

Shri R. K. Sidhva (C.P. & Berar : General): Those were disposed of last time.

Mr. Vice-President: They relate to the article as it stood and it is likely, some of the Members may like to move amendments standing in their names The best thing is for me to read them out one by one.

(Amendments Nos. 2265 to 2268 were not moved.)

2269—Professor Shah.

Prof. K. T. Shah (Bihar : General): Sir, there are several amendments in my name which I would like to seek your guidance on. Under the new scheme suggested by Dr. Ambedkar, all these amendments would seem to be irrelevant. Thus the entire scheme being different, my amendments have been laid down according to the original scheme.

Mr. Vice-President: As a matter of fact all the amendments beginning from 2274 relate to the panels as proposed in the original draft, and they have no application—generally speaking—to the new draft.

Prof. K. T. Shah: I feel it would create confusion in the House if one went on speaking on them.

Mr. Vice-President: It would be very good if Members who have got amendments to propose to the panel *i.e.*, the deletion of any of the classes mentioned in clause (5) or the insertion of new categories in clause (5) moved those heads for inclusion in or deletion from clause (5)—in other words as amendments to the new clause (5).

Prof. K. T. Shah: I submit that my earlier amendments relate to the proportions *e.g.*, one-fifth instead of one-third. These proportions are different under the compromise new draft. It would be better both from the point of saving the time of the House, as well as for clarifying issues if at the time of general discussion on the article these points are brought out, and not by amendments because if the amendments are moved there will be confusion.

Mr. Vice-President: Certainly. The amendments do not fit in with the new article.

Prof. K. T. Shah: In that case I would beg your leave not to move these, and reserve my points for the general discussion.

Mr. Vice-President: Certainly. That applies to all these amendments in the Printed List ?

Prof. K. T. Shah: Yes, as far as I am concerned.

Mr. Vice-President: Does any other Member wish to move any of the amendments in the Printed List ?

Shri H. V. Kamath: Sir, I have given notice of amendments to the amendment of Dr. Ambedkar.

Mr. Vice-President: I am prepared to permit you to move the amendments you have just handed in to me. In that case I presume you are not going to move any of the amendments on the Printed List.

Shri H. V. Kamath: No, Sir.

Mr. Naziruddin Ahmad: I have to move 2284 and 2287.

Mr. Vice-President: You may move them. You will move them for insertion in clause (5) of the article.

Mr. Naziruddin Ahmad: Yes. These should be taken as amendments to clause (5) of the new draft. I beg to move :

"That in sub-clause (a) of clause (3) of article 150, after the word 'art' the word 'medicine' be inserted."

I also beg to move :

"That in sub-clause (c) of clause (3) of article 150, before the word 'engineering' the word 'Commerce' be added."

Mr. Vice-President: Unfortunately there is no 'engineering' in clause (5). Would you like to move that "engineering and commerce" be inserted? Please move that as amendment to clause (5).

Mr. Naziruddin Ahmad: Sir, I beg to move :

"That 'medicine, engineering and commerce' be inserted in clause (5)."

Shri S. Nagappa (Madras : General): I want to move amendments 66 to 68 to article 150.

Mr. Vice-President: You were not in your place when these amendments called. Provided you move them quickly without taking up much time of the House, you may move them.

Shri S. Nagappa: I beg to move :

"That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed article 150, for the word 'forty' the word 'forty-five' be substituted.

That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clauses (b) and (c) of clause (3) of the proposed article 150, for the word 'one-twelfth', wherever it occurs, the word 'one-fifteenth' be substituted.

That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clauses (a), (b), (c) and (d) of clause (3) of the proposed article 150, the words 'as nearly as may be', wherever they occur, be deleted."

Sir, my intention in moving these amendments is that in clause (1) it has been stated that :

"Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty."

Now, by dividing, how will the representation be given to each section of the electorate? You cannot divide 40 by 12. Because 4 will remain. If you make it 45 and if you enhance this twelve to fifteen, forty-five will be easily divisible by fifteen. That will be very easy mathematically. One-third of fifteen will be five, and in place of one-twelfth, I want that we should substitute one-fifteenth. If there are forty seats to be divided, and if you mean to take only one-twelfth, then four still remain. On the other hand, if the number is to be forty-five and the proportion is to be one-fifteenth, then it will mean that three members will be selected.

I am glad that you have now given representation to the teachers. Teachers of our land have been the silent sufferers all these years. They are, I think, the lowest paid. The teachers of our country are the lowest paid in the whole world, and I am glad that at last you have recognised their right to be represented in the legislative council.

You have also been good enough to give representation to local bodies like the district boards and municipalities. In this, I feel you have gone a long way in the direction of progress. But this progress will not be complete unless and until you give sufficient representation to labour. Sir, labour is one of the most important

[Shri S. Nagappa]

sections of our society and it also forms the bulk of our population. They are responsible for increasing the production in our country and for the well-being of our country. If the rights of labour are not recognised in this connection, I am afraid you are ignoring the bulk of our population.

71. "That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments after sub-clause (d) of clause (3) of the proposed article 150, the following new sub-clause be inserted :-

'(dd) one-fifteenth shall be elected by Agriculture labour from amongst the labourer classes.'"

Mr. Vice-President: Are you moving your amendment No. 71 now?

Shri S. Nagappa: Yes, Sir. They are all connected.

Mr. Vice-President: Have you finished?

Shri S. Nagappa: Not yet. In order to facilitate the giving of one-third to the local boards, one-third to the graduates and one-fifteenth to labour, you must have the number as 45. The rights of labour should be recognised. Without the co-operation of labour the country cannot progress one inch. It is their right to be represented in the Upper Chamber. They have been ignored and so I have had to bring in these amendments, so that you may not disturb your distribution of the seats or the quotas to the various sections. If you accept my amendments, the problem of distribution is automatically solved, from the view-point of labour, of the teachers the graduates and the local bodies. It is also in line with your wish that each section of the population of this country should be given representation. I hope the Honourable Dr. Ambedkar will not hesitate to accept my amendments as they are so reasonable and equitable. I would also request honourable Members to see the point in my amendments and also appreciate the importance of labour in our country. You should give encouragement to labour so that it may produce more and more so that the country may progress further and further. I hope the honourable Members will accept these simple amendments without any hesitation. I thank you very much.

Mr. Vice-President: I now call on Mr. Kamath. He has given notice of some amendments which I have permitted him to move.

Shri H. V. Kamath: Mr. Vice-President, at the outset I crave the pardon of the House for having given notice of my amendments only this morning, as a consequence of which, honourable Members have not been supplied with copies of my amendments. This was partly due to the fact that the Drafting Committee's draft article 150 did not reach me—I do not know whether that was the case with all—the draft did not reach me till late on Wednesday night, and so there was hardly any time to set out my amendments before this morning. I shall, however, read the amendments of which I have given notice.

I have given notice of four amendments which I will read out one by one.

The first is :

"That in amendment 1 of List I, Fourth Week, (that is to say, the amendment now under consideration moved by Dr. Ambedkar), the proviso to clause (1) of the proposed article 150, be deleted."

That is the proviso which says :

"Provided that the total number of members for the legislative council of a state shall in no case be less than forty."

The second amendment is :

"That in amendment 1 of List I of Fourth Week, in clause (2) of the proposed article 150, the words 'Unless Parliament by law otherwise provides' be deleted." (That is to say, the first portion of clause (2) be deleted.)

My third amendment is :

"That in amendment 1, List I (Fourth Week), in clause (5) of the proposed article 150, the words (they are in the last clause of the proposed article)—co-operative movement' be deleted."

And the last amendment of mine is to the effect :

"That in amendment 1 of List I (Fourth Week), in clause (5) of the proposed article 150, before the word 'literature', the words 'religion, philosophy' be inserted."

That is to say, the list would read :

"religion, philosophy, literature, science, art and social services."

I hope, Sir, that I have read out the amendments very audibly and clearly to the House so that they have an idea of the scope of my amendments. I propose now to take these amendments, one by one. May I speak now, Sir ?

Mr. Vice-President : Yes.

Shri H. V. Kamath : I take up, Sir, the first amendment, that is to say, the one relating to the proviso to the proposed article 150. The proviso lays down that the total number of members in the Upper Chamber of a State shall in no event be less than forty. During the discussion of this article, on the last occasion, some days ago, I had the opportunity of pointing out to the House that there are several States in the Indian Union whose population is perhaps not very much more than six or seven million. If that be so, the Lower Chamber in such States will consist of sixty to seventy members, and in a State where the Lower Chamber has not more than sixty to seventy members, it would be most undesirable to have an Upper Chamber consisting of forty members. The original draft of article 150 in the Draft Constitution had no such proviso and it fixed only the upper limit, which was to the effect that it should not exceed one-fourth of the total strength of the Lower Chamber. I submit that that would be adequate to our needs. If in any State the Lower Chamber consists of only 40, 50 or 60 members, you may have, if the State wants it, an Upper Chamber, but I do hope such States will not in practice desire the luxury of a Second Chamber. But if they do opt or vote for one, then I feel that they should be content with having an Upper Chamber of twenty to twenty-five or thereabouts. Today, I know that in Coorg the Council consists of twenty members. I feel and I urge upon this House that we should not countenance the setting up, in tiny States of less than ten million population, of a Second Chamber with a strength of forty members. It will not only be a luxury but an unnecessary drag upon the Lower House, and if we once provide in this article that the minimum shall be forty, then every tiny State in our Indian Union will be encouraged, and instigated if I may use the word, to ask for a Second Chamber. If we lay down definitely that we shall not have more than one-fourth of the Lower Chamber in the Upper Chamber, then many tiny States will not vote for a Second Chamber in their States. Besides, we have already passed an article in this House that Parliament may by law provide for the setting up of a Second Chamber in a State where there is none if the Legislature of that State asks for one; and this proviso under reference will act as an encouragement to tiny States of five million and six million population to ask for a Second Chamber, because they will be guaranteed a strength of forty in the Upper Chamber. I think this situation should not be countenanced and we should delete the proviso because in bigger States which have more than fifteen and sixteen million population, it will be forty *ipso facto* as the Lower Chamber will consist of more than 150 members; but tiny States should not be encouraged to have a Second Chamber in their own States.

[Shri H. V. Kamath]

The second amendment is with regard to clause (2) of the proposed article. I seek deletion of the first part of this clause which vests in the future Parliament power to alter the composition of the Upper Chambers in the States. I feel that so far as the composition of Upper Chamber—or Lower Chambers for the matter of that—is concerned, it should be more or less sacrosanct and open to change only by means of an amendment to the Constitution and not by a law of Parliament.

In clause (3) we have vested power in Parliament as regards certain matters relating to the determination of Local Authorities which might vote in this connection and the qualification for graduates. All that I am content to leave to Parliament. But the composition of the Upper Chamber or both Chambers, should be alterable only by an amendment to the Constitution and not by a simple majority in Parliament. Yesterday, I remember that Dr. Deshmukh pointed out to Section 61 of the Government of India Act, which puts the composition of the Chambers of the Legislatures on a different footing from subjects connected with franchise and other cognate matters. Even the Government of India Act, which we regarded as reactionary, gave a separate and more important and sacrosanct place in the Act to the composition of the Chambers.

So, I feel that so far as the composition is concerned, we should lay down specifically that that can be altered only by an amendment to the Constitution and not by a law made by Parliament. With regard to the other matters mentioned in clause (3), there is no harm if they are left to determination by Parliament by law, but in my judgment, the composition of the Chambers is so important that Parliament should have no hand in changing it except by an amendment to the Constitution.

Next, I come to amendment 3. I might however take amendments 3 and 4 together. Clause (5) provides that the nominees of the Governor in the Upper Chamber shall be persons having special knowledge or practical experience in respect of literature, science, art, co-operative movement and social services. Through my amendment, I seek a change in these various categories. I wish to provide that the nominees of the Governor shall be persons who will have special knowledge in the fields of religion, philosophy, literature, science, art and social services. It passes my comprehension why the category of "co-operative movement" has been included specifically in this clause and why so much importance has been attached thereto. I am all for co-operation—everywhere, in the House and outside the House. Without co-operation we will get nowhere. No nation can get anywhere without co-operation. But to specify the co-operative movement in this clause seems to me to be wholly unnecessary, and if at all it is necessary—and if the wise men of the Drafting Committee feel that they must find a place for men and women eminent in the co-operative movement in the Upper Chambers—there is the category of social services. I suppose the term 'social service' if understood in a wider sense does include the co-operative movement. It is not a political service or educational service : the co-operative movement is a social service. And when social service is provided for, I do not see why we should specifically provide for the co-operative movement. I do not know who has suggested this particular category to be included. It is, if at all, a sub-category and it should find no place as such in this clause.

Coming to the suggestion of two new categories, that is to say, religion and philosophy, I should like to plead with the House that in spite of repeated

admonitions to us that ours is and will remain a secular State, I am convinced that the secularity of the State cannot act as a bar to men of religion or philosophy. After all the only argument that may be advanced against my amendment is that a secular State does not necessitate the presence of men and women of religion or philosophy in our legislatures. That to my mind is a wholly erroneous conception. The conception of a secular State is in my humble judgment not a State which has discarded religion or philosophy in the highest sense but a State which is in the highest degree spiritual, and in the light of that highest spirituality or highest religion, regards all religions as one and makes no distinction between one religion and another. Is it necessary, I ask, to plead with my honourable colleagues here that the presence of men and women who have devoted or dedicated their lives to the cause of the highest religion and the highest philosophy—spirituality—will lend colour and dignity to the House? Have we not felt on many occasions the presence of my friends, who today are not here, Dr. Radhakrishnan and Rev. Father D'Souza, through eloquent speeches here having contributed to the weight of our debate? Have we gone so far in our interpretation of a secular State that we consider that there is no place in our legislatures for men of philosophy and religion? I for one will shudder to think if we lay down a constitutional bar to the admission or the entrance of men of philosophy and religion in our legislatures. After all, we in India have always stood for certain fundamental spiritual values. Even if other legislatures have not provided for and not given a place to such men of religion and philosophy—I think I am not quite right in saying that, because in the British Parliament we have the Lords Temporal and the Lords Spiritual; some other countries too have similarly provided, I suppose the Irish Parliament and other countries—but even if they have not, it does not act as a precedent to me. We, framing the Constitution for our country, should not give the go-by to the finest traditions of our race, country and nation. We should not in any way make the world feel that the men of religion and philosophy have no place in our legislatures. It was only a few months ago that this Assembly accepted an amendment of mine providing for an invocation of God in the oaths to be administered to the President and to the Governors. I say it will be wholly in conformity with the spirit in which this House accepted that amendment invoking the name of God Almighty, if we provide that in the Upper Chambers—this clause only deals with that—we give an honoured place to Hindu, Muslim, Parsi, Sikh and other divines. I would welcome the divines of every religion in the Upper Chamber so that it will conduce not merely to the dignity of the Chamber and to the raising of its level, but also conduce to harmony in the House.

As regards the amendment moved by my Friend Mr. Naziruddin Ahmad that medicine should be given a place I feel that medicine is comprised in science and so there is no need for a special amendment as regards medicine. It may be argued against this amendment of mine that literature or art or science, or altogether, may comprise philosophy. Science of course in the highest science—according to the Greek *scio* meaning 'to know', that is, knowledge—does connote the highest knowledge—*paravidya* and *aparavidya*—but science as it is currently known and as it is in vogue today does not connote philosophy and religion. As a matter of fact all the eminent scientists today are agreed on this point that where science ends, religion begins. I agree that the day may come when the thin partition between science and philosophy may vanish and the highest science and the highest philosophy may be used into one whole. But that is not so now and we are legislating for this particular period when there is science and art on the one hand and religion and philosophy on the other. I, therefore, urge that the categories mentioned in clause (5) be widened or increased so as to include representatives of philosophy and religion. And I hope that in the future Parliament of this country the Upper Chamber will include men who have dedicated

[Shri H. V. Kamath]

their whole lives not merely to literature, science and art but also the highest philosophy and the highest religion.

I move, Sir, my various amendments and commend them to the acceptance of the House.

Mr. Vice-President: I should like to remind Members that we have had a long discussion on this article on a previous occasion. I hope they will confine themselves to new points and make them briefly.

Shri Brajeshwar Prasad (Bihar: General): Sir, I rise to oppose article 150 as moved by Dr. Ambedkar. In clause (1) it is mentioned that the total number of Members in the Legislative Council of a State having such a Council shall not exceed one-fourth of the total number of Members of the Assembly of that State. I do not see why the membership should be limited to one-fourth of the total. Secondly, in clause (2), the words, "as Parliament by law prescribe" still find a place. I had hopes that after our discussion of this article last time this nasty business of Parliament interfering with the composition of the Legislative Council will be averted. It is my impression—I am open to correction, I hope that my suspicions are unfounded, but this is my impression—that the Members of the Drafting Committee have now changed their minds, they have now come to the conclusion that it is not desirable to have a second Chamber in the Provinces, therefore they are now resorting to these methods so that it may not be possible to have second Chambers at all in the Provinces. In the article it is not mentioned when the Parliament should decide the composition of the Legislative Council; the whole question may be left undecided. The Government of India on the plea of want of time may not come before the House to decide the question of the composition of the Legislative Councils. The result will be that on the commencement of the Constitution there will be no Legislative Councils in the Provinces.

Sir, I am a keen supporter of second Chambers in the Provinces. I feel that we are taking a grand leap in the dark. Adult franchise will release forces of violence and of disorder on a scale of which probably we have got no idea at present. Therefore, I feel that there should be some organisation in the country which may act as a brake on the vagaries of adult franchise. Secondly, in all the sub-clauses of clause (3) Parliament comes in. It is for the Constituent Assembly to decide and not for Parliament, as to what should be the other local authorities over and above the Municipalities and the District Boards which should form the electorate of the Legislative Councils. Again in sub-clause (b) it has been left for Parliament to prescribe the qualifications which shall be equivalent to that of a graduate. Again, in sub-clause (c) it has been left for Parliament to decide the electorate and in clause (4) it has been mentioned that the Members to be elected under sub-clauses (a) to (c) of clause (3) of this article shall be chosen in such a manner, in such territorial constituencies as may be prescribed by or under any law made by Parliament.

So, I am definitely of the opinion that there has been a fundamental change in article 150. The article which finds its place in the Draft Constitution is of an entirely different character where Parliament has not been empowered to interfere with the composition of the House. But somehow or other, for reasons best known to the Members of the Drafting Committee—probably they may not be responsible, they may not be free agents in this matter—somehow or other this thing has been foisted. I do not see how the future Parliament of India shall be in a better position to come to a decision on the question of the composition of the Legislative Councils. We have been sitting here since the last thirty-three months. If we are not in a position to decide the composition of the Legislative Councils, I do not see any reason why the future Parliament of India will be in

a better position to decide this question. It is no use postponing the evil day. It is far better that we sit here and decide the composition of the Legislative Councils, or let us frankly say that there is no need for Legislative Council in the States. Probably most of the Members will agree and abide by the decision on higher bodies and authorities.

I would like to reiterate once again my stand on this question of the Legislative Councils. I want that these bodies should be nominated bodies. A Legislative Council should be nominated by the Governor in his discretion, or by the President. The Members should be nominated for life and all the Members must have some educational qualifications. It is no use sending a Member who does not know how to sign his own name. I have no objection if a Member is elected by a municipality or a district board, let the municipal commissioner go to the Legislative Council but such a municipal commissioner must be a graduate. I have no objection to a school teacher going to the Legislative Council, but such a school teacher must be a graduate. I have no objection to a Member of the Provincial Assembly going to the Legislative Council, but such a Member must be a graduate. I have no objection to the Governor nominating persons to the Legislative Councils but I want that he should nominate only graduate Members. There is no use sending illiterate persons to the Legislative Councils.

Shrimati Purnima Banerji (United Provinces: General): Mr. President, Sir, article 150 had come up for discussion before this House on a previous occasion and the question of who should form the Upper House was discussed at that stage. As the amendment now proposed as to who should elect these Members —municipal boards or the Provincial Assemblies—the electorate was mentioned but not the qualifications of those who are eligible for membership of the Upper House.

If we look into the reason why an Upper House is constituted, we all feel that the necessity of such an Upper House was that it should be a revising body, it should give the Assemblies an opportunity to include any small amendments or useful amendments and also that the Lower House should have the benefit of such Members of the society who could not stand for election in the adult franchise electorate—such useful members of society should be associated in the work of legislation and government at some stage or the other. Therefore, Sir, I feel that, keeping this object in view, a certain kind of qualification for Members should have been laid down even for those two categories, that is those who are to be elected by municipalities and district boards and those who are to be elected by Provincial Assemblies.

There is another point. I am glad that the teaching profession has also been associated. I would only emphasise that not only teachers of schools but also voluntary teachers, should be included. In the new set up, if education is to make any great advancement, I am sure we shall need the help of able and qualified persons who will act as voluntary teachers. I would therefore suggest that in the teaching profession one should include voluntary teachers also. From time to time our Ministers have been appealing to the public to come and help in this great work. I, therefore, feel that their association should be sought.

Thirdly, where you have asked for nomination of Members by Governors, the words used are "social services". In this connection, I had given notice of an amendment to the effect that "social service" should include "voluntary social service". The object with which I tabled that amendment was that by social services as we all know, or as the House is now passing the article, I am sure they have in mind voluntary social service or social service done by such useful bodies as the Harijan Sevak Sangh, the Kasturba Memorial or any other similar

[Shrimati Purnima Banerji]

organisations where the workers are paid undoubtedly but it is hardly a payment but more or less a stipend, and they give most of their time to this work. I emphasise the words 'voluntary social service', because lately provincial and other Governments have opened branches of studies in the subject and are giving diplomas for attending the social service camps which are organised. For women workers who wish to do such social service the provinces have not provided opportunities for opening such camps. Facilities are lacking for opening such social service institutions. Therefore, when I say that voluntary social service should be included I mean that women's organisations which are in the field and whose members are eligible for such nominations should not be left out by a narrow interpretation of the words 'social services'.

Another suggestion that I want to make is that a certain form of labour which is unorganised and which is not formed into a constituency may, as labour is allowed representation in the Lower House, be allowed representation also in the Upper House and the co-operation of those useful members of society secured.

Shri V. S. Sarwate (Madhya Bharat) : Sir, in the proposed article 150, it may be noted that clause (3) gives representation to university graduates. The wording of the clause as it is, raises some difficulty. The expression "consisting of persons who have been for at least three years graduates of any university in the State" means that for graduates to be electors two conditions are necessary : that they must be firstly graduates of three years standing and secondly the university must be in the State. It may be seen that this would cause much difficulty. For instance in Central India there is no university located. Therefore any university graduate in Central India may not be able to vote under this clause. The other difficulty is that before 1904 there was no University Act prescribing territorial jurisdiction to the universities. Therefore any person who was desirous to appear for a university examination was able to appear for examinations of universities outside his province. For instance, a Bombay student was allowed to appear for the examinations held by the Calcutta University. So there may be now in Bombay many persons who are graduates of the Calcutta University. It may also happen that persons who were first residents of Calcutta and have become Calcutta graduates may have migrated to other provinces and become residents there. Such persons, being graduates of a university located outside the State *i.e.*, the province may not be able to vote in that province or State. To avoid this difficulty, I beg permission to move two amendments which bring out the intention of the Mover in a more consistent way. I hope Dr. Ambedkar would accept them. The first amendment that I propose is this : In clause (b) in the second line, after the word 'persons' add the words "who are habitually residing in the State and".

My second amendment is that, for the words "in the State" which occur after the words "any University", substitute the words "in the territory of India". So the clause as amended would run thus : "as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who are habitually residing in the State and who are graduates of any university in the territory of India". I trust these amendments will bring out the intention more clearly and will be acceptable to the honourable Mover.

Dr. P. S. Deshmukh (C.P. & Berar : General): Mr. Vice-President, Sir, it was at the instance of the Honourable the President that we have here an outline of the composition of the Second Chambers in the Provinces being determined in this Constitution and not being left to Parliament as was suggested earlier. I say it is an outline, because, as honourable Members will be pleased to

see, in almost every clause there is something that will have to be decided by Parliament. Every clause contains the words 'as Parliament may by law specify, or as may be prescribed by law.' This shows that the whole structure of the Second Chambers is presented here in a bare outline specifying merely the numbers which will approximately represent the various interests mentioned herein.

Now, in spite of the fact that we have this outline before us, I think it is yet correct to say that there is no need as a matter of fact for Second Chambers at all because even now we are not certain as to what particular interests deserve protection and representation in those Houses. We are going by resorting to this amended article to give representation in the Second Chambers in certain provinces to such categories of persons and people as are hardly worthy of it in a stricter sense. If we examine the article from this point of view, we will have to accept the contention that the composition of the Second Chambers is not going to be anything radically different from the composition of the Legislative Assemblies *i.e.*, the lower Chambers. As many as one-third are going to be chosen by the members of the Legislative Assembly themselves. It is improbable that they would choose anybody unlike themselves. They are likely to choose men of the same qualifications and social status as themselves. Probably economically also those thus selected will be more or less on the same footing as those who have been selected by adult franchise to the Provincial Assemblies. Then, if we look at the other categories such as persons who may be chosen by graduates and teachers, there is no likelihood that any of the best elements in society will be chosen. They are again likely to be of the same nature as members of the Legislative Assembly. This article also bears the imprint that it has been very hurriedly drafted. There are so many unsatisfactory expressions used in it and so many errors one of which was pointed out by Mr. Sarwate. There is also an element of chance so far as the making of the whole Constitution is concerned. This is borne out by this particular article. I do not think honourable Members will point out that on any occasion at any discussion a secondary school teacher was intended to be a voter for election of members to the Second Chambers. I had never heard of it. I hear for the first time this important privilege being given to the secondary school teacher in the amendment proposed by Dr. Ambedkar. We have graduates of universities. One can understand representation being given to them. I do not see why a secondary school teacher has been brought in for this privilege. And if a secondary school tecaher is lucky enough to find a place why not include the primary school teacher also for the grant of this privilege? I think this is very unfair to the primary school teachers. Secondly, when we are considering a graduate as a qualified person to elect persons to the Second Chambers, and also a secondary school teacher, how will it be possible to keep these people away from politics? Sir, I do not think that the Drafting Committee has paid very careful attention to this side of the question. There is going to be a very large number of persons in the Government services and those persons are likely to be mostly graduates even if the views propounded from time to time by my honourable Friend Mr. Brajeshwar Prasad are not acceptable to this House. Wherever we go, we shall meet with graduates and already thanks to the British Government's attaching disproportionate value to university education and the fetish they made of university degrees with which I completely disagree, we will be having a very large proportion of our graduates in the Government services. On the one hand you will have to deny them the franchise or on the other if we give the franchise, you will have to drag them into and permit them to dabble in the day to day politics. I would like the Honourable Dr. Ambedkar to imagine what will be the condition of the services. Would it be wise to permit the permanent services to take part in politics and to enter elections not probably—at any rate I hope not—as candidates but as

[Dr P S Deshmukh]

voters? And what will be the effect of all this on the whole politics of the country. I leave it to the honourable Members of the Drafting Committee to judge. I have got an instance in point which will show the kind of things the permanent services are capable of doing. A graduate of a particular standing in the Nagpur University can select a certain number of representatives on the Nagpur University Court *i.e.*, lower body in the University and it has been our experience that more than half of these people were permanent Government servants because they had the required influence and the required power to influence by canvassing in direct and indirect ways; they could, sometimes against the wishes of the voter, collect the voting papers from the voters, get their signatures beforehand and post all the voting papers in one bundle to the University so that even before the result was declared the required first preferences having been already securely secured their election was guaranteed and a certainty. Here also we are going to have the same system of proportional presentation for which some members show great admiration and with which they are fascinated. I for one think that this aspect of the question in regard to the franchise we are proposing for representation on the Upper Chamber should be considered with greater care so far to see whether it will be wise to allow the pemanent services who are bound to be graduates to interfere in the elections and to take part in politics.

Another point which I would like to emphasise is that the Drafting of this Constitution appears to me to be a veritable lottery. At least two categories of persons who could have never dreamt of getting any representation in the Second Chamber appear to have got the merest chance. I refer to the inclusion of the words "co-operative movement" as selected for nomination by Governor. This has been rightly criticised by my honourable Friend, Mr. Kamath. It was really suggested that all persons who are members of primary co-operative societies should be given votes along with the members of the local boards, municipalities, etc., so that they may take part in the election and be included in sub-clause (i) I cannot understand what particular competence, what special expert knowledge, what special qualification the co-operative movement itself is presumed to possess so that the Governor must choose somebody from that movement. This is an absolutely funny proposal and I do not know what milder words to use. I think this is really something that has just crept into the article without anybody's strong volition I am at any rate not aware of any demand from any quarter in this regard. The wording is absolutely ununderstandable to me except as a pure accident unless we intend that Rao Sahibs and Rai Bahadurs who have prospered under it should be helped and promoted. They never contributed a single pie, borrowed anything, they merely took the money from the Government or some one else and gave it to the agriculturists. It is such persons who are supposed to be the great and celebrated co-operators. If it is intended to make a law so that the Governor could nominate such nonentities, such people who have exploited both the agriculturists as well as the Government and give them representation on the Second Chamber, then alone the provision is understandable; otherwise, I am absolutely at a loss to understand how the co-operative movement should get a place in this sub-clause (5). I am really very much surprised. The other instance of persons who got representation on the Upper Chamber are the school teachers. On the whole, we find that the totality of the representation we are going to have on the Second Chamber is not going to be very much different from the composition which we are going to have so far as the Provincial Assemblies are concerned and that being so, there is no use wasting our energies spending so much time and money on the composition of this House, since it is not going be anything much different. I feel like foretelling that this House will probably

be more reactionary than even the Provincial Assembly. The only justification for a Second Chamber is that a State should have for the purposes of stability and as a check on hasty and harmful legislation a Chamber consisting of such persons who are not likely to take part in the day to day politics and to fight elections and spend the money that elections need. Their experience, their mature judgment and their position in the society and country are such that they do not want to take the trouble of going through an ordinary election. But at the same time they constitute the more sober elemnets in the society and it is a national loss if their experience cannot be availed of or placed at the service of the State. It is for these purposes that Second Chambers are provided for. Is there any room except the nomination by the Governor for such persons to come to the Second Chamber? There is none. Almost every one else is going to be of the same position as the members of the Provincial Assembly and therefore the whole paraphernelia is going to be completely unnecessary and burdensome and it is not likely to serve the purpose which is intended by the Drafting Committee. I think this House will be committing an error in accepting this article as it stands and to have a Chamber like this which will be absolutely useless and will not serve any purpose which such chambers are calculated to serve. I would therefore like to suggest, Sir, that the whole structure of the Second Chamber should be completely modified or that the whole thing ought to be dropped.

Shri T. T. Krishnamachari (Madras: General): The question be now put.

Mr. Vice-President: Closure has been moved. I am going to place.....

Prof. K. T. Shah: I already said I will reserve my remarks for a general discussion.

Mr. Vice-President: Prof. Shah may now speak. After he speaks, I will put the closure.

Prof. K. T. Shah: At the time when this amendment came to be discussed, the amendments which we originally tabled became overlapping, or mutually inconsistent: and in the desire to save the time of the House, as well as to maintain the clarity of the issues to be discussed, I offered to withhold those amendments. I am afraid, however, that the compromise draft that the Honourable the Chairman of the Drafting Committee has placed before the House, is not even not satisfactory to the sections of the House interested in such matters; it makes matters worse than even the original article to which this amendment has been presented. I would, however, confine my remarks to the new article proposed by Dr. Ambedkar, and would like to point out that in almost every respect the new draft does not make any improvement over the original article.

On the previous occasion when we had a discussion on the subject Dr. Ambedkar himself reminded the House of the classic remark of Abbe Sieyes who said that if the Second Chamber agreed with the first House—the lower House, it was superfluous; and if it disagreed, it was dangerous. I am afraid that, true to his own learning, he has made a presentation of a Second Chamber which is going to be both superfluous and dangerous and which would not make it at all suitable for the carrying out of the real function that the Second Chamber may usefully or harmlessly discharge?

In this case, as it has already been pointed out, the limitation on the total strength may become incongruous, in view of the strength of the population in the different States; and the actual strength of a Second Chamber in a State may be such as to be perhaps incompatible with or unworkable along with the Lower Chamber.

[Prof K. T. Shah]

But, leaving that matter aside as a mere matter of detail, I would invite attention to another point which relates to the elective principle and the nominating principle that are both attempted to be combined in this Draft. Certain elements of the Second Chamber as here proposed are to be elected; and the constituencies or electorates are to be framed in accordance with the laws made by Parliament: I take it, that it means the Central legislature, the central law-making body. That is to say, the local legislatures or the local authorities would not have any initial say in the composition of that body, so far at any rate as these electorates are concerned.

At the same time, in a later clause of this article, nomination is brought in by the Governor, who is primarily, exclusively a local authority. The combination of these two authorities plus the election by the local legislature, the local Lower Chamber, makes a hotch-potch, I think, of the various interests or authorities entitled under this amendment to send their nominees or representatives to the Second Chamber.

The purpose of the Second Chamber, as has been laid down in the different parts of the Constitution, would be to join in the legislation, have a sort of watch or supervision over the administration though not equal authority over the finances and sometimes to delay what might be called hasty legislation. If that is to be the purpose or function of the Second Chamber as conceived in this Constitution, the provisions here made for its consitution would, I am afraid, not at all serve that purpose.

In the first place, its total strength is too small, it will not be more than one-fourth of the First Chamber, and consequently will not ever be in a position effectively to influence opinion as formed by the majority of the Lower Chamber, unless, of course, that majority is a very chancy or a slight majority.

Secondly, there are to be in the Second Chamber elements representing to the extent of one-third plus one-sixth, that is, five-sixths, that would be really in one way or another nominees of the Lower Chamber. The Governor nominates about 2/6ths. He will act presumably on the advice of the party in power. Therefore, these would be up to at least five-sixths creatures of the Lower House or of the Governor acting on the advice of the party in power in the Lower House. As such, it will only be a duplicating or complicating machinery without making it more useful. A suggestion has been thrown out, not as an amendment, but as a remark in the course of the debate, which would make some elements in this House or a section of the House as life appointees. Being myself against the Second Chambers on principle altogether, I do not look upon it as an improvement to make a life tenure for some of the members. In any case, the composition, whether by nomination or election by the Lower House and nomination by the Governor, would be, to some extent, confusing, I think, with the general electoral principle as determined by central legislation enacted by Parliament.

Then, again with regard to the various elements which are sought to be brought into the Second Chamber such as representatives of graduates and teachers. I really do not see what purpose they would be peculiarly qualified to serve, that the members elected by the local bodies or elected by the lower Chamber will not be able to serve. It seems to me that these other bodies, particularly, the graduates and teachers, one-twelfth each, will be really helping, if at all, to confuse the issues so as to make the discussion more difficult and bewildering and progress more hampered rather than serve any useful purpose. Dr. Deshmukh and other speakers have pointed out the way in which graduates, for instance, have been acting in their own nearer interests of the University elections. I may quote my own experience of the working of the graduates electo-

rate. However, strong a believer I may be in their right to be represented in the University bodies. I am afraid to make of them a special electorate for the Second Chamber in a State. And the three years standing appears to me to lack any reason or principle.

Whatever may be the convenience of securing them as elements to be represented in the Second Chamber, I fail to understand what principle there could be in just selecting graduates and teachers against any other section or professions in the State. The teachers, moreover, would be a part of the social services. I take it social service is such a wide and comprehensive term that it can easily include the teachers, health workers, public welfare visitors to Jails or factories and so on, so that if we really want to have Social Service as such, as a category to be represented by itself, to select a fraction of it like the teachers separately is again an over-doing or rather duplicating the machinery.

The classification in the last instance of certain elements to be nominated by the Governor, such as science, literature, art, co-operative movement and social services, seems to me again to suffer from the same defect of there being absolutely no principle whatsoever by which these items have been chosen and others, which could be put equally on a par with them, are left out.

My Friend Mr. Kamath mentioned, for example, that he would like to add religion. This is the one subject on which I am afraid I have never been able to agree with Mr. Kamath. Representation of religion in a body of this kind seems to me to be utterly uncalled for and out of place. However, it is also a category that might have been suggested, though in what way that category would function I cannot quite imagine, myself. Would you choose the Ministers of religion? Or would you choose those who profess or speak loudest in its praise? Or those who follow silently whose number is unknown? These are categories which if included in the Second Chamber appear to me to be only giving so much more power to the Governor or his Advisers to put for ornament's sake or for the sake of honouring those particular persons who are supposed to represent art, literature, science, co-operative movement and social services. Of all these perhaps the co-operative movement is the only one which may be said to have some definite organisation. If selection were to be made out of such elements, here is the only one illustration where selection could be made according to some reasonable understandable principles. For the rest, eminence in science, art, literature or social service would be judged more by a person's occupying certain chairs or posts, and having a certain reputation as a publicist; or indications of this character rather than representation of the whole element as such which is not organised, unless, again, it may be the intention to select such people from the Universities for example which are said to represent or embody the faculty of art, faculty of science and so on.

For all these reasons, it is evident that this compromise draft will not really serve any purpose, let alone the purpose of making the Second Chamber useless in itself and dangerous in its possibilities, and will not make the Second Chamber a part of the machinery that would add weight to our Constitution, to the dignity of the deliberations in the legislative bodies and to the sound working of a democratic system.

Mr. Vice-President: I will now put the closure motion to the House.

The question is :

"That the question be now put."

Mr. Vice-President: Closure is accepted.

Some Honourable Members: The Noes were more vociferous.

Mr. Vice-President: May I call again?

The question is:

That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, out of the amendments that have been moved, I am prepared to accept the amendments moved by Mr. Sarwate. I think he has spotted a real difficulty in the draft as it stands. The draft says –'University in the State'. It is quite obvious that there are many States with at present no university. All the same there are graduates from other Universities who are residing in that State. It is certainly not the intention to take away the right of a graduate residing in a State to participate in the elections to the Upper Chamber merely because he does not happen to be a graduate of a University in that particular State. In order therefore to make the way clear for graduates residing in the particular State, I think this amendment is necessary and I propose to accept it. I would only say that the word 'habitually' is perhaps not necessary because residence as a qualification will be defined under the provisions of article 149 where we have the power to describe qualifications and disqualifications.

With regard to the other points of criticisms, I do not know that those who have indulged in high-flown phraseology in denouncing this particular article have done any service either to themselves or to the House. This is a matter which has been debated more than one. Whether there should be a Second Chamber in the province or not was a matter which was debated and the proposition has been accepted that those provinces who want Second Chambers should be permitted to have them. I do not know that any good purpose is served by repeating the same arguments which were urged by those Members at the time when that matter was discussed.

With regard to the merits of the proposition which has been tabled before the House, I have not seen any single constructive suggestion on the part of any Member who has taken part in this debate as to what should be the alternative constitution of the Second Chamber. Here and there bits have been taken and denunciations have been indulged in to point out either that that is a useful provision or a dangerous provision. Well, I am prepared to say that this is a matter where there can be two opinions and I am not prepared to say that the opinion I hold or the opinion of the Drafting Committee is the only correct one in this matter. We have to provide some kind of constitution and I am prepared to say that the constitution provided is as reasonable and as practicable as can be thought of in the present circumstances.

Then there were two points that were made, one of them by my Friend Mr. Nagappa. He wanted that a provision should be made for the representation of agricultural labour. I do not know that any such provision is necessary for the representation of agricultural labour in the Upper Chamber, because the Lower Chamber will be in my judgment having a very large representation of agricultural labour in view of the fact that the suffrage on which the Lower Chamber would be elected would be adult suffrage and I do not know.....

Shri S. Nagappa: If that is the case, all other sections also to whom you are giving will also get representation in the Lower Chamber.

The Honourable Dr. B. R. Ambedkar: They are provided for very different reasons but agricultural labour would be amply provide in the Lower Chamber.

My Friend Shri Muniswami Pillai by an amendment raised the question that there should be special representation for the Scheduled Castes in the Upper Chamber. Now, I should like to point out to him that so far as the Drafting Committee is concerned, it is governed by the report of the Advisory Committee which dealt with this matter. In the report of the Advisory Committee which was placed before the House during August 1947 the following provision finds a place :—

"(c) There shall be reservation of seats for the Muslims in the Lower House of the Central and Provincial Legislatures on the basis of their population."

"3. (a) The section of Hindu community referred to as scheduled caste and defined in scheduled 1 to the Government of India Act 1935 shall have the same rights and benefits which are herein provided for etc, etc"

which means that the representation to be guaranteed to the Scheduled Castes shall be guaranteed only in the Lower Houses of the Central and Provincial Legislatures. That being the decision of the Constituent Assembly, I do not think it is competent for the Drafting Committee to adopt any proposition which would be in contradiction to the decision of the House. I might say, although I do not want to injure anybody's feeling, that if any one was vociferously in favour of this decision, it was my Friend Mr. Muniswamy Pillay and I think he ought to be content with what he agreed to abide by then.

Mr. Vice-President: Dr. Ambedkar you have to formally withdraw amendment No. 2.

The Honourable Dr. B. R. Ambedkar: Yes, I have to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Shri H. V. Kamath: I beg leave of the House to withdraw amendment No. 3.

The amendment was, by leave of the Assembly, withdrawn.

Shri S. Nagappa: In view of the explanation given by Dr. Ambedkar, I beg leave to withdraw amendments Nos. 66, 67, 68, 70 and 71.

The amendments were, by leave of the Assembly, withdrawn

Dr. Monomohan Das: I beg to withdraw amendment No. 69.

The amendment was, by leave of the Assembly, withdrawn.

Shri V. I. Muniswamy Pillai: I beg leave of the House to withdraw my amendment, and I do not agree with the observations of the Honourable Dr. Ambedkar.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: The question is:

"That in amendment 1 (List I Fourth Week), the proviso to clause 1 of the proposed article 150 be deleted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in amendment 1 (List I Fourth Week), in clause of the proposed article 150, the words 'Unless Parliament by law otherwise provides' be deleted."

The amendment was negatived.

Mr. Vice-President: The third amendment is for the deletion of the words "co-operative movement" in clause (5).

The question is :

"That in amendment 1 (List I, Fourth Week), in clause 5 of the proposed article 150 the words 'co-operative movement' be deleted."

The amendment was negatived.

Mr. Vice-President: The question is :

"That in amendment 1 (List I, Fourth Week), in clause 5 of the proposed article 150, before the word 'literature', the words 'religion, philosophy' be inserted."

The amendment was negatived.

Mr. Vice-President: I now put Mr. Sarwate's amendment to the House.

The question is :

"That in sub-clause (b) of clause (3) of the proposed article 150, after words 'consisting of persons' the words 'resident in the State' be added, and for the words 'in the State' the words 'in the territory of India' be substituted."

The amendment was adopted.

Mr. Vice-President: I now put amendment No. 2284 of the Printed List. Volume I, that the word "medicine" be inserted in clause (5).

The question is :

"That in clause (5) of article 150, after the word 'art' the word 'medicine' be inserted."

The amendment was negatived.

Mr. Vice-President: I now put the amendment No. 2287 in the printed volume I, for the addition of the words "engineering and commerce" in clause (5).

The question is :

"That in clause (5) of article 150, before the word 'engineering' the word 'commerce' be added."

The amendment was negatived.

Mr. Vice-President: Now I place before the House article 150, as amended.

The question is :

"That article 150, as amended, stand part of the Constitution."

The motion was adopted.

Article 150, as amended, was added to the Constitution.

PART VIII-A

Article 215-A

The Honourable Dr. B. R. Ambedkar: Sir, I move my amendment No. 6, List 1, Fourth Week.

"That after Part VIII, the following new Part be inserted :—

"PART VIII-A

THE SCHEDULED AND TRIBAL AREAS

215A. In this Constitution—

(a) the expression 'scheduled areas' means the areas specified in Parts I to VII of definitions the Table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those Parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph;

(b) the expression 'tribal areas' means the areas specified in Parts I and II of the Table appended to paragraph 19 of the Sixth Schedule subject to any order made under sub-paragraph (3) of paragraph 1 or clause (b) of sub-paragraph (1) of paragraph 17 of that Schedule.

Administration of Scheduled and tribal areas.

215B. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any State for the time being specified in Part I or Part III of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam."

Sir, my amendment merely replaces the original articles 189 and 190. The only thing we are doing is that we are transferring the provisions contained in articles 189 and 190 to another and a separate part. It is because of the transposition that it has become necessary to re-number them in order to secure the necessary logical sequence of the new part. Barring minor changes, there are no changes of substance at all, in the new articles proposed by me—article 215A and article 215B.

Mr. Vice-President: There is an amendment at page 253 of the printed volume I, No. 2553, by Mr. Naziruddin Ahmad. Does he propose to move it?

Mr. Naziruddin Ahmad: The whole basis of that amendment is taken away and some new amendments moved, making the whole thing impracticable.

Mr. Vice-President: Then you do not move it. The same remarks apply to your amendments Nos. 2554 and 2557. I presume amendment No. 2555 is not moved. Does any Member wish to speak on the motion?

Shri Brajeshwar Prasad: Sir, I rise to support the articles 215A and 215B as moved by Dr. Ambedkar. But I would like to add the following words—"Until Parliament by law otherwise provides..." It is not safe, it is not proper to define and lay down the constitution and the government of the tribal areas which cannot be changed without an amendment of the Constitution. Everything in the tribal areas is in a flux. Therefore it will be wise on the part of the Drafting Committee to add these words in articles 215A and 215B.

Shri Yudhisthir Mishra (Orissa: General): Mr. Vice-President, Sir. The Advisory Committee which was set up under clause 20 of the Cabinet Mission's Statement of 16th May, 1946 was required to report to the Constituent Assembly upon the scheme for the administration of the tribal and excluded areas, and to advise whether these rights should be incorporated in he Constitution: and I think, in accordance with the Cabinet Mission's plan, the Tribal Advisory Committee was set up to report about the administration of the tribal areas and the provisions to be incorporated in the Draft Constitution. The Advisory Committee has submitted its report and the present provisions have been incorporated in the Draft Constitution according to that report. Now, Sir, the Tribal Advisory Committee did not then enquire into the conditions of the tribal people in the Indian States as it was not within its scope. In the meantime, however, a large number of Indian States have been integrated into the neighbouring provinces and they will now be administered as parts of those provinces. It is therefore meet and proper that the tribal people of these small States should also get the benefit of the present provisions. In the original draft, the States were excluded from the operation of these provisions regarding the scheduled tribes but they have been included in the amendment just moved by Dr. Ambedkar. When the backward tribal people of the provinces will have the benefit of the provisions of the Fifth Schedule, there is no reason why the aboriginal tribes of the States under the same administration should be excluded. There is a large aboriginal population in Saraikella and Kharswan in Bihar and Orissa and the C.P. States.

[Shri Yudhisthir Mishra]

Orissa they form one-third of the population in the States. But I regret to say that none of the tribal areas in these States have been specified as Scheduled areas in parts V to VII of the table appended to paragraph 18 of the Fifth Schedule of the Draft Constitution. The reason probably for omitting the tribal areas from the category of Scheduled areas is that the Advisory Committee on Tribes has not been able to go into the whole question, as it was not within its scope. I would request the Drafting Committee to specify the scheduled areas from the States in the Fifth Schedule, when that particular Schedule is taken into consideration in this House. The President of the Indian Republic under the new Constitution will, of course, have sufficient authority to specify any new area in any State as a Scheduled area under sub-para. (2) of paragraph 18 of the Fifth Schedule. If it is not possible for the Drafting Committee at this stage to specify the scheduled areas from the States in the Constitution, I would submit that as soon as the Constitution is passed, the President of the Indian Republic should set up a Commission to enquire into the conditions of the tribal people of these States and to report whether any of the areas would be specified as scheduled areas. I cannot but strongly press for the protection of these tribal people of Orissa and the C.P. States by bringing the tribal areas under the scope of the Fifth Schedule as has been done in the case of the provinces.

The tribal areas according to the proposed Constitution will no longer be treated like excluded or partially excluded areas in the present Constitution, and as they have been done in the 1935 Act. The scheduled areas specified in the Fifth Schedule will not be excluded from the jurisdiction of the Legislature or executive but according to the provisions of the Draft Constitution, the Tribal Advisory Committee, as has been provided for in the Fifth Schedule, will only work as a sort of check on the executive power of the provinces as far as tribal matters are concerned. I submit that the tribal people of these States are as backward as their kinsmen in the provinces. Therefore, whilst supporting the amendment of Dr. Ambedkar, I request him to take steps to incorporate the scheduled areas of Orissa and the C.P. States in the Fifth Schedule when that question comes up for consideration before this House.

Shri H. V. Kamath: Sir, I rise to support the suggestion made by my honourable Friend, Shri Brajeshwar Prasad, with regard to the future administration of these tribal areas. It will be agreed on all hands that we do not contemplate the continuance of these various tribal scheduled areas in the same condition as they are today. I am sure that all of us visualise the day when they will be brought up to the level of the adjoining neighbouring provinces and will be integrated with the Provinces and States that lie contiguous to them. We do not contemplate a permanently different type of administration for them from what is obtaining or might obtain or will obtain in the rest of India. In the light of these considerations the suggestion made by my Friend, Shri Brajeshwar Prasad is quite sound and I suggest that we should adopt the article as proposed by Dr. Ambedkar today, subject to the condition "until Parliament by law otherwise provides". We have just now adopted an article where we have vested power in Parliament to alter such a fundamental thing as the composition of the Second Chamber. I do not see any reason why, as regards the constitution of these tribal councils, and in general the administration of the tribal areas, Parliament should not be vested with the power to alter, at any subsequent date, this Constitution by an ordinary vote of Parliament.

Pandit Thakur Das Bhargava (East Punjab: General): According to Mr. Brajeshwar Prasad the whole thing is in a state of flux. Therefore it is a good ground that Parliament should be given the power.

Shri Brajeshwar Prasad: That is exactly what he is saying!

Pandit Thakur Das Bhargava: The very ground given by Mr. Brajeshwar Prasad constitutes a good reason why Parliament should be empowered and the proposed provision is justifiable.

Shri H. V. Kamath: On the contrary, Parliament should also have the power to declare other than otherwise, later on. It can change later on. I do not know what Pandit Bhargava has in his mind. I hope he will make it clear later on. But it is clear to me that it should not be left to an amendment of the Constitution: as it is, it will be so rigid that the Constitution will have to be amended if we wish to change the constitution and administration of the tribal areas. But if we leave it to Parliament to change it, it will be easier: otherwise it will involve an amendment of the Constitution, which I do not like in this particular context. I therefore suggest that Parliament should be invested with the power to make any suitable alterations in this regard and therefore the suggestion made by Shri Brajeshwar Prasad may be embodied suitably in the final draft of the article before it is brought before the House.

The Honourable Dr. B. R. Ambedkar: I do not think there is any necessity to offer any remarks in reply.

Mr. Vice-President: The question is:

"That after Part VIII, the following new Part be inserted:—

PART VIII-A

THE SCHEDULED AND TRIBAL AREAS

215A In this Constitution—

Definition

(a) the expression 'scheduled areas' means the areas specified in Parts I to VII of the Table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those Parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph;

(b) the expression 'tribal areas' means the areas specified in Parts I and II of the Table appended to paragraph 19 of the Sixth Schedule subject to any order made under sub-paragraph (3) of paragraph 1 or clause (b) of sub-paragraph (1) of paragraph 17 of that Schedule.

Administration of scheduled and tribal areas

215B. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any State for the time being specified in Part I or Part III of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam."

The motion was adopted.

Part VIIIA and articles 215A and 215B were added to the Constitution.

Mr. Vice-President: The question is:

"That article 189 be deleted."

The motion was adopted.

Article 189 was deleted from the Constitution.

Mr. Vice-President: The question is:

"That article 190 be deleted."

The motion was adopted.

Article 190 was deleted from the Constitution.

Article 250—(*Contd.*)

Mr. Vice-President: We now take up article 250. When the article was last under consideration Mr. Sidhva was speaking on his amendment No. 12 of List I—Fourth Week.

Shri R. K. Sidhva: Mr. Vice President, Sir, as you rightly stated, last time when I was moving my amendment No. 12 the Honourable Dr. Ambedkar intervened and stated that this article should be held over. My amendment in the printed list (page 27) reads :

"That with reference to Amendment No. 2851 of the List of Amendments, in article 250, the following proviso be added at the end :—

'Provided that the proceeds collected by the Government of India under clause (c) shall be assigned to local authorities in the jurisdiction of the States.'"

If you refer to clause (c) of the article you will find that it relates to "terminal taxes on goods or passengers carried by railway or air". My amendment, if accepted, would mean that, while (a), (b) and (d) would remain, (c) would go. I will give you my reasons as to why I desire that clause (c) should be deleted from this article.

The Octroi, terminal tax and toll tax are more or less allied taxes and at the same time they form the major revenue of the local bodies. Prior to the Government of India Act, 1935, the terminal tax was a provincial subject. In the 1935 Act this terminal tax has been put as a Central subject. The Drafting Committee has more or less borrowed the section from the Government of India Act with minor changes in the language. They have not taken care to see why the terminal tax was changed in the 1935 Act from a provincial subject to a Central subject. If they had taken pains in the matter I am confident that they would have accepted my amendment.

This octroi tax which is levied by the local bodies is a pernicious tax. It creates so many complications. The tax is levied on the weighment of goods and in the matter of *ad valorem* also on the weighment of articles carried by rail, which has created a kind of harassment to the trade. Not only that. It has also lead to corruption with the result that the Government of India appointed a Committee to investigate into this matter. They unanimously resolved that the octroi should be abolished and instead terminal tax should be substituted.

Terminal tax is a very substantial tax which is recovered by various local bodies, and on the recommendation of that Committee in many local bodies this octroi has now been abolished although it has proceeded with a slow pace. Today nearly 80 per cent. of the local bodies still levy the octroi and the Provincial Governments are permitting them without taking any notice of the recommendations of the Committee.

The terminal tax is levied by municipalities and also by the Sanitary Committees and local boards Committees. The object of this alteration in the Government of India Act, 1935, is quite evident. This terminal tax brings a substantial big amount on one single item which is imported, namely, petroleum. The kerosene and petrol which is imported from foreign countries is subject to a tax, and although the terminal tax is only one pice per gallon it brings in a revenue of nearly Rs. 1,10,000 for only one tanker which arrives at either of the ports of Karachi, Bombay, Madras or Calcutta. This affected the Britishers who hold

the sole monopoly of the import of these articles. Therefore, for the interest of their own nationals, the Britishers at that time thought that under the provisions of the Government of India Act, 1935, which confers autonomy to provinces, if the terminal tax is allowed to be retained by the province, the province might further increase the terminal tax. Therefore they conveniently omitted this from the provincial list and tagged it on to the Central list.

You will be pleased to see that I had moved another amendment in this matter which I am glad the Drafting Committee has accepted. That amendment was that after the word "railway" there should be a comma and the word "sea" should be added. In the original clause you will find that the word "sea" is omitted. The Drafting Committee without considering its implications merely copied the words from the Government of India Act. I brought to their notice that the omission of the word "sea" was deliberate on the part of the framers of the Government of India Act, 1935, their object being not to allow the terminal tax to be levied on petroleum goods which arrived by sea, and they therefore intentionally omitted the word "sea". I am not quite sure that the Drafting Committee actually realised the reason for accepting my amendment—I do not know whether they merely felt that 'air' and 'railways' are mentioned here but 'sea' is omitted and therefore 'sea' should be included, without realising the implications of my amendment. My amendment, if not accepted, would have deprived the local bodies of a large revenue on terminal tax. Therefore, from that point of view I congratulate the Drafting Committee for having accepted my amendment. I can assure that if this amendment was not accepted, in all it would have brought a loss of a crore of rupees to the local bodies by way of this terminal tax.

I come to the other part in which it is stated in the article that this tax shall be collected by the Government of India but will be handed over to the States. So far so good. In the Government of India Act, 1935, there is a proviso that no fresh or additional terminal tax shall be imposed unless the permission of the Central Government is obtained. That is a most objectionable feature in that Act which has been copied by the Drafting Committee. You are preventing the local bodies from expanding their revenue by increasing the terminal tax on certain articles. I see no reason why the Provincial Government should not be allowed to increase it on the recommendation of the local bodies in regard to items on which they desire an increment in the terminal tax. The Calcutta Corporation wanted to increase certain items of tax on goods imported by rail, but when the matter was referred to the Government the increment was not allowed on the ground that it is a corollary of the toll-tax. The Kanpur Municipality had a question of similar nature which was referred to the U.P. Government which in turn referred it to the Central Government who did not give permission to accept any additional items. These are the impediments which stand in the way of betterment of the local bodies. I am sorry to state that the Drafting Committee have not taken this matter into consideration at all. At a Conference held last year of the Provincial Local Self-Government Ministers presided over by the Health Minister, this question of Finances in relation to the Provinces and the local bodies was considered and a unanimous resolution was passed which was forwarded to the Drafting Committee. I fail to understand how when the Provincial Ministers are agreed unanimously on the point, the Drafting Committee negatived it. The resolution said :—

> "The Committee was of the opinion that while terminal tax may be governed by Central Legislature, it should be made clear that such taxes are for the benefit of local bodies. With this end in view, it suggested that in the Draft article 250, the words 'and shall be payable to local bodies' be inserted after the words 'shall be assigned to the States in clause (1) of the Draft article'."

I fail to understand why they have discarded the suggestion unanimously put forward. I may also draw your attention to the amendment proposed by the

[Shri R. K. Sidhva]

Honourable Pandit Govind Ballabh Pant. He is one of the Ministers who takes great interest in the welfare of local bodies. He has stated that in clause (1) of article 250, sub-clause (c) be deleted and sub-clause (d) be re-numbered as sub-clause (c). I wish he was present here today; had he been present he would have supported me very strongly and I am sure if he had supported this, Dr. Ambedkar would have had no other alternative but to accept it. On a previous occasion when the question of the increment of the taxes on profession came up, my amendment suggested Rs. 250 *plus* a certain percentage but the Drafting Committee did not accept it. My Friend Pandit Pant was very keen on it and he pressed for Rs. 250 and the Drafting Committee accepted it. It is very strange that the Drafting Committee ignores the recommendations from Members like us but when similar recommendations are moved by a man of position they accept them. What does it show? It shows that they have not understood the matter themselves thoroughly and only when—according to them—a responsible Member puts it forward they accept it. They consider us as irresponsible. I deprecate that idea. While I have the highest respect for the legal knowledge that the Drafting Committee have, I in return expect the same kind of respect from the Drafting Committee to those Members who have studied and have vast experience of the working of local bodies. I am very sorry that that spirit does not exist, otherwise there would be no dispute over the present question. Why should the terminal tax be removed from the Provincial to the Central List? It was done in 1935 for other reasons; the Britishers did not want a particular type of tax to be imposed on articles that they imported. The Provinces were autonomous in those days and they could have increased the terminal tax. It made no difference to the consumers, the tax being insignificant, but the collective amount that was brought in was beneficial to the local bodies. Sir, I feel very strongly on this question. It is not my view-point but I am telling you that as the President of the All-India Local Authorities Union they have unanimously supported my standpoint; all the Local Self-Government Ministers have supported it and because the Finance Minister of the Central Government is opposed to it, for reasons best known to him, the Drafting Committee has rejected these unanimous proposals. When my Friend Dr. Ambedkar last time got up and intervened to say that this subject should be held over, I thought he would take a very reasonable view of this matter but I was surprised to find that he has made no change in his attitude and has allowed this article to remain as it was. It is not going to improve the financial conditions of the local bodies; the Provincial Governments will be put to a great amount of strain. It is up to this House to see that sufficient provision is made in the Constitution for the betterment of the local bodies. How else are you going to improve the lot of the common man and make him happy? The common man, the masses live in the villages; *gaon panchayats*, notified and sanitary committees and municipal committees all govern their respective villages and towns. Somehow it seems to be the notion of the Drafting Committee that they will have nothing to do with the local bodies, that it is the function of the Provincial Governments. I ask what business have you to take away the terminal tax to the Centre? Why should you take away the taxes for which a Province is legitimately entitled and which the local bodies have all along been collecting? The Centre has nothing to do with this tax. I want to hear one single instance where the terminal tax has been collected at any time by the Centre. It has been a Provincial subject and always recovered by the local bodies. Even the Provincial Governments have not kept a single pie of it to themselves but given it all to local bodies. This impediment of not allowing the terimnal tax to be increased but having to come to the Centre for permission has brought about the result that the finances of the local bodies have suffered gravely.

Sir, I have sufficiently elaborated my points on this question. This being a technical issue many Members do not probably care to understand it, but I

would request the honourable House to bear in mind one factor that if you really want the local bodies to live, if you want your common man to be happy, you cannot do it without giving them adequate money. You merely give them certain powers but you deny them the money which is entirely due to them. Today, the entertainment tax, the electricity tax and similar taxes which are really the local boards' share, are taken away by the Provinces. In the County Councils of Europe and, I can tell you, in many States of America, these taxes are collected by the local bodies and not by the Government. Tramways, buses and taxis are run by local bodies in the other countries and all the gains go to them. The terminal tax which the local bodies were enjoying up to 1935 were taken away from them in that year. I am very sorry that particular provision of the Government of India Act has been bodily put in in the Draft Constitution. I expected the Government to bear in mind the difficulties of the local bodies. I hope the Drafting Committee would now at least see that this clause is omitted especially when an amendment to this effect has been sponsored by no less a person than Pandit Govind Ballabh Pant, at the instance I think of the Conference of Ministers of Local Self-Government who unanimously demanded this financial provision for the good working of the local bodies It is only the Finance Ministry who are against this demand. They want to grab everything. This is unfair. From this point of view I move the amendment and I expect that even at this late stage the Drafting Committee will consider the necessity, the urgency and the importance of this tax being left to be levied by the Provinces for the benefit of the local bodies. I have here before me a report of the United Provinces Grants-in-aid Committee. I wish the Drafting Committee had read this report. They have made out a very strong case for the purpose of the terminal tax which, they say, should be allowed to be levied by the local bodies. They also say that the local bodies should be given freedom to increase the number of items for the levy of this tax and to increase the tax. If you bring in an impediment to this, you will be doing a great disservice to the administration of the local bodies, while the Provincial governments are doing their best by enacting the Panchayat Act United Provinces have passed this Act, though it is too early to say how it will work; the Central Provinces Government also have enacted a similar measure. If you do not give them sufficient funds or financial resources, how will the local bodies be able to do any good to the small man for whom everyone today is showing lip sympathy ? With these words I move my amendment which I hope the Drafting Committee will accept.

Shri Brajeshwar Prasad: Mr. Vice-President, I am not moving my amendments 7 and 11.

Mr. Vice-President: Amendment No. 8 is also not moved, as Pandit Govind Ballabh Pant is not present.

The Honourable Dr. B. R. Ambedkar: Sir, I move :—

"That in sub-clause (c) of clause (1) of article 250, after the word 'railway' a comma and the word 'sea' be inserted."

Sir, I move my next amendment also.

"That in clause (2) of article 250, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move :

"That in sub-clause (b) of clause (1) of article 250, after the word 'estate', the words 'or succession' be inserted."

[Mr. Naziruddin Ahmad]

I submit this is a purely formal amendment. Clause (b) says 'Estate duty in respect of property.....' To that I want to add "or succession duty". There is a difference between estate duty and succession duty. Estate duty is leviable on the death of a man owning an estate and succession duty is calculated from the point of view of the successor. If we put down Rs. one lakh as the taxable value of the property, estate duty will have to be paid by all who get the property. But if there are more heirs than one, the share of each would be less than the one lakh and no one pays the succession duty. At present there is a Bill before the Legislature for charging estate duty. Here we are legislating for a long time. Therefore we should have both estate or succession duty.

The Honourable Dr. B. R. Ambedkar: Succession duty is covered by (a) which says 'Duties in respect of succession to property'. Why repeat that in (b) ?

Mr. Naziruddin Ahmad: The two might have been combined.

Mr. President: At the last meetings, the amendments on pages 297 and 298 of the Printed List, Vol. II were called and no Member moved them. Does any Member now propose to move any of them ? If no one wants to move them, does any Member wish to speak on the article ?

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, I have stood up to support the amendment moved by my honourable Friend, Mr. Sidhva. He has in a very lucid speech explained to the House the purpose of his amendment and also pointed out the importance of it. He has also said that no less a person than the Premier of my Province, the Honourable Pandit Govind Ballabh Pant, had given notice of a similar amendment. Sir, it is the second occasion when the cause of local bodies has been brought before this House. The first occasion was when we discussed article 256, when I moved an amendment for increasing the limit up to which local bodies could tax the people in their areas, *i.e.*, up to one per cent. of their annual income or up to Rs. 1,000. That was opposed on the ground that income-tax would be affected and that the men are already taxed by the Centre on their income. Here again, my honourable Friend, Mr. Sidhva, has suggested that clause (3) should be deleted from article 250 and the appropriation of revenue from this head should not be made by the Central Government but the local bodies should be entitled to appropriate the sums coming from this revenue. I am therefore very much surprised that in spite of all the arguments put forward by my honourable Friend, Mr. Sidhva, and his assertion before this House that all the local self-government Ministers of all the provinces in the country had suggested that this clause should go and in spite of the fact that a person like Pandit Pant has also suggested that this clause should be deleted, still the Drafting Committee will not accept the amendment because the Finance Ministry wants that this money should go to them.

Sir, a very fundamental question is raised by this amendment. We probably think that only the Centre and provinces should be provided with funds. We forget that the local bodies have also got vital functions to perform. I was surprised to learn from one of the members of the Drafting Committee that these bodies were useless bodies and it was so much money wasted if it was given to them. As one who has experience of these bodies I personally feel that ultimately you have to take care of the people in the villages and in the cities and you can really reach them only through these local bodies. I know that in my own district there are about a thousand primary schools and the conditions of the schools are such that it should be a shame to any Government, and if one were to go about repairing them it would cost several lakhs of rupees but the total income

of my District Board is hardly Rs. 10 lakhs; it cannot afford the repairs. Here you pass schemes worth crores of rupees for education, for universities and all these things but when it comes to the question of giving money to the local bodies which really finance the schools for the children of the village people, then we say we should not remove this clause from this article and we should not raise the limit of taxability of persons for local bodies to Rs. one thousand. I therefore say that by this stubbornness and refusal to help local bodies, you are really defeating the very purpose of the Constitution which is intended to benefit the masses. I say the masses are benefited best when the local bodies are given the power to cater for them. They must be supplied with sources of revenue which are expanding and the terminal tax that is levied on pilgrim traffic should be given to them because they have to spend a lot to cope with that traffic and if you deny them this terminal tax, they would not be able to serve the pilgrims properly. Everybody wants to grab money and there is no source of revenue left to be exploited by the local boards, and with the little that the local bodies get they cannot make even both ends meet. I therefore strongly support the amendment moved by Mr. Sidhva; he has shown that it is not his own opinion but the unanimous opinion of all the ministers of local self-government of the various provinces in the country; he also said that it is the legitimate right of local bodies to get this tax, and still I do not know of any reason why his amendment should not have been accepted. Last time this article was held over for further consideration and therefore I ask the House to support the amendment of Mr. Sidhva and see that this clause does not remain in this Constitution.

Shri V. S. Sarwate: Mr. Vice-President, Sir, I am in full sympathy with the claim which my honourable Friend, Mr. Sidhva has put forward regarding the local bodies, but as I interpret the article, I see no necessity for the amendment which he has proposed. As the article at present stands, the House may have noted that it is a reproduction of Section 137 of the Government of India Act except one item namely the stamp duty which has been transferred to article 249. Now admitting that the local bodies are very important bodies and as such require all the assistance and encouragement from the provincial Governments as put forward by Mr. Sidhva, till the article as it stands gives full discretion to the Provincial Governments to make allotments as they please, out of the proceeds which they receive from the Centre. There are many nation building activities in every province. There are village panchayats, there are local bodies, there is medicine and other subjects, for instance, education, and it may be that in one province the village panchayats or local bodies may be important and may require comparatively more attention. Then in other parts of the country, Education may require more attention and in a third Province probably hygiene and medicine. So when the proceeds are received by the Governments of these various provinces, the Governments would have full discretion to allot the proceeds according to the special requirements of that province. If we accept the amendment, the effect would be that the discretion of the Provincial Governments will be circumscribed and would be restricted, so that all the proceeds must necessarily be given to the local bodies; whereas at present there is discretion to allot to the local bodies or to other nation-building departments. Therefore, I think that the article as it stands gives more discretion, has more elasticity and serves better the purpose which the honourable Mover of the amendment has in mind. If the U.P. Government for the matter of that intends that the village panchayats and local bodies should be specially encouraged, it has full discretion to do so without the amendment being accepted here. Therefore, I think that the article as it stands should go in.

Shri R. K. Sidhva: May I know from the honourable the speaker whether he desires that the terminal tax collected from the jurisdiction of one province

can be transferred to the other jurisdiction of that very province? Does he mean that?

Shri V. S. Sarwate: That would depend upon the principle. It is provided that the total amount collected would be divided among all the provinces. The principle of division which would be presented in the case of duties in respect of succession to property may also be prescribed in the case of terminal taxes also. As I interpret it, there may also be different principles prescribed for the different categories (a) and (b) and different principles for (c) and (d) when Parliament passes the law prescribing principles of division. The article as it is gives a wider scope and greater elasticity and by the amendment we are creating difficulties for the provincial Governments.

Shri Brajeshwar Prasad: Mr. Vice-President, Sir, I rise to support the article; I am opposed to Mr. Sidhva's amendment for a very simple reason.

This Constitution recognises only two levels of Government, Central and provincial. There is no third legal entity known to constitutional law.

Shri R. K. Sidhva: Read section 250 carefully, you will find local bodies are mentioned there.

Shri Brajeshwar Prasad: That comes only by the way. If we give this power to the local bodies, we will have also to say what are the powers and functions of these local bodies. We will have to make a constitution for these local bodies here. Though in fact, it is a *de facto* Government, in this Draft Constitution, there are only two levels of Government known. We shall be creating innumerable difficulties and complications if we recognise a third level of Government by the backdoor.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I am sorry I am not able to support the amendment moved by Mr. Sidhva. This article 250 has been taken word for word section 137 of the Government of India Act. On that alone, I am not basing my claim. On the other hand, the principle that Mr. Sidhva's amendment seeks to introduce is both dangerous and not feasible. It is dangerous from this point of view. We are trying to interfere with provincial autonomy. He has read some extracts from books and publications, the views of some Ministers of particular provinces. It is open to them to say so because the distribution of the proceeds of the taxes which are collected by the Centre can be made in any way they like. We introduce this principle of allocating or earmarking of particular taxes collected by the Centre to the provinces not for being utilised for such purposes as they may consider proper, but for a particular head of provincial administration, that would be interfering with provincial autonomy. I do not know how many of these Ministers are in favour of this proposal. We have already got the petrol tax which is being earmarked for the purpose of roads; there is a certain amount earmarked for education, and so on. Ultimately, what remains to the provinces? You ought to make the provision as flexible as possible.

There is another difficulty also. The terminal taxes are collected not at every terminal; not always in the same place. The amendment does not say that the amount collected at particular terminals are to be earmarked for those local administrations. Again, there are many local bodies; there are panchayats in the villages; there are district boards covering the entire district; there are municipalities having jurisdiction over only particular areas. Does he mean to say that amount should be distributed among the panchayats, district boards and municipalities? Even there, a certain amount of discretion is vested in the hands of the provincial Government. Again, the local administrations are in charge of various subjects, primary education, secondary education, health, sanitation, drainage, water-supply. For what purposes does he mean that this amount should be utilised? Even if this amendment is accepted, even then it would not

interfere with the discretion vested. Even though it may not be flexible but rigid, it is still open to the provincial Government to use such powers as they have and to say that this amount shall be utilised for such and such purposes by the local bodies. It is not right that the Constitution itself should sub-divide and earmark the amounts for particular purposes and for particular local administrations. I was sorry to hear when my honourable Friend said that if the amendment had come from any other Minister, the Drafting Committee would have accepted it I am sure the Drafting Committee goes into these matters on their own merits and not with reference to the person who brings forward a particular amendment.

Shri R. K. Sidhva: That has happened in one case.

Shri M. Ananthasayanam Ayyangar: That may have happened. But, so far as article 250 is concerned, the persons who are in charge of and are interested in this matter are the persons in charge of the provincial administration. My honourable Friend Mr. Sidhva must take into consideration the experience, weight and authority which flows with any recommendation made by the provincial Governments as against individuals, be they as high as Mr. Sidhva himself. He cannot say that he has got all the experience of the Premier of a provincial Government. He ought not to have made such a remark in the House that the Drafting Committee makes invidious distinctions. I have got the greatest respect for the Drafting Committee. They are putting themselves to enormous inconveniences and trouble. We address ourselves only to some amendment here and there. They are incharge of the entire drafting of the Constitution. I take this opportunity to thank the Drafting Committee for the able manner in which they are carrying out the work. Any aspersion against their character or alleging that they make invidious distinctions is out of place.

Shri R. K. Sidhva: May I know from the honourable Member what answer he has to this point? Before the Government of India Act of 1935, this was a provincial subject, which has since been brought into the Centre by the Act of 1935.

Shri M. Ananthasayanam Ayyangar: It is not as if the proceeds are taken away by the Centre. The Centre is only a collecting agency. The Centre collects only for the purpose of ensuring uniformity. My honourable Friend may also see that with respect to another provincial tax, the sales tax, for the purpose of ensuring uniformity, a conference of provincial Finance Ministers is being called. The Centre may be able to act with greater speed and efficiency allocate the proceeds of the taxes to the various provinces. We are not unused to this; there is the duty in respect of succession to property; there is the Estate Duty in the same category.

Mr. Vice-President: Also, does Mr. Sidhva think that the taxes collected in Calcutta, Bombay and Madras should go to those provinces exclusively or to the local bodies in those provinces?

Shri R. K. Sidhva: At present these taxes are collected by the local bodies. The Government of India Act of 1935 makes it a Central subject.

Mr. Vice-President: We have now included terminal taxes on goods or passengers carried by sea. Take terminal taxes collected in Calcutta, Bombay, Madras and other big ports which serve large areas. Should the particular corporation or provinces be entitled to retain them?

Shri R. K. Sidhva: The Calcutta Corporation or the Madras Corporation gets the benefit.

Mr. Vice-President: The main point is, the Calcutta Port carries goods and passengers for more than one province. Anyway, does Dr. Ambedkar want to say anything?

The Honourable Dr. B. R. Ambedkar: I do not want to say anything.

Mr. Vice-President: I will now put the amendments to the House.

The question is :

"That in sub-clause (c) of clause (1) of article 250, after the word 'railway' a comma and the word 'sea' be inserted."

The amendment was adopted.

Mr. Vice-President: The question is :

"That in clause (2) of article 250, for the words 'revenues of India the words 'Consolidated Fund of India' be subsituted."

The amendment was adopted.

Mr. Vice-President: The question is :

"That in amendment No. 2851 of the List of Amendments, for the words proposed to be added in article 250, the following words be substituted :—

'The net proceeds of such taxes recovered under sub-clause (c) and (d) be assigned by the States to the local authorities in their jurisdiction.'"

The amendment was negatived.

Mr. Vice-President: I now put the whole article as amended. The question is :

"That article 250, as amended, stand part of the Constitution."

The motion was adopted.

Article 250, as amended, was added to the Constitution.

Article 277

Mr. Vice-President: We now go to 277.

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move :

"That article 277 be re-numbered as clause (1) of article 277, and to the said article as so re-numbered the following clause be added :—

'(2) Every order made under clause (1) of this article shall, as soon as may be after it is made, be laid before each House of Parliament.'"

This article 277 is a consequential article. It lays down what shall be the financial consequences of the issue of an emergency proclamation by the President. Clause (1) of the article says that provisions relating to financial arrangements between provinces and the Centre may be modified by the President by order during the period of the emergency. It was felt that it was not proper to give the President this absolute and unrestricted power to modify the financial arrangements between the provinces and the States and that the Parliament should also have a say in the matter. Consequently it is now proposed to add clause (2) to article 277 whereby it is provided that any order made by the President varying the arrangements shall be laid before each House of Parliament. It follows that after the matter is placed before the Parliament, Parliament will take such action as it deems proper, which the President will be bound to carry out.

Mr. Vice-President: Amendment No. 14 is not moved by Shri Brajeshwar Prasad.

Pandit Kunzru—No. 72.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, I beg to move:

"That with reference to amendment No. 3007 of the List of Amendments and Amendment No. 13 of List I (Fourth Week) of Amendments to Amendments, for article 277, the following article be substituted:—

'277. (1) While a Proclamation of Emergency is in operation, the Union may, notwithstanding anything contained in article 251 of this Constitution, retain out of the moneys assigned by clause (1) of that article to States in the first year of a prescribed period such sum as may be prescribed and thereafter in each year of the said prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual deduction:

Modification of the provisions relating to distribution of taxes on income during the period proclamation of emergency is in operation.

Provided that the President may in any year of the said prescribed period direct that the sum to be retained by the Union in that year shall be the sum retained in the preceding year and that the said prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with the States nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Government of India requires him so to do.

(2) In this article, 'prescribed' means prescribed by the President by Order.'"

Sir, the language of the amendment is complicated but it has been borrowed from the Government of India Act, 1935, with which honourable Members are familiar. I think that Dr. Ambedkar who laughed without any cause should also be familiar with it. The meaning of my amendment is this. Under article 251 a percentage has to be prescribed which will represent the share of the provinces in the divisible portion of the net proceeds of the income-tax. The language of that article is such as to make it appear that the entire provincial share shall have to be made over to the provinces at once. As soon as it has been prescribed by the President, with or without consultation with the Finance Commission as the case may be, it must be made over to the provinces at once. What my amendment proposes is that notwithstanding the language of article 251, the Centre may make over the entire provincial share to the provinces not at one bound but in a certain period; but if during that period an emergency occurs, an emergency so grave as to require the issue of a Proclamation of Emergency, then the President may direct that the transfer of the provincial share in the particular year in which the emergency occurs shall be stopped. In other words, my amendment if accepted would restrict the power proposed to be given to the President by article 277. Further, while there may be delay in the transfer of the provincial share to the provinces nothing that has been already given to the provinces can be taken back from them.

Now having briefly explained the purpose of my amendment, I shall deal with article 277 as modified by the amendment of Dr. Ambedkar. When I referred to article 277 the other day and said that it was practically subversive of the financial rights of the States, Dr. Ambedkar objected to my referring to it and said that the article had not been moved and might therefore not be moved or be modified. He has now introduced a modification; but does this modification mean anything at all? Suppose Dr. Ambedkar had not moved this amendment, could anything have debarred Parliament from taking into consideration the modification of the financial relations between the Provinces and the States, brought into effect by the order of the President during the period of emergency? Parliament has got an inherent right to consider any matter that it likes. Consequently the amendment moved by Dr. Ambedkar

[Pandit Hirday Nath Kunzru]

adds nothing to its power. It gives it no right that it would not otherwise possess. Let us, therefore, consider article 277 as it is, in the form in which it has been proposed in the Draft Constitution. We need pay no attention whatsoever to the amendment moved by Dr. Ambedkar because it means nothing in practice. It gives Parliament no additional opportunity of dealing with any order that the President might make that it would not otherwise have. Now article 277 authorises the President, while a Proclamation of Emergency is in force, to direct "that all or any of the provisions of articles 249 to 259 of the Constitution shall for such period, not extending in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit." The President in this article will enjoy full authority to alter the financial relations between the Provinces and the States in any manner that he likes. Let us therefore, consider what it is that the articles referred to in article 277, give to the provinces. Under article 249, the Union may levy stamp duties under any law made by Parliament and such duty of excise on medicinal and toilet preparations as are mentioned in the Union List These duties shall be collected and appropriated by the States. The Centre has never claimed a share in their proceeds. Article 250 that we have just dealt with provides that certain duties and taxes including duties in respect of succession to property other than agricultural land, and estate duty in respect of property other than agricultural land, shall be levied and collected by the Centre, but shall be distributed entirely between the Provinces except in so far as they represent the share attributable to the States for the time being specified in Part II of the First Schedule. This is the second source from which Provinces will derive their income and it too is entirely provincial. The Centre has never laid claim to a percentage of their proceeds of these duties. The third source will be the taxes on income. The President will, by order, fix the percentage of the divisible portion of the net proceeds of the income-tax that should be made over to the Provinces. I have already dealt with this. Then we come to the excise duties, duties of excise, other than duties of excise on medicinal and toilet preparations mentioned in the Union List, are to be levied and collected by the Government of India. But if Parliament so provides, the proceeds of these duties may be divided between the Centre and the Provinces. The President has no power to deal with them. Then there is the duty on jute which is not to be distributed now, between the Centre and the Provinces, but such provinces as are entitled to a share in the proceeds of the jute export duty will get a sum to be prescribed to compensate them for the loss of their share in the duty. Lastly, Sir, there are the grants from the Centre which of course can be altered from time to time.

These are the various ways, Sir, in which the Provinces will derive their income. And article 277 allows the President to arrive at any decision he likes in regard to the availability of any or all these sources of income to the provinces. Now, what are the provinces to do, if such action is taken by the President? If the sum to be made over by the Centre to the Provinces were to be parted within a prescribed period, then in an emergency, the President could well say that the Centre could not afford to part with more money than it had already given to the Province, so long as the emergency lasted. Such a proceeding would be intelligible and reasonable, but what is now proposed is that, after a financial settlement has been arrived at with the provinces and they have increased their expenditure and have come to depend on the money received by them from the Centre for meeting their liabilities, the President may say to them that whatever happens to them the financial settlement made

by them must be modified. What are the provinces to do in these circumstances ? So far as I can see, they are to enjoy the blessing of financial *nirvana*. The Provincial Governments and the people of the provinces may suffer seriously—may, so to say go about with a loin cloth—but the Centre will have little regard for their plight. Such a proceeding, I think, is both iniquitous and impracticable. My contention is, as I have already said, that if you have to give a certain sum of money, or a certain percentage of the proceeds of certain taxes to the provinces, you may delay the full distribution of the provincial share, but nothing that has been once given to them ought to be taken back. The Government of India Act, 1935, proposed nothing so drastic. The framers of the Act realized as well as the framers of the Constitution do, that the Centre may some day be involved in an emergency. But all that they provided was that the transfer of the full provincial share of the divisible portion of the proceeds of the income-tax may be delayed on account of an emergency, but no part of the divisible portion given to the provinces before the occurrence of the emergency could be taken away from them. As regards the proceeds of the Central Excise Duties and the Central Export Duties and the other taxes that I have referred to, there could be no change in them whatsoever in any emergency. The position of the provinces in regard to the other taxes was to remain wholly unaffected by the occurrence of an emergency. It was realized that if the provinces, depending on the money received by them from the Centre extended primary education, or made it compulsory, or increased the number of hospitals and dispensaries, or undertook a programme for the improvement of the condition of the rural masses, they could not in justice be asked suddenly to change their budgets and tell their people that the facilities already available to them in respect of education, public health, medical relief or rural welfare shall be withdrawn. If such a thing were to be done in future, there would be serious discontent in the provinces, so serious indeed as to create another emergency greater than that to deal with which the President is to be given the plenary power contained in article 277. I think, therefore, Sir, that article 277, the effect of which on the provincial administration will be exceedingly harmful, should be replaced by the amendment that I have moved.

Sir, I do not know what the exact share of the divisible portion of the net proceeds of the income-tax now received by the provinces is. But I understand that the maximum share is still that prescribed in 1936, namely 50 per cent. and that in all probability, the provinces are getting about 42 or 43 per cent. of the divisible portion. I do not know what the prescribed percentage in future will be. Let us suppose that it is 60 per cent. Then you can lay down that the differences between 42 per cent. and 60 per cent. shall be transferred to the provinces within a certain period, and that if an emergency occurs during this period, the process of transfer can be halted. The provinces will thereby not suffer materially but article 277 is contrary to the best interests of the provinces and if given effect will create chaos there.

The House will undoubtedly be surprised that so drastic a provision should have been included in the Draft Constitution. The framers of the Constitution are reasonable people. We have therefore to consider what made them think of inserting such an article in the Constitution. When I dealt with some of the articles relating to the future financial position of the provinces, I pointed out that if the settlement were made too generous to begin with, the Centre might be faced with a serious position later when an emergency occurred. I ventured to say that it would be better if the Centre were a little cautious in the beginning so that it might have to take no action that would completely dislocate the finances of the provinces later. But that warning was not heeded. The only way now in which, according to the framers of the Constitution, the future financial position of the Centre can be safeguarded is

[Pandit Hirday Nath Kunzru]

that the President should be allowed during an emergency practically to annul the provisions of the articles 249 to 259. It will be open to the Finance Commission when it is appointed, and to the President after the Constitution has been passed, to consider carefully the existing situation and distribute the proceeds of the divisible sources of revenue between the Centre and the Provinces in such a way as to take due note of the interests both of the Provinces and the Centre. In spite of our having passed all the articles referred to in article 277, the President can still so fix the provincial and Central shares that the Centre may not be driven to take action of the kind envisaged in article 277. Such a course would be far better than pleasing the Provinces now and making them gnash their teeth and tear their hair afterwards.

Sir, I have explained the meaning and purpose of my amendment as clearly as I could. I hope that the representatives of the Provinces realise how grave a danger to their interests article 277 constitutes. If the Provinces are not even to enjoy financial autonomy in certain circumstances, they will have no independence left whatsoever and their position will be equivalent to that of the municipalities and district boards. But it is not primarily on that ground that I have moved my amendment. I have done so in the interests of the people of the Provinces who cannot arbitrarily be deprived of the facilities that they have become accustomed to in such matters as education, medical relief and the welfare of the masses even during a war. Such a thing did not happen during the last war. Why should we then think that it would happen or might happen during a future war? Article 277 is an expression of nothing but the undiluted financial autocracy of the Centre. I hope therefore that every Member of the House will protest against this iniquitous provision and see that it is changed in such a way as to assure the Provinces that their finances cannot suddenly be disorganised by any order of the President and that at the same time the position of the Centre is such as to enable it to discharge properly its supreme responsibilities.

Amendments Nos. 3009 and 3010 on page 318 of the Printed List were not moved.

Prof. Shibban Lal Saksena: Sir, the speech delivered just now by my honourable Friend Dr. Kunzru will certainly give food for thought to the House for reviewing this important article. I have very carefully followed his speech and also studied his amendment. When we were discussing articles 275 and 276 and when we gave to the President powers to issue a Proclamation when necessary, we had provided that within two months of that Proclamation, it must be laid before each House of Parliament and must be approved. Only then will it continue for a further period of six months.

In article 277 it is provided that not only will the Central Parliament have concurrent jurisdiction over subjects which are the province of the States but also that "provisions of articles 249 to 259 of this Constitution shall for such period not exceeding in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as the President thinks fit". So that, by this article, articles 249 to 259 lose their existence during an emergency. For the President has the power to pass orders in contravention of the provisions of these articles. I would have been happier if whatever changes or variations of the articles are desired were also part of the Proclamation and are brought before Parliament for approval. I have throughout protested against arming the President with almost autocratic powers in financial matters, but I am sorry to have to say that our protests have gone in vain and every time when an amendment comes, the President is armed with powers of issuing orders by which even the provisions of this Constitution can be

amended. I think Dr. Kunzru has pointed out what difficulties arise if this article is passed as it is. The amendment of Dr. Ambedkar does not help matters at all. To "lay it" before each House of Parliament is not a sufficient safeguard. I therefore think that Dr. Kunzru has done a service to the House by bringing forward this amendment and by pointing out the danger inherent in this article 277.

This is a vital article. The budgets framed by the States may be upset by an order of the President and if he is not very favourably disposed towards some of the Ministers of any Province, then woe betide that Province. Therefore, it is not proper to pass this article in its present form. I would request Dr. Ambedkar and the Drafting Committee to review this article in the light of the arguments advanced by Pandit Kunzru and also in view of the fact that such powers should not be given to the President which may upset the budgets of the Provinces. Of course no President will deliberately use such powers and upset all their plans, but unless there are safeguards in the Constitution it is not proper to give those powers. With the best will in the world and with the most pious intentions he may pass orders which may bring about the position I have pointed out. I therefore request that some machinery may be provided for in the Constitution by which that position may not be brought about. I hope that in the light of these arguments, the learned Doctor will accept my amendment.

Shri Alladi Krishnaswami Ayyar (Madras : General): Mr. Vice-President, I should like to say a few words in support of article 277 along with the amendment moved by my Friend, the Honourable Dr. Ambedkar. A lurid picture has been painted by my esteemed Friend Pandit Hirday Nath Kunzru as to the effect of this article. Hospitals will be closed, all constructive activities of the Provinces will be set at naught, Provincial autonomy will come to a dead stop, the Central Executive will assume dictatorship, there will be nothing but chaos as a result of this article taken along with the amendment.

My friend forgets that article 277 is a sequel to 275. We are proceeding on the footing that the security of India is threatened or that there is war or domestic violence of a character which necessitates the President to proclaim an emergency posited by article 275. The normal conditions are disturbed by the very premises with which we start, namely war, and everybody must be ready to support the security of the country, to see that the State itself which is the basis for individual liberty does not fall to the ground. That is the basis of article 275.

Then, article 277 does not say that the whole of the financial provisions will come to an end. It says, "subject to such exceptions or modifications as he thinks fit". Normally it is not expected that he will abrogate the entire financial scheme. The article provides that the provisions of articles 249 to 259 of the Constitution shall for such period have effect subject to such exception or modification as he thinks fit. Therefore, it is an exception to the rule that has been working for sometime, it is a modification of the rule that has been working for some time. It is not an obliteration of the entire financial structure or the financial relation between the Provinces and the Centre that is contemplated under article 277.

Even in normal times the Parliament has the power to interfere with the distribution. That is stated in the very articles, 249 to 259. The whole question of distribution is left to Parliament. No doubt distribution implies that a certain percentage at least will be left to the Provinces, but the intervention of the Federal Parliament is posited in the various articles to which reference has been made by my Friend Pandit Kunzru. Therefore, what we are now doing is—and he himself has pointed this out—to see that the plenary

[Shri Alladi Krishnaswami Ayyar]

authority of Parliament to pass any law to interfere with the distribution is not affected even by the powers conferred upon the President under article 277. The President's power is not exclusive of, and does not derogate from, the plenary authority of Parliament under the Constitution. Therefore, the only question is that in an emergency like this, the President acting on the advice of the Central Cabinet ought to modify or to provide for certain exception in regard to the distribution of the various proceeds.

So far as the right to distribute income-tax is concerned, even in normal times, it rests upon an order of the President—(on an Order of His Majesty in Council under the present Constitution,)—it does not rest on Parliamentary authority. It no doubt contemplates that after the Statutory Commission makes its report a degree of permanency will be introduced in the distribution of income-tax proceeds, but until the financial provisions come into operation the power rests with the President which means the Central Cabinet. It does not mean that they will flout the claims of the various Provinces who are represented in the Upper House, and in the Lower House, and we are not to proceed on the footing that the representatives will not discharge their functions and their duties to their constituencies properly.

Therefore, I submit, Sir, that there is nothing drastic in article 277. You cannot carry on a war under the principle which obtains in normal times. You must provide the Centre with an emergency power and that emergency power is by no means so drastic and so omnibus a power, so all-comprehensive a power as might be imagined. It expressly says "subject to such exceptions or modifications as the Cabinet thinks fit." An exception cannot be the rule. A modification cannot take away the original rule. A modification can only be a modification and an exception can only be an exception. Therefore, in an emergency, is the President, is the Central Cabinet, to be clothed with some kind of discretionary power in regard to the adjustment of the financial relation between the Provinces and the Centre subject to the plenary power of Parliament and to the intervention of Parliament if anything goes wrong in the action of a Cabinet which is responsible to the Lower House and in which both the Houses can take the Cabinet to task for putting the emergency provisions into operation? Under those circumstances, I submit that it is inevitable that you should have a provision of that description. Whenever we refer to these things we must remember that we are dealing with a Cabinet which is responsible to the people. A Government which is responsible to the Parliament and the people can certainly be invested with greater powers than His Majesty in Council who was responsible only to the British Parliament and not to the Parliament of this country. It will mean the negation of the principle of responsible government to say that the responsible Government today must exercise the same kind of power as His Majesty in Council or a foreign Government could exercise in the circumstances of a war. At that time other people were responsible for the maintenance of India and for seeing there was no internal commotion. We are responsible now for the security of India and for the safety of the State. No price is too high for discharging that responsibility for the welfare of the people. That is the principle contained in article 277. It is a necessary consequence of article 275 which posits the existence of war or some domestic situation equivalent to war. There can be no exception taken to the principle underlying article 277 and the amendment which has been brought before the House by Dr. Ambedkar.

Shrimati Renuka Ray (West Bengal: General): Mr. Vice-President. Sir, I am one of those who believe that, in the present context of things in this country and in view of the fact that we have so much leeway to make up in the matter of the nation-building services, we should of course have a very

strong federal Centre. It is necessary that the Centre should be in a position to see that the provinces do not fall behind in regard to the minimum standards of development. But, none-the-less, I must say that the arguments that Pandit Kunzru has advanced before the House this morning have a great deal in them. It is not possible for a province to administer its responsibilities in an adequate manner if its financial position is unstable or uncertain. I realise that it is in the case of emergencies alone that this power under article 277 is sought to be given to the President, which means the Central Government. None-the-less I do feel that this is a very drastic measure. The provinces draw their finances from two sources. One source is the obligatory allocation made to them to maintain their general services. The other is the grants made for development purposes. I could have understood it, if a demarcation had been made and the finances of the provinces had been left intact in the matter of the obligatory taxes with which they carry on their normal life. Even that has not been done. I do not want to reiterate all that Pandit Kunzru has very pertinently pointed out. I do feel that this is a vital matter. There is article 276-B under which all extravagant expenditure during emergencies could be stopped. The provinces can be requested to drop their development programmes during an emergency such as war. But surely it should not be in the power of the Centre or the President to stop the normal functioning of the provinces. It is through the provinces that the life and activities of the people of the country is administered. I should like to point out that the Centre does not work in the air. It has to work through the provinces and I can see no reason whatsoever for having this provision just as it is. I do think that Pandit Kunzru has drawn attention to a very important point. I would therefore request Dr. Ambedkar and the Drafting Committee to hold over this article and re-draft it in the light of the observations that have been made.

Prof. N. G. Ranga (Madras : General): Hold over till the emergency is over ?

Shrimati Renuka Ray : I do not mean that. Professor Ranga has sought to be very sarcastic. I would point out to him that even in an emergency the normal functioning of the provinces must continue. I see no reason whatsoever to give the President power to stop those sources of revenue from which the provinces have to function in a normal way, even in an emergency. I can understand stopping the development activities of a province in an emergency, but how can the normal functioning of the provinces be stopped even in emergencies ? Even in war-time, people have to continue to eat, to have education and be protected against evil-doers. I do appeal to Dr. Ambedkar and the Drafting Committee to reconsider this article which is a vital one. I support the changes proposed by Pandit Kunzru.

Mr. Vice-President : Mr. Biswanath Das may now speak.

Pandit Hirday Nath Kunzru : It is nearly one o'clock.

Mr. Vice-President : We shall now adjourn and meet again at 9 a.m. tomorrow.

The Assembly then adjourned till Nine of the Clock on Saturday, the 20th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 20th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. Vice-President (Shri V. T. Krishnamachari) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 277—(*Contd.*)

Shri Biswanath Das (Orissa : General): Mr. Vice-President, Sir, I stand to oppose article 277 as unnecessary in this Constitution. Sir, the emergency powers incorporated in this Constitution are more or less adapted on the lines of Section 93 of the Government of India Act, 1935, with certain modifications necessary from their point of view for the purpose. An analysis of the clauses reveals that it is classified under three heads, firstly, provisions relating to war emergencies, secondly, provisions relating to domestic violence and thirdly, provisions relating to any such violence and acts of violence which the President considers imminent and dangerous. A Government functioning under any constitution has always the right to take all necessary powers to deal with the situation in cases of external aggression or war emergencies. To that extent, any restriction of the powers and privileges of the ordinary citizens may be allowed under the Constitution. I do not believe that any honourable Member of this House seriously objects to that aspect of the question. It would be ridiculous to call it democracy if a party or a provincial Government goes on in its own way to take a course of action which is contradictory and conflicting with the best interests of the Union or its safety. Under these circumstances, any power reserved for the Centre in war time and war emergencies is welcome.

Sir, we come to the question of domestic violence and any acts of violence which according to the President are considered imminent and dangerous. These are different questions and have to be considered from a different point of view. As I have stated on many occasions, I repeat that we are contemplating party Government in a system of democracy. Party Government necessarily means different parties. In a federation with a Centre and Units, there is no denying the fact that different political parties may be in charge of the administration in the different units or even in the Centre. Under these circumstances, there is a possibility of misuse of these powers. Speaking personally. I have experience of this misuse. Recollecting my past experience of Madras and the Justice Party, I have seen how the District Boards and Municipalities were mercilessly superseded without rhyme or reason because the Government had the power kept to itself to supersede these municipalities. What has been done in Madras by a certain party with regard to district boards and municipalities may be repeated by the Centre. Therefore, I plead with the honourable Members of this House that no more power need be left with the Centre or with the Governors who are practically the agents of the Centre to deal with any such situation.

Any power that you reserve to yourself for war emergency is quite welcome. We do not oppose it. I concede the fact that the provisions contained in articles 275 to 277 and the rest are not as drastic as they are in the small Section 93 of the Government of India Act. I do realise that the framers of the Constitution

[Shri Biswanath Das]

have not arrogated to the Governor all the executive and legislative powers that you have under Section 93. I also further concede the fact that you do not wipe off the High Court if and when it suits you. All that is conceded. Why should you have article as 277 which is not even contemplated under Section 93? Section 93 does not suspend the allocation of grants from the Centre. Speaking from past experience, let me state that even in the war years (during the second world war), the provinces were getting their financial allocation from the Centre, even in the provinces where we had government under Section 93. I also feel that a responsible Government functioning at the Centre cannot afford to suspend the grants that are given to the provinces to be utilised for nation-building activities unless it wants to bury itself. There is also the possibility of a totalitarian party coming into power at the Centre. Under these circumstances, I do not see any reason why more powers should be reserved in the Centre under the Constitution for taking necessary action in such cases. Sir, this is giving autonomy with vengeance to the provinces. Therefore, I plead with the honourable Members of this House as also with the Drafting Committee that a reconsideration of this article is called for.

Again, I have to state that the reports, both of the Central Committee and the Provincial Committee, have not recommended such powers as are proposed to be given to the provinces under article 277. I do not see any reason why the Drafting Committee should have taken this course without any authority from this House or anything of the like contained or contemplated in the reports of the Provincial or Central Constitution Committees. With the proclamation of emergency under article 275, autonomy in the provinces is being suppressed and the powers practically vested in the provincial executive lapses more or less into the Centre in the sense that the province has to be governed under the directions of the President. That being the position, why should you take a further step in refusing even the grants, suspending or reducing the grants which are allocated to the provinces not by the President, nor by the legislature, but by a non-political body that you yourself have constituted?

Assuming for a minute that the grants are suspended, activities connected with it for nation-building or administrative activities are suspended to that extent. What do you do with the money? Allocations have been made on a regular defined basis; each province gets its share while this money lies idle without being used for its legitimate purpose. Why should you create this discrimination among the provinces? If power is taken under sub-clauses (b) and (c) as I have already stated for domestic violence or such acts of violence as the President considers imminent and dangerous in the province or provinces, why should you punish the people of the province as different from the Government which may be responsible for mis-handling or for encouraging these unlawful and violent activities? It may be enough if the provincial executive is suspended; it may be enough if the provincial legislature is also suspended. But, why should the people be punished for an act for which they are not in the least responsible? Under these circumstances, I find neither reason nor justice in the article that has been placed before the House for approval. I have no option but to oppose it.

Shri Brajeshwar Prasad (Bihar: General): Mr. Vice-President, Sir, I rise to support this article with all the emphasis that I command. My Friend Mr. Biswanath Das raised the question of democracy. He is shedding tears at the prospect of democracy being liquidated when there is a great emergency in this country. I am definitely of opinion that the issue involved is not democracy but the security of the country and I feel that this article is a necessary corollary of aricle 275. There must be a political reservoir of power somewhere at the Centre to deal and to meet with a situation that may arise in the country when there is a grave emergency in this country. The whole idea is unsupportable

that any Government at the Centre will starve the provinces and medical facilities, educational facilities or other nation-building departments will come to an end. Mr. Biswanath Das is under the impression that provincial autonomy or democracy will survive in this country if there is a totalitarian party at the Centre. If a totalitarian Government at the Centre emerges, there will be no provincial autonomy left. I am of opinion that we have already given too much powers to the provinces and at a time when there is an emergency the whole Constitution must be changed into a unitary constitution. It is only when there is a unitary State in this country that there can be progress. The main issue is not democracy but security of the country and the economic well-being of the people of India. We want progress of the country. Therefore, I support this article.

Shri Kuladhar Chaliha (Assam: General): Sir, I consider this a very drastic provision. It will have the effect of completely dislocating a province. In fact I think Assam will be the first casualty. If you have the power to suspend the Constitution, then how will the provinces function? Under the pretext of this provision probably you will take all the finances to the Centre and we will have nothing left to the provinces. What will happen under this provision? On a certain date the Communists of Burma might come into the Eastern frontier. Then under that pretext an emergency will be declared and you will take all the powers. If the entire State is on revolt against the Centre, then of course this emergency may be declared; but unless there is definition of what is an emergency and under what circumstances these provisions could be applied, it will be causing something which is not expected. I submit that this provision is put in a manner which does not show all the consequences; if this is applied, it will lead to the greatest hardship. Mr. Brajeshwar Prasad is of course a very straight and balanced man and he always thinks of the stability of the country and thinks that the Constitution may be jeopardised if powers are left to provinces, and he further thinks all the good qualities are in the Centre and they are all devoid of good qualities in the provinces. He is anxious to concentrate all power in the President. If we go on like this the provinces will be left with nothing. You are only introducing dyarchy like the old dyarchy and everything will be in the Centre and provinces will be mere nonentities. If you want to have this provision, then you have to define what is an emergency and under what circumstances they can be applied; otherwise this word 'emergency' is so vague that even if a small Naga tribe attacks Assam you will declare emergency, or if there is Communist disturbance at Dibrugarh you may declare an emergency. I therefore request Dr. Ambedkar to define the word 'emergency' and under what circumstance this suspension or taking the taxes can be taken by the Centre. Provinces are of course going to be mere puppets in the hands of the Centre and I trust the gentlemen in charge of the drafting of the Constitution will think over the matter and try to define what an emergency is and under what circumstances this can be applied.

Mr. Vice-President (Shri V. T. Krishnamachari): I think Shrimati Durga Bai has moved for closure. I am sure the House will agree to that.

Honourable Members: No. No.

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, Article 277 empowers the President to effect alterations which are necessary in the existing arrangements with regard to the distribution of revenues between the units and the Centre. This power is conceded to the President only for the period of emergency and in my opinion this is a necessary sequel to article 275 which has already been agreed to by this House. This House has already agreed that during a period of emergency the President ought to be clothed with overriding powers to safeguard the interest and peace of the country. What are those special powers worth, may I ask, if the President is denied the authority of

[Shrimati G. Durgabai]

pleading with the units to readjust the allocation of finances between the unit and the Centre? A grave emergency arises when there is a war or a threat even to the Constitution of this country and no sacrifice is too great to successfully overcome this period of emergency. An honourable Member vehemently opposed this article 277. She has conceded that the President could ask the units to stop expenditure on development schemes of the units, but in the same breath she said that the Centre should not have power to readjust the allocation of finances or make the necessary adjustments with regard to existing finances between the units and the Centre. It should not be forgotten that first of all the President means the President acting on the advice of his Cabinet; secondly we have given this power to President only for the period of emergency. This power will not exceed in any case the financial year and lastly, it is subject again to the intervention of the Parliament at any stage even during this period if anything went wrong.

So I do not understand why some of the honourable Members should take objection to the giving of these powers, under the circumstances that have already been explained by Dr. Ambedkar, and also by other Members who have supported this article. Under these circumstances, it is extraordinarily unjust to suppose that this article provides for financial autocracy of the Centre. Certainly it should not be considered so because we have given these powers for a period which we call an emergency period, and also we have limited its period only to the financial year in any case, and also we have given the power to Parliament to intervene at any time if anything went wrong. Therefore, Sir, I support the article 277 as amended by Dr. Ambedkar.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. Vice-President, Sir, I also rise to support article 277 as it is framed and amended by Dr. Ambedkar's amendment. With all respect to Pandit Kunzru, I oppose his amendment. In fact, I think Mr. Chaliha has not read article 275. An emergency comes into operation only in case of war, or internal disorder or external aggression. In such circumstances, extraordinary powers have to be given to the Centre. The suspicion, I believe, is born out of the feeling that the Centre is something different from the Provinces. In fact, the period of emergency lasts only for two months, and it continues only if Parliament approves of the emergency powers within one month of the date of the meeting of Parliament; if it is not approved, then the state of emergency lapses. And also, the period for which the financial powers are given under Section 277 cannot be longer than one year because the budget is framed from year to year. During the period of emergency, the security and safety of the entire country must be the sole responsibility of the Centre and extraordinary powers have to be given to the Centre. Otherwise, during the period of grave emergency, if quarrels for adjustment of financial contributions are allowed to be going on between the Provinces and the Centre, the safety of India will be jeopardised; and if India survives every province survives and every citizen survives,—not otherwise. The safety of the country must be the predominant factor and these powers as are given under article 277 are absolutely essential, and therefore, I support this article.

The Honourable Shri Satyanarayan Sinha (Bihar: General): The question may now be put.

Mr. Vice-President: I have promised Mr. Sarwate that I would allow him to speak. I will put the question later.

Mr. Naziruddin Ahmad (West Bengal: Muslim): There are also several other speakers; you may give them a little time each, say two minutes at least.

Shri V. S. Sarwate (Madhya Bharat): Mr. Vice-President, I thank you for giving me this opportunity to express my feelings. However, I shall not be long. I think that Sections 276, 277 and 227 are to be read together. When an emergency arises, the Government at the Centre would have to function in two departments, the Executive and the Legislative. By article 227, powers have been given to the Centre to legislate on matters which come within the purview of the State legislature. By article 276 (b) power has been given to the Central Government to take upon itself executive functions in respect of such matters. Now, when the Central Government takes upon itself certain duties which otherwise would have been done or executed by the Provinces or States, then it is but natural and necessary that it should be provided with the necessary funds. Therefore, it follows that article 277 is a repercussion in the financial sphere, of the powers which have been given by articles 227 and 276 to, which the House has already agreed. For instance, if the Centre takes over to itself the functions of the police, in case of emergency in a State, it will require certain more financial expenditure. That has been provided by article 277. If this provision is not made, then it would be something like providing a car and not providing the petrol for running the car. Therefore, I say that these three articles are closely knit together and you cannot take away the financial provisions from the rest. With these remarks I support this proposition.

The Honourable Shri Satyanarayan Sinha: Sir, the question may be put now

Shri H. V. Kamath (C. P. & Berar: General): Sir, Mr. B. Das has been trying to catch your eye since yesterday.

Mr. Nazimuddin Ahmad: Sir, the request to put the question is very premature.

Mr. Vice-President: I do not know about that, I have asked Mr. B. Das to speak.

Shri B. Das (Orissa: General): Sir, Part XI of the Draft Constitution provides the emergency provisions. If you look at pages 129 to 131, you find articles 275 and 276 where you have the original intentions of the Union Powers Committee and the Union Constitution Committee of which Pandit Jawaharlal Nehru was the Chairman. The Drafting Committee seem to have had some inspiration and it has not been explained how it got this inspiration about the financial provisions in article 277, and the subsequent article 278,—additional articles introduced by them. Sir, it is said that India is for world peace and is following in the footsteps of the Father of the Nation. But anyone who reads article 277 can see for himself, and if it is passed it would show that India is preparing to starve all the resources of the Provinces for aggressive Wars against other nations. What does article 277 require? It would give that power to the President—this new Frankenstein that has been created by the Draft Constitution, for the President of India is not a democratic President, he is to be something like the South American Presidents who will exercise all emergency powers—all financial powers and even starve the provinces. Articles 249 to 259 have been discussed threadbare on behalf of those under-fed provinces of Assam, Orissa, Bihar and Bengal which are starved for no fault of theirs, and if article 277 is allowed to be passed on the floor of the House, woe betide these poor provinces.

Sir, if I compare the attitude of mind of the authors of the Drafting Committee and that of the predecessor government here,—the former British rulers, I find that the latter did not take away the resources of the provinces during the last great war. They went on, it is true, taxing, they went on extending their taxable capacity by putting extra income-tax, corporation-tax, excess-profit-tax and so many other taxes. They brought in higher export duties and

[Shri B. Das]

so on. Of course, that was taxing the people of the Provinces; but at no stage did the Centre encroach upon the resources of the Provinces. Today we are asked to hand over that power of confiscating the provincial revenues to the President. We are told that an elected Cabinet would be there and the Cabinet would advise the President. We have an elected Finance Minister in the present Government as Member of this House. Why is it that he has not justified his attitude as to why he advised or his Ministry advised the Drafting Committee to encroach or expropriate or usurp the resources of the provinces in time of emergency? Sir, this is a challenge to the democratic spirit of the future Parliament. Do members of the Drafting Committee think that the Parliament will not be willing to hand over such absolute power to the President or the Cabinet when an emergency arises? It did in other countries. Why should the Indian Parliament behave differently? I may say the future Parliamentarians will be as good, bad or indifferent as we all are at present.

I feel grateful that my honourable Friend Pandit Hirday Nath Kunzru has raised a debate on the important point of the President's power in regard to usurpation of provincial financial resources. It is like capital levy. It is like taking away by force what others possess. During the last Great War, the Nazis took away iron and metals from the householders not only in their own country but in conquered territories. Why should the Government of India, like the Nazis, expropriate the revenues assigned to the States in an emergency? I cannot understand it at all. Is it charity which the Centre has been giving to provinces, that it would take away that part of the revenue in times of emergency? I find the provinces derive substantial shares of revenue from income-tax and central taxes:

Orissa	..	24 per cent.
Assam	..	22 per cent.
Bihar	..	20 per cent.
Bengal	..	19 per cent.
U.P.	..	18 per cent.
Bombay	..	19 per cent.

and Madras which has the largest revenue of 55.94 crores has 15 per cent from the sources of income-tax. Surely this is not a new allocation that we have done today. The present Government is not responsible for this assignment except for certain modifications made by an Ordinance in 1947 whereby when Pakistan came into existence West Bengal which originally had 20 per cent. of income-tax now will have to be content with 15 per cent.

I think, Sir, that such an emergency power is not necessary. Such an usurpation will not be allowed in any democracy, not to speak of India. I listened most attentively to the speech of my honourable Friend Mr. Alladi Krishnaswami Iyer and I felt that his was a legal argument and there was no substance in it to justify the granting of such power to the President or the Cabinet. Everybody knows that the Government of India are now angling to collect all the sales-tax on behalf of the provinces and to distribute them. If article 277 will be in the brain of the Finance Minister and his Ministry, they will try to collect all resources, so that the provinces will have little which they will collect, and in time of emergency the Centre will apply article 277 and thereby take away whatever provincial resources are collected by the Centre. Who says that the Cabinet of the time in time of emergency will be more democratic than it is today? The sympathy which the Finance Minister and the Finance Ministry have shown over the discussions on the Federal Finances on the floor of this sovereign House shows that provinces will get scant justice, not to speak of scant courtesy, in times of emergency.

Suppose we have a Finance Minister who gets fluttered over every little incident, who becomes extra-ambitious. During the Second World War, the Government of India through their Executive Councillors became extra-ambitious and took away by means of Ordinances all our resources—lock, stock and barrel. Who can similarly doubt the power of the Central Government to pass Ordinances as ambitiously or as ignorantly as the British Government did? They imposed "control" prices and supplied all they required for themselves and the Allies and the result is that India is in the grip of inflation and prices are now 365 per cent. of the pre-war level, whereas in America they are somewhere about 200 per cent. and in England somewhere about 100 per cent. That is the effect of the "control" prices and controlled purchases.

Let me hope there will be no war, no emergency. I am for peace in India and peace in the world. But supposing an emergency unfortunately arises, who suffers? The people. The people have to suffer and supply goods at controlled prices as they did between 1939 and 1947. What does inflation mean? It means that the provincial governments and the people cannot make both ends meet, and if a new Finance Minister is extra-ambitious he may begin taking all the resources of the provinces by asking the President to exercise article 277. How much is that—something like 60 per cent. of the income-tax; 40 per cent. of the excise duties and 40 per cent. of the jute duty in certain provinces; it comes to something like Rs. 60 crores now.

If this sovereign House had accepted the Sarkar Committee Report the provinces would have got about 60 per cent. of the proceeds of all sources of Income-tax (which comes to somewhere about 150 crores of rupees) and about 60 per cent. of the share of excise duties which would have meant very large sums. If you will kindly permit me, I shall illustrate my point with reference to Orissa. The total revenue of Orissa is Rs. 6.82 crores of which about 3 crores is derived from the Centre as extraordinary grants. That means Orissa's net revenue is only Rs. 3.82 crores. The standard of living of people in Orissa is very, very low.

Mr. Vice-President: Are all these details necessary? Will the honourable Member please conclude his speech?

Shri B. Das: I would very much like to. But I am only expressing the feelings of the lacerated hearts of provinces which have to be deprived of even the moiety which till now they were getting from the Centre as share of central taxes. I want to quote certain figures to illustrate the standards of our administrations

Bombay spends five annas and one pie on Education; U.P. spends 6.5 annas; Bihar spends 3.11 annas; Assam spends 6.2 annas, while Orissa spends 4.1 annas. If you take the question of public health and medicine—about which we talk always—the figures are more discouraging. C.P. spends 2.1 annas *per capita*; Assam spends 3.1 annas. Orissa spends much less.

This is the condition of the provinces and today we are asked to be a party to article 277 whereby even the low standard of living in the provinces will become lower still. I am very much perturbed; I am very much disturbed. I think democracy will not lead to autocracy which will create Frankensteins and South American Presidents who can do anything. I have studied this Constitution carefully. I find the President can any moment become an autocrat: he can dismiss his Cabinet and dissolve the Legislature. It is no use framing a Utopian Constitution which any President can upset; and who knows that the Gandites will rule India all along!

[Shri B. Das]

I feel very glad at heart. I fully carry out the objectives of my honourable friend Pandit Kunzru and I am fully in agreement with the Lady Member from Bengal Srimati Renuka Ray who spoke on behalf of her province and the Sardar Sahib Gurmukh Singh for the second time. I, therefore, feel that Dr. Ambedkar will be wise to withdraw this amendment and accept the wishes of the associated provinces.

Mr. Vice-President: The question is:

"That the question be now put"

The motion was adopted.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, I have given as close an attention as it is possible to give to the amendment moved by my honourable friend Pandit Kunzru, and I am sorry to say that I do not see eye to eye with him, because I feel that in a large measure his amendment seems to be quite unnecessary.

Let us begin by having an idea as to what financial relations between the Centre and the provinces are normally going to be. I think it is clear from the articles which have already been passed that the provinces will be drawing upon the Centre, in the normal course of things:

(1) proceeds of income-tax under article 251;

(2) a share of the central excise duties under article 253; and

(3) certain grants and subventions under article 255.

I am not speaking of the jute duty because it stands on a separate footing and has been statutorily guaranteed.

Let us also have an idea as to what the article as proposed by me proposes to do. What the article proposes to do is this, that it should be open to the President when an emergency has been proclaimed to have the power to reallocate the proceeds of the income-tax, the excise duties and the grants which the Centre would be making under the provisions of article 255. The article, as proposed by me, gives the President discretion to modify the allocations under these three heads. That is the position of the draft article as presented to the House by the Drafting Committee.

Now, what does my Friend Pandit Kunzru propose to do by his amendment? If I have understood him correctly, he does not differ from the Drafting Committee in leaving with the President complete discretion to modify two of the three items to which I have made reference, that is to say, he is prepared to leave with the President full and complete discretion to modify any allocation made to the provinces by the Centre out of the proceeds of the excise duty, and the grants made by the Centre under article 255. If I understood him correctly, he would have no difficulty if the President, by order, completely wiped off any share that the Centre was bound to give in normal times to the provinces out of the proceeds of the excise duties and the grants made by the Centre.

Pandit Hirday Nath Kunzru (United Provinces: General): I never said any such thing.

The Honourable Dr. B. R. Ambedkar: Your amendment is limited only to the income-tax. That is what I am trying to point out. You do not, by your amendment, in any way suggest that there should be any different method of dealing with the proceeds of the excise duties or the grants made by the Centre under article 255.

Pandit Hirday Nath Kunzru: The reason why I cast my amendment in that form is this. In so far as the distribution of the proceeds of any taxes depends on a statute passed by Parliament that power cannot be taken away from Parliament but it does not belong to the President. But so far as income-tax is concerned, the Government of India Act, 1935, envisaged the transfer of the full share of the provinces to them within a certain period and allowed the Governor-General, in case there was an emergency, to delay the transfer to the provinces and thus lengthen the total period in which the provinces were to get their full share. That was the only reason; the inference drawn by my honourable Friend is completely unjustified.

The Honourable Dr. B. R. Ambedkar: I am entitled to draw the most natural inference from the amendment as tabled.

Pandit Hirday Nath Kunzru: The honourable Member is completely misunderstanding me. Under my amendment the President will have no power to alter the distribution of the proceeds of the Union excise duties.

The Honourable Dr. B. R. Ambedkar: I am sorry the honourable Member did not make the matter clear in his amendment. And if he wants to put a new construction now and make a fundamental change the amendment should have been such as to give me perfect notice as to what was intended. There is nothing in the amendment to suggest that the honourable Member wants to alter the provisions of articles 253 and 255. It may be an after thought but I cannot deal with after thoughts; I have to deal with the amendment as it is tabled. Therefore, as I read the amendment, my construction is very natural.

Pandit Hirday Nath Kunzru: The honourable Member is utterly unjustified.

The Honourable Dr. B. R. Ambedkar: That is the honourable Member's opinion. My reading is that something new is being put forward now.

Pandit Hirday Nath Kunzru: The honourable Member is misrepresenting me and knows that he is doing so.

The Honourable Dr. B. R. Ambedkar: The honourable Member is misrepresenting his own thoughts. Therefore, as I understand it, there is no question of my honourable Friend suggesting any alteration in the system of modifying the proceeds of the excise duty and the grant. The only question that he raised is the question of the modification of the allocation of income-tax during an emergency. Even so what do I find? If I again read his amendment correctly, he is not altogether taking away the discretion which is left to the President in the matter of the modification of the allocation of the income-tax. All that he is doing is that if the President was to make a modification of the allocation of the income-tax as contained in the previous order, then the President should proceed in a certain manner which he has stated in his amendment. In other words, the only difference between the draft clause as put by me and the amendment of my honourable Friend Pandit Kunzru is this that, so far as the discretion of the President is concerned, it should not be left unregulated, that it should be regulated in the manner which he suggests.

My reply to that is this: Where is the reason to believe that in modifying or exercising the power of the President to modify the provisions relating to the distribution of the income-tax he will act so arbitrarily as to take away altogether the proceeds of the income-tax? Where is the ground for believing that the President will not even adopt the suggestion made by my honourable Friend, Pandit Kunzru, in the amendment as he has put it? There is no reason to suppose or to make such an arbitrary suggestion that the President is going to wipe out altogether the total proceeds which the provinces are entitled to receive under the allocation. After all the President will be a reasonable man; he will know that to a very considerable extent the proceeds

[The Honourable Dr. B. R. Ambedkar]

of the income-tax do form part of the revenues of the provinces; and he will also know that, notwithstanding the fact that there is an emergency, it is as much necessary to help the Centre as it is necessary to keep the provinces going.

Therefore in my judgment there is no necessity to tie down the hands of the President to act in a particular manner in the way suggested by the amendment of my Friend Pandit Kunzru. It might be that the President on consultation with the provinces or on consultation with the Finance Commission or any other expert authority might find some other method of dealing with the proceeds of the income-tax in an emergency, and the suggestion that he might have then might prove far better than what my Friend Pandit Kunzru is suggesting. I therefore think that it would be very wrong to tie down the hands of the President to act in a particular manner and not leave him the liberty or discretion to act in many other ways that might suggest themselves to him. I suggest that it is better to leave the draft as elastic as it is proposed to be done by the Drafting Committee; no advantage will be gained by accepting the amendment of my Friend Pandit Kunzru.

As I have said, I have made another amendment in the original draft which left the matter entirely and completely to the discretion of the President and Parliament had no say in the matter. By the new amendment I have proposed it is now possible for Parliament to consider any order that the President may make with regard to the allocation of the revenues; and therefore if the President is doing something which is likely to be very deleterious or injurious to the interests of the provinces, surely many representatives in Parliament who would be drawn from the provinces and who would undoubtedly not forget the interests of the provinces would be in a position to set matters right. I therefore think that the original arrangement should be maintained by virtue of the fact that it is be more elastic than what is suggested by my honourable Friend Pandit Kunzru.

Mr. Vice-President: The question is:

"That article 277 be renumbered as clause (1) of article 277 and to the said article as so renumbered the following clause be added:—

'(2) Every order made under clause (1) of this article shall, as soon as may be after it is made, be laid before each House of Parliament.'"

The amendment was adopted.

Mr. Vice-President: The question is:

"That with reference to amendment No. 3007 of the List of Amendments and Amendment No. 13 of List I (Fourth Week) of Amendments to Amendments, for article 277, the following article be substituted:—

'277. (1) While a Proclamation of Emergency is in operation, the Union may, notwithstanding anything contained in article 251 of this Constitution retain out of the moneys assigned by clause (1) of that article to States in the first year of a prescribed period such sum as may be prescribed and thereafter in each year of the said prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual deduction:

Modification of the provisions relating to distribution of taxes on income during the period a Proclamation of Emergency is in operation.

Provided that the President may in any year of the said prescribed period direct that the sum to be retained by the Union in that year shall be the sum retained in the preceding year and that the said prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with the States nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Government of India requires him so to do.

(2) In this article, 'prescribed' means prescribed by the President by Order.'"

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 277, as amended, stand part of the Constitution."

The motion was adopted.

Article 277, as amended, was added to the Constitution.

New Article 279-A

Mr. Vice-President: Pandit Thakur Das Bhargava may move his amendment No. 73 to add a new article 279-A. There is an amendment of his also to article 280 in exactly the same terms as amendment No. 73. I wish to know from him whether he will move this as a new article or propose it as an amendment to article 280.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I beg to move:

"That with reference to amendment No. 15 of List I (Fourth Week) of Amendments to Amendments after article 279, the following new article be added:—

'279-A. Any law made or any executive action taken under article 279 in derogation

Mr. Naziruddin Ahmad: On a point of order, Mr. Vice-President. This should be moved as an amendment to article 280.

Mr. Vice-President: But he wants now to move it as a new article after article 279.

Mr. Naziruddin Ahmad: Then, article 280 also may be moved and the whole thing considered together.

Pandit Thakur Das Bhargava: I have no objection to that course being adopted.

Mr. Vice-President: I think Pandit Bhargava might move his amendment No. 74 after article 280 is moved. Instead of moving amendment No. 73, he may move amendment No. 74 after Dr. Ambedkar moves article 280.

Article 280

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 280, the following article be substituted:—

Suspension of the rights guaranteed by article 15 of the Constitution during emergencies.

'280 (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament.'"

Sir, the House will realise that clauses (2) and (3) are additions to the old article. In the old article there was a provision that while a Proclamation of Emergency was in force the President may suspend the provisions for the rights contained in Part III throughout India. Now, it is held that, notwithstanding the fact that there may be emergency, it may be quite possible

[The Honourable Dr. B. R. Ambedkar]

to keep the enforcement of the rights given by Part III in certain areas intact and there need not be a universal suspension throughout India merely by reason of the Proclamation. Consequently clause (2) has been introduced into the draft article to make that provision.

Thirdly, the original article did not contain any provision permitting Parliament to have a say in the matter of any order issued under clause (1). It was the desire of the House that the order of suspension should not be left absolutely unfettered in the hands of the President and consequently it is now provided that such an order should be placed before Parliament, no doubt with the consequential provision that Parliament will be free to take such action as it likes.

Mr. Vice-President: Now Pandit Thakur Das Bhargava may move amendment No. 74.

Shri H. V. Kamath: There are other amendments in List I of Third Week.

Mr. Vice-President: I am coming to all that.

Shri H. V. Kamath: List I may be taken up first.

Pandit Thakur Das Bhargava: With your permission I propose to move amendment No. 73 for new article 279-A as well as amendment No. 74 to article 280.

Mr. Naziruddin Ahmad: This proposed new article is not on the agenda for today.

Mr. Vice-President: Pandit Thakur Das Bhargava has to move amendment No. 74. That is what was agreed to.

Pandit Thakur Das Bhargava: The point is that if new article 279-A is agreed to, I would have no objection to drop the amendment to article 280.

Mr. Vice-President: You agreed sometime ago that you would move the amendment for the new article 279-A as an amendment to article 280.

Pandit Thakur Das Bhargava: My submission is that I have given notice of two amendments, Nos. 73 and 74. The substance of both is the same. But, while one seeks to substitute article 280, the other seeks to add article 279-A. At the same time, the objective of both the amendments is quite separate. Therefore you may allow me to move both and put both—in fact all —the amendments to the House.

Mr. Vice-President: Very well, you may speak.

Pandit Thakur Das Bhargava: Sir, I move :

"That with reference to amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, after article 279, the following new article be added :—

'279-A. Any law made or any executive action taken under article 279 in derogation of the provisions of article 13 of Part III of the Constitution shall enure for such period only as is considered necessary by the State as defined in that Part and in no case for a period longer than the period during which a Proclamation of Emergency is in force.'"

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, for the proposed article 280, the following be substituted :—

'280. Any law made or executive action taken under article 279 shall enure for such period only as is considered necessary by the State as defined in Part III of the Constitution and in no case for a period longer than the period during which a Proclamation of Emergency remains in force.'"

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments in clause (1) of the proposed article 280, after the words 'a Proclamation of Emergency' the words, figures and brackets 'under article 275(1) of the Constitution' be inserted."

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (2) of the proposed article 280, the following be added at the end :—

'for a period during which the Proclamation is in force or for such shorter period as may be specified.' "

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, after clause (2) of the proposed article 280, the following new clause be added :—

'(2A) Any such order may be revoked or varied by a subsequent order.' "

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the following be added at the end :—

'and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such order is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of one month referred to in clause (3) of this article and the order has not been approved by a resolution passed by the House of the People before the expiration of that period, this order shall cease to operate at the expiration of fifteen days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the order have been passed by both Houses of Parliament."

Sir, I would beg of the House to consider article 279 which we have already passed and the present article 280 together and in the light of what we have passed under article 279, consider the effect of article 280 along with article 279.

So far as article 279 goes, we have so far agreed as follows :—

"While the Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the State as defined in that Part to make any law or to take any executive action which the State would otherwise be competent to make or to take."

When we have passed this article 279, it follows that as a matter of fact we have given very extensive powers to the executive, in so far as the restrictions which have been imposed by provisos to article 13 in regard to fundamental rights have been practically taken away. While the proclamation of an emergency is in operation, the executive can change any law and make any law with regard to fundamental rights, of freedom of speech etc., and those restrictions which have been placed by the statute under Section 13 as such power will no longer avail, which means that during the period of emergency the Executive will be armed almost with autocratic powers.

Now if you will kindly look at 280 it is half not so drastic as article 279 In regard to article 280 as it now emerges from the Drafting Committee the prick of the clause has been taken away. If you will kindly see the original Section 280 then the House will come to the conclusion that this section as originally drafted was much more drastic than it is at present. The old article 280 as originally found in the Draft Constitution ran thus :—

"Where a Proclamation of Emergency is in operation, the President may by order declare that *the rights* guaranteed by article 25 of this Constitution shall *remain suspended* for such period not extending *beyond a period of six months* after the proclamation has ceased to be in operation as may be specified in such order."

So that according to article 280, all the rights spoken of in article 25 would have remained suspended. Not only the right to move and the guarantee of the right to move the Supreme Court for implementing these rights was taken away, but, the rights themselves were taken away. Now, there is a great difference between the guarantee of moving the Supreme Court being taken away and the rights guaranteed under III being taken away. If

[Pandit Thakur Das Bhargava]

the rights were not taken away then the position is very safe and the Supreme Court and other citizens cannot go against the declared law of the country, but only the right to move the Supreme Court by appropriate proceedings is taken away. The laws remain as they are, but if the right to change the law is taken away, as it has been taken away by article 279, a position is created in which the Executive becomes too autocratic. They can do whatever they like; they can pass any law if they can make the Parliament to enact it, so that article 279 is much more drastic in its effect than article 280. If you will kindly see article 279, it appears that during the period of emergency you authorize the executive to take any action untrammelled by the provisions of article 279 and similarly, you authorize the legislature to pass any law, a legislature as it is defined in article 7, without those safeguards and restrictions which the Constitution has in its wisdom taken the trouble to enact in respect of article 13, so that the result will be that if any action is taken or the law is passed during that period, the action and the law will be good and will inure for all time. Article 279 does not say that the action taken or the law passed will only be applicable for the period of emergency or within six months after that and article 279 is totally silent upon that. Therefore, any law enacted during this period will be a good law unless it is repealed or avoided. My amendment seeks to restrict this period and I want that any law passed during this period or any executive action taken during this period under the provisions of article 279 may only inure for the period of the emergency or such shorter period as the State enacting it or the executive taking the action thinks it necessary.

Therefore independently of what we do in regard to article 280, it is absolutely necessary that you agree to the enactment of article 279-A. Otherwise, the effect will be that the powers taken under an emergency and action taken and law enacted during that period will inure for all time unless it is repealed or avoided. If you accept the amendment, then automatically as soon as the emergency passes away and normal condition return, the effect of any such action or law would be taken away and the action and the law will be automatically repealed and avoided.

In regard to article 280 I would beg of the House to consider its full implication before it considers this article. The wording "emergency" has not been defined anywhere and one of my honourable Friends suggested to Dr. Ambedkar to define the word "emergency" and I told Dr. Ambedkar that he will certainly perform a miracle if he succeeded in defining the word "emergency" as the word "emergency" is so fluid and is of such a nature, that you cannot possibly define it. It depends upon a particular executive to say whether there an emergency has arisen and an ordinary emergency may soon unnerve the executive of any State. A small bubble may at any time develop into a glacier and even the biggest seeming mountain of truth may just dwindle into a mere scrap of sand. Nobody can foresee or can say before hand how the actual trouble will develop. Therefore a panicky Cabinet will declare an emergency very soon, whereas a strong and sturdy Cabinet will not declare in any such situation that an emergency has arisen. It will depend upon the nerve and spine of the Cabinet as to how they deal with this question. Therefore, I think that we should not visualize that the present Cabinet shall remain for all time or there will not be cabinets in the future which will perhaps not take the view which our present Cabinet is expected to take. Let us therefore be cautious and see that we arm the executive with such powers as are necessary, so that the liberties of the people are not jeopardized by a panicky Cabinet. Therefore it is up to us to see that we enact provisions which do not arm the Executive with too much power.

After all is said and done, Parliament is the alternate authority. If we can take away some of the powers which are sought to be given by this article 280 and invest the Parliament with those powers, it would be doing the right thing. It is in that view that I have proposed the other amendments to this article.

The first amendment in this connection to which I would draw the attention of the House is No. 75. So far as this amendment is concerned, I think it is only a clarification. I have pointed out that a Proclamation of Emergency can only be issued under article 275(1). Under article 278 it is not contemplated that any proclamation of emergency can be issued. I only want to make it quite clear that it is only under this article that the powers can be taken.

In regard to amendment No. 76, I beg to submit that as I read the amendment of Dr. Ambedkar, I can understand that the proclamation or order may apply to the whole of India or it may apply to a part of India. In so far as the question of time is concerned, if you keep the article as it is and do not incorporate the amendment contained in No. 76, in clause (2), it would mean that every order shall remain in force for the full time of its duration in the whole of India or part of India. If you add these words, it would be possible that in certain parts, the order may be for a shorter period, and in the rest of India, it may be for the full period. Unless you add this, the object which Dr. Ambedkar has in view will not be fulfilled

In regard to amendments 77 and 78, I do not want to take much of the time of the House because as a matter of fact, these two amendments have been taken from the original clause which we have already passed about the Proclamation of Emergency. If you kindly refer to article 275, you will see that these two are already there. I want these two safeguards which appear in article 275 in regard to Proclamation of Emergency may also appear in regard to this order also. After all, the first and foremost effect upon the citizens of a proclamation of emergency is that it takes away their fundamental rights. They are affected very vitally. When I understand that an emergency may be as elastic as the proverbial foot of the Chancellor, then my difficulty becomes all the greater. Unless and until Parliament confirms the particular order taking away the guarantee of enforcing the fundamental rights, we will not be safe in this country and no citizen would be safe with his liberty, unless this provision is enacted.

If you look at the present position in regard to articles 279 and 280, you will find, as a matter of fact, this provision of article 280 is not so necessary as it appears to be. One of my amendments is that instead of article 280, we may substitute article 279-A. I wish to take the House with me in coming to the conclusion that the enactment of article 280 is not so necessary as it appears at first sight. So far as the fundamental rights are concerned, article 13 is the principal article. If you take away article 13, very little remains in the Fundamental Rights over which a person should feel enthused or to feel concerned. Article 13 being practically taken away by article 279, what is there to worry any person about fundamental rights? In regard to the personal liberty of the subject and the protection of his rights, article 15 is there. The House will kindly excuse me if I dilate a bit on this provision.

Now, Sir, according to the fundamental rights as they exist today, this article 15 is the greatest blot on our Constitution. By article 15, whatever we had given in article 13 we have taken away. If the adjective law has been sought to be corrected by enacting article 13, and safeguards against the misuse of the powers given under article 13 were provided by the use of the word "reasonable" before the word "restrictions", they are all washed away by article 15, because in regard to procedure we have not put in any restriction

[Pandit Thakur Das Bhargava]

whatsoever on the powers of the legislature. Under article 15, the legislature is at perfect liberty to pass any law it likes. It can take away all the safeguards that exist today. Under article 15 any legislature is competent to enact that no accused shall be defended by counsel. Any legislature, under article 15 as it exists today, is competent to enact that as a matter of fact, the present provisions relating to arrest, relating to remands and bail, production of defence, appeal etc., can all be abrogated. Under article 15, any special courts with special powers and procedure can be created and the liberty of the subject can be reduced to zero. This is the present position. Unless and until we see that article 15 is righted, there is nothing which you possess can be taken away by article 280. If you take full powers under article 13, what else is there for which one should feel sorry for the deprivation? If you kindly look at the fundamental rights, you will be astonished to see there is no other such fundamental right which could possibly be taken away by enacting this article 280. In the first place, if you look at those rights one by one, you will come to the conclusion that article 280 does not practically touch many of them. Taking article 9, I do not think that any person will dispute that article 280 touches any of the rights in regard to the use of wells, roads, hotels, etc. Similarly in regard to article 10 which deals with employment and article 11 in regard to untouchability and article 12 in regard to titles. Article 13 has already been taken away. In regard to article 14, I understand something worse can be done if article 280 is enacted. A person who has committed a crime two months ago may be tried by a law enacted subsequently by virtue of which he may be liable to a greater amount of punishment. Similarly, there can be two convictions for the same offence and the right to move the Supreme Court for immediate remedy will be taken away. In regard to article 15, I have already submitted. If the article 15 remains in its present form, I can predict that after all this Constitution is enacted and all the dust of controversy is over, and Dr. Ambedkar sits down in his bungalow, he will repent the day when he passed article 15 without any safeguards. I appeal to him and to the House that if they really mean well to the people of the country, they must see that article 15 is amended. If article 15 is not amended, this Constitution and these fundamental rights are not worth having. Therefore, I submit so far as article 15 is concerned, the law already provides that Parliament may make any law as regards procedure and thus there is no fundamental right in respect of procedure. So that, there is no other vital fundamental right which this article touches.

In regard to article 16, which deals with freedom of trade, the Parliament already possesses the power to enact laws. Article 17 deals with prohibition of traffic in human beings, and article 18 deals with the employment of children. I do not think any Government worth the name will try to conscript under article 17 one class only. The State is empowered by this article to conscript without discrimination. It is thus more an enabling than a disabling clause. No other fundamental right is affected if article 280 is not passed, in regard to articles 19, 20, 21, 22, 23 which deal with religious and cultural rights and article 24 deals with compensation.

So that my humble submission is, if my interpretation is correct, article 280 only takes away the power guaranteed to the people of moving the Supreme Court alone. The rights are not taken away; the laws are not taken away; the laws will remain as they are. Only I cannot move the Supreme Court by appropriate proceedings. The laws will not be taken away except in regard to article 13. If the President takes power under this article 280, the laws will remain as they are; only the immediate remedy by appropriate proceedings is taken away. Therefore, my submission is, unless and until you change

article 15, I do not care whether you enact article 280. If article 15 is amended or the safeguards are further provided by enacting other articles, as I think they must be and shall be provided in the Constitution, then article 280 would have a meaning. Then article 280 will be a necessary article because it would mean that if emergency is there, the important rights which the amended article 15 will confer will be taken away, and we should see that the Executive is not armed with such powers as to take away all the cherished and vital rights of the citizens. As I have submitted, this emergency may be very serious or may not be serious at all. Suppose there is a war in Kashmir or in any outlying part of the country, I do not see what would thereby happen to Travancore and Mysore, and why the rights of the people there should be taken away. It would depend upon the particular emergency. A panicky cabinet may take away all the rights, without good reason.

Therefore my humble submission is that as ultimately our last resort is the Parliament, Parliament should be given all those powers and should have the last say in the matter and as soon as an Ordinance is passed, it should be subject to the veto of the Parliament and Parliament should within one month be able to say whether it accepts it or not. If there is a Resolution that the order is not accepted, it should be scrapped. Therefore, if you want to safeguard the rights of the people, you must see that article 280 is not passed in the way it is sought to be passed by the amendment of Dr. Ambedkar.

Shri B. N. Munavalli (Bombay States): Mr. Vice-President, I beg to move :

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the full stop occurring at the end be substituted by a comma and the words 'when it meets for the first time, after such an Order' be added thereafter."

Sir, the article 280 is an article which arms the President with drastic powers. If we look to the other constitutions of other nations, we will find that no President is armed with such powers. Under the French Constitution the President is simply a Phantom of the King without a Crown. The only power he assumes is that of veto and even that power is scarcely used. During the last fifty years there was no occasion to use such a power. So also under the Swiss Confederation, the President is not clothed with such powers; but curiously enough, the President under our Constitution, instead of becoming a Phantom of a King without a Crown, is so to say a Phantom of King with a Crown and also with a Sceptre. Of course he is armed with these powers at the time of emergency but the fundamental rights which every citizen is to enjoy under this Constitution, will be deprived, by passing an order under this article by the President. He has no recourse even to law; but even then there is one sanguine point viz., the clause (3) which states that an order passed by President may be placed as soon as may be after it is made, before the Parliament. My amendment to this clause is that as soon as the Parliament meets for the first time after the President passes such an order, it should be placed before the House of Parliament instead of postponing the matter. My Friend Pandit Bhargava has moved certain amendments and they are quite regular and proper because the article as it stands will simply stun the citizens as they are deprived of all the fundamental rights and if his amendments are accepted, there will be some facilities. So I support the amendments of Pandit Bhargava.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move—

"That in amendment No. 15 above, in clause (1) of the proposed new article 280, for the word and Roman figure 'Part III' the words and figures 'articles 13 and 16' be substituted."

[Mr. Naziruddin Ahmad]

Sir, this proposed new article 280 is also equally drastic. It is just in keeping with other equally drastic clauses which are allied to it. What is the effect of article 280 as it is proposed in its new shape? It may be recollected that this article was moved by Dr. Ambedkar on a former occasion in a milder form. There were serious objections in the House. Dr. Ambedkar desired that its consideration be postponed till he could attend to it and then he has brought in something which is much more drastic, more objectionable and therefore there was not only no consideration of the objections raised but the article has been presented again to the House in a more objectionable form. In its present form it strikes at pending cases laso. What is the purport of article 280? It is that during the pendency of an emergency the President may by order suspend the right of any person to go to Supreme Court or other Courts which might be empowered in this behalf by Parliament to vindicate his rights under Part III of the Constitution. What are the rights contemplated in Part III of the Constitution? They are what are called "Fundamental Rights". It is suggested that those Fundamental Rights should remain, but no one would be able to approach the Court for redress if they are violated. Pandit Bhargava has drawn a distinction which does not really apply at all. He contends that the rights will not be taken away but only the resort to Court for their vindication will be prevented. The right will be there; its existence is not to be denied, but people would be merely prevented from going to Court. This is a wrong way of approach. There is no point in giving anyone any right unless he is also enabled, in case the right is violated, to go to Court. If you say "we give you a property absolutely, but if I take it away you must not go to Court," that is as good as denying the right itself. I submit taking these two together it amounts to this that the rights are also suspended. What are the rights that are going to be suspended? They are described in the Constitution itself—Fundamental Rights. They are however such rights which should not be in the least affected by the fact that there is an emergency. You must give the President power to act in an emergency. That power is conceded by the House. What is now contended is that needless power, the power needlessly to interfere with fundamental rights should not be given. The powers now sought are absolutely unnecessary and an emergency cannot be solved by refusing to give the people rights which are fundamental. Now, what are the fundamental rights granted by the Constitution, the enforcement of which through Court is prohibited? I shall briefly point out these rights. They are laid down in articles 9 to 23-A.

Article 9(1) lays down that there shall be no discrimination against any cititzen on grounds only of religion, race, caste, sex, place of birth or any of them.

Does this article mean that this fundamental right of protection against discrimination is to remain in abeyance when there is a Proclamation of Emergency? Can any honourable Member conceive of a situation where it will be possible to suppress the rights relating to this, that there should be no discrimination on grounds of religion, sex and so on? Does it mean that during an emergency, the State may make discrimination on the ground of religion, or race or caste, sex, or place of birth? Under article 7 "State" includes the Government and Parliament of India and those of the Provinces and even the "local or other bodies". I think the obvious implication of the suppression of these rights means that it would enable any Government or even a District Board or a Municipality or a Union Board to discriminate against any person on these grounds. I think nothing can be more absurd than this.

Then we come to clause (1-a) of article 9. There it is said that there should be no disability on grounds of religion, race, caste, sex, etc. etc., in having access to shops, public restaurants, hotels, and using wells, tanks, bathing

ghats, roads and places of public resort. May I ask whether, during an emergency any section of the people should not be allowed to go to shops, or public restaurants, hotels, use wells, tanks and so forth? I submit these rights cannot remain suspended even during an emergency.

Then we come to article 10 which says there shall be equality of opportunity in the matter of employment or appointment. If you suspend these rights during an emergency, it would mean that during an emergency, there should be no equality of opportunity. May I ask what is the point of this suspension?

Then we come to article 11 which deals with a most important right. By article 11 untouchability is abolished. If there is any observance of untouchability, if there is any discrimination on the ground of untouchability, it is made penal. Do you mean to give the President down to the meanest village Union Board authority to re-impose untouchability? I think this will not solve an emergency but will accentuate it.

Then in article 12, the conferring of titles is prohibited, or rather it says that titles are not to be recognised by the State. Does the suspension of this mean that during an emergency titles will flow from our Governments or from foreign governments and will be recognised by the State? I fail to see how this will solve an emergency.

Then we come to article 13 which guarantees the freedom of speech, and to assemble peacefully and without arms, to form associations and move freely from one place to another and so forth. But these are also hedged in by conditions, that in making the speeches we should not commit libels, slander or defamation; that there should not be violation of decency or morality, that there should not be any attempt through this freedom of speech to effect the security of the State or any attempt to overthrow the State. This freedom of speech has been circumscribed by conditions in such a way that they would be harmless even in times of emergency. Then the same conditions apply to assembling. Anything done against public order such as unlawful assemblies and similar other things are safeguarded. I think, Sir, therefore, that this right to assemble peaceably has been sufficiently safeguarded and conditions imposed so as to make them perfectly harmless. And then the right of forming associations and other things are also hedged in with similar conditions. These fundamental rights have been given to the people in such a way that they cannot be used for any purpose detrimental to the safety of society or to public morals or public peace.

Then coming to article 14(1), it says that there should be no conviction except in due course of law. If you suspend this right, then it would mean that there could be conviction without any law, that you can catch hold of any person who speaks against the Government, or any newspaper writing any article against the Government and send him to jail without the authority of law. In article 14(2), we have also laid down that there should be no double prosecution and no double punishment for the same offence. If you suspend this right, it will authorise any one being punished twice for the same offence as also without the authority of any law. Also, no accused under this article can be compelled to give evidence against himself. If this right is suspended, then a Criminal Court may compel an accused to give evidence against himself.

Article 16 deals with trade and commerce, that trade and commerce should be free.

These Sir, in general, are some of the more important fundamental rights guaranteed in so many words by the Constitution. There are others, but it is not necessary to recapitulate them. May I ask what earthly purpose could

[Mr. Naziruddin Ahmad]

be served by suspending these rights? In most cases the suspension of these rights, as I have pointed out would lead to absurdities and in some cases to serious injustice, without in any way helping the State to come out of the emergency. In these circumstances, I submit that the suspension of these rights is not only unnecessary but would lead to hardship and injustice and in many cases to patent absurdities. But my amendment makes some exception in the case of articles 13 and 16. Article 13 deals with the right of freedom of speech, freedom of assembly and so on. These rights may, during an emergency, have to be curtailed in the interest of the State itself. Similarly freedom of trade guaranteed under article 16 may have to be restricted on public grounds. In an emergency consumer goods may be concentrated in the hands of a few who may use them for purposes of blackmailing. So it may be necessary for the State, to interfere with this right during an emergency. I have therefore by my amendment, provided that the rights guaranteed under article 13 and 16 may be suspended during an emergency.

Article 280, as it would read along with my amendment is that during an emergency, the President may order that no person shall have the right to move the Court, that the rights under articles 13 and 16 have been interfered with. I have conceded this right of suspension to this extent, though I fail to see to what extent these could be legitimately or usefully suspended even during an emergency. At any rate, I am prepared to give the right to the President to interfere with these rights.

Sir, as I have already submitted, an emergency is not a ground for suspending these important and valuable rights. Fundamental rights will cease to be fundamental if they could be suppressed on these flimsy and unnecessary grounds. These are inalienable rights and should not be interferred with, without the State being in the least benefited by such interference. Even during the two great World Wars—the greatest emergencies that can happen to mankind—Courts were never closed. In fact, Indian and English Courts kept their doors open. No one thought that their powers should be curtailed. These rights should be justiciable. Otherwise, it is impossible to say that the rights exist. The very right of violated rights being challenged in court would act as a deterrent upon the State officials acting arbitrarily. The sacred name of the President has been used—I submit exploited—in these articles. As I have already submitted, the President will not act himself. He is not supposed to be acting on his individual discretion. He has always to act on the advice of his Ministry and it is conceivable that the Ministry may be moved to action by some Secretary or Under Secretary who may start the mischief innocently, and so valuable rights which are the essence of liberty, will be suspended in the sacred name of the President.

The feeble provision that orders must be placed before the next sitting of the Legislature seems to be a poor consolation in view of the fact that such order as is passed by the President cannot be questioned or criticised or even discussed in the House. So the mere fact that they are placed before the House without any opportunity of discussing them, I submit, is a poor consolation for those who value individual freedom more than anything else.

I think, Sir, that these powers should be curtailed as much as possible, though everybody will concede that some powers should be given to the President to be exercised which are really needed to meet an emergency. But the powers claimed for the President will suppress the liberties of the people. During the War, the English Courts were open and the Indian Courts were also open and one of the greatest Law Lords—Lord Atkin—when an argument was made

that during the war, justice should be so modified and individual rights so curtailed as help the war effort—made a famous pronouncement. He said. "War or no war, justice must go on. His Majesty's justice cannot be curtailed or in the least affected by the existence of a war." War is the greatest emergency conceivable, and yet law Courts were open to give effect to individual rights. We have not defined emergency. Emergency may mean anything; or it may mean nothing. A trivial matter may be called an emergency and may be used wantonly to interfere with fundamental rights and liberties of the people with which the emergency may have nothing to do. The rights may be totally irrelevant for the emergency, but yet they will remain suspended and the Courts will be absolutely powerless to give them redress. I submit that these powers cannot be given. They can be confined at least to rights guaranteed under articles 13 and 16 as I have submitted. I think the matter is too serious to be passed by a mere majority of votes without any adequate debate by the device of premature closure motions.

Mr. Vice-President: Are you proposing to move No. 17?

Mr. Naziruddin Ahmad: No, Sir.

(Amendment No. 16 was not moved.)

Shri H. V. Kamath: Mr. Vice-President, the draft of the proposed article 280 now before the House is a mere rehash of the old draft of the same article. The House will recollect that on the last occasion, further discussion of this article was held over and the wise men of the Drafting Committee asked for time to put the article into better shape. We hoped—at any rate those of us who had taken an interest in the subject—we hoped that this article would come back to the House in a more presentable form, in a better shape. Our hopes have been disappointed. There is an old saying in Sanskrit that a person tried to do something but got something worse out of his labours:

Vinayakam Prakurvàno Rachayàmàsa Vànaram

विनायकं प्रकुर्वाणो रचयामास बानरम्

A person who set out to make an image of Vinayaka—Ganesh—ultimately got out of it a model of monkey. That is what has happened to the labours of the Drafting Committee. The Drafting Committee hoped—or at least we hoped—that the Committee would consider the various suggestions made in the House and embody them in the new draft. But that was not to be. The Constitution has been founded—at any rate, we the founding Fathers here have tried to found the Constitution—on what I would call the "Grand Affirmation" of fundamental rights. We have tried to build on that the edifice of democracy, but I find surmounting that edifice is the arch of the "Great Negation". First, the grand affirmation, then that edifice, at any rate that facade of democracy and surmounting that edifice or facade is the great negation of Part XI, the notorious negation of Part XI; and article 280 is to my mind the key-stone of this arch of autocratic reaction.

The draft now before the House has been sought to be amended by my Friends Pandit Thakur Das Bhargava, Mr. Munavalli and Mr. Naziruddin Ahmad. I have tabled several amendments to this proposed article which, by your leave, I shall now put before the House. My amendments visualize two separate schemes. One scheme is to vest this great fundamental power of suspension of fundamental rights completely in Parliament. That is one scheme. If that scheme be not acceptable to the House, I propose a second scheme whereby the action of the President shall be subject at every turn to the consideration and approval or rejection of Parliament. Amendment No. 18 comprises these two sets and according to the order in which they appear in the list, I shall now move them before the House.

[Shri H. V. Kamath]

I move :

"(i) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'the President may by order declare' the words 'Parliament may by law provide' be substituted.

(ii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'mentioned in the order' the words 'specified in the Act' be substituted.

(iii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'the rights so mentioned', the words 'any of such rights so mentioned' be substituted.

(iv) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'in the Order' occurring at the end of the clause, the words 'in the Act' be substituted.

(v) That in amendment No. 15 above, for clauses (2) and (3) of the proposed article 280, the following clause be substituted :—

'(2) An Act made under clause (1) of this article may be renewed, repealed or varied by a subsequent Act of Parliament.' "

These as I have already stated, vest the power of divesting or depriving the individual of the fundamental rights guaranteed to him by Part III of the Constitution in Parliament and not in the President.

The second set of amendments provides for the conferral of provisional power to suspend fundamental rights upon the President, subject to its immediate ratification or rejection by Parliament. That set, Sir, is the alternative set which I have tabled, and which by your leave, I shall now move.

Sir, I move :

"(i) That in amendment No. 15 above, in clause (1) of the proposed article 280 for the word 'mentioned' where it occurs for the first time, the word 'specified' be substituted;

(ii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'the rights so mentioned' the words 'any of such rights so mentioned' be substituted.

I am not moving (iii)

(iii) That in amendment No. 15 above, for clause (3) of the proposed article 280, the following be substituted :—

'An order made under clause (1) of this article, shall, before the expiration of fifteen days after it has been made, be laid before each House of Parliament, and shall cease to operate at the expiration of seven days from the time when it is so laid, unless it has been approved earlier by resolutions of both Houses of Parliament.'

(iv) That in amendment No. 15 above, after clause (3) of the proposed article 280 the following new clauses be added :—

'(4) An order made under clause (1) of this article may be revoked by a subsequent order.

(5) An order made under clause (1) of this article may be renewed or varied by a subsequent order, subject to the provisions of clause (3) of this article'

(v) That in amendment No. 15 above, at the end of the proposed article 280, the following new clause be added :—

'Notwithstanding anything contained in this article, the right to move the Supreme Court or a High Court by appropriate proceedings for a writ of *habeas corpus*, and all such proceedings pending in any court shal lnot be suspended except by an Act of Parliament.'

Now, the matter under discussion today is a very serious one in all conscience and I would appeal to the House not to dismiss it very airily, but to bestow on it its mature judgment. As I have already said, this article to my mind is the

Great Negation; and I am sure that when tempests blow—God forbid that they blow—the weight of this Negation will be so heavy that I am afraid the whole edifice will collapse. It is for that reason that I have sought your leave, Sir, to move these amendments and I would again appeal to the House to consider them earnestly and seriously.

The argument has been very often trotted out that we must have a strong Centre. I am all in favour of a strong Centre—especially so in a time of emergency when the security and the stability of the State are at stake. But what do you mean by the Centre? The Centre, I may remind the House, is not merely the Executive. The Centre is Parliament, that is the Legislature, plus the Executive *plus* the Judiciary. We are apt to forget this when we speak of a strong Centre. We are inclined to think that by a strong Centre is meant a strong Executive. That is a wholly erroneous conception—a fallacy which should be discarded at the earliest possible moment. The Centre therefore is the Parliament (Legislature), the Executive and the Judiciary. Make all the three strong—I agree—but not one at the expense of the other two, not the Executive at the expense of the Judiciary or the Legislature.

The other day the Prime Minister, I believe while addressing some public meeting, referred to the frequent conflict between the liberty of the individual and the security of the State. Yes, I agree that the State should be secure so that the individual may have life, liberty and happiness. But the liberty of the individual is not a thing to be trifled with at the mere behest or arbitrary fiat of the executive. It was the great American thinker Thoreau who said: "At a time when men and women are unjustly imprisoned, the place for the just man and woman is also in prison." If this article as moved by Dr. Ambedkar were passed today can we say with any degree of assurance, that the liberty of men and women in this country would be worth a moment's purchase and would not be trampled under foot without a moment's notice? Sir, I do not want to alarm the House and sing a jeremiad, but I fear that such a situation is likely to arise if this article be passed today. As an autocratic negation of liberty this article takes the palm over all other constitutions of the world. Article 279 which we have already passed provides that as long as an emergency proclamation is in force the guarantees of individual freedom as set forth in article 13 will be automatically suspended throughout the Union; and now article 280 denies to the citizen the right of access to courts of law for making complaints about the violation of not only the rights of individual freedom but all other fundamental rights during the period of emergency. A general authorisation of this kind for restricting individual freedom has no parallel anywhere else.

The Drafting Committee took time to prepare a new Draft and they have tried to put up a rehash of the article. I find that the language of this article compares unfavourably with that of the Emergency Powers Act (DORA) passed in England in 1920 which the Drafting Committee have plagiarised in a dishonest fashion. Clause (3) of the proposed Draft reproduces the first part of one of the clauses of that Act, but the second and vital portion of that clause has been conveniently and dishonestly dispensed with. I do not know why this subterfuge has been resorted to. The relevant clause of that Emergency Powers Act reads thus:

> "If Parliament is then separated by such adjournment or prorogation as do not expire within five days, a proclamation shall be issued for the meeting of Parliament within five days, and Parliament shall accordingly meet 'and sit upon a day appointed by that proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued that day."

[Shri H. V. Kamath]

And the further safeguard is this :

> "Any regulations so made under the Act shall not continue to be in force after the expiration of seven days from the time when they are so laid unless a Resolution is passed by both Houses providing for the continuance thereof."

This vital portion of the Emergency Powers Act of England is absent from our Draft article.

Then I come to the Weimar Constitution whose provision came very near to this clause but which was still very mild as compared to this. In clause 48 of the Weimar Constitution occurs this provision :

> '(2) If public safety and order in the German Reich is materially disturbed or endangered, the National President may take the necessary measures to restore public safety and order and, if necessary, to intervene by force of arms. To this end he may temporarily suspend, in whole or in part, the fundamental rights established in articles 114 (personal liberty), 115 (inviolability of dwelling, 117 (secrecy of postal, telegraphic and telephonic communications), 118 (freedom of speech and press), 123 (right of peaceable assembly), 124 (freedom of association), and 153 (guarantees of property rights)."

But even to this there were safeguards. The next clause was to the effect that the President must immediately inform the Reichstag of all measures adopted by authority of this article and that these measures shall be revoked at the demand of the Reichstag. This was the safeguard of the German Constitution.

Under the American Constitution the privilege of the writ of *habeas corpus* shall not be suspended unless when in case of rebellion the public safety may require it. But even here the suspension can be authorised only by the Congress whose decision can be tested by the Supreme Court as to whether the conditions under which such suspension would be justified did exist or not That is so far as the American Constitution is concerned. So also in the Italian Constitution there are similar safeguards. But, unfortunately, we who profess to build a Sovereign Democratic Republic in India have no use for such safeguards. We trust the executive implicitly. God grant that our trust be justified. But if our executive demands our trust, why should not the executive trust the judiciary, why should it not repose confidence in Parliament? Is our judiciary, bereft of all wisdom, integrity and conscience that the executive should snap their fingers at them? This is a most disgraceful state of affairs. I do not see how we can build up an egalitarian or democratic State on such a foundation.

It has been suggested that in a time of emergency the State has got to be preserved. By all means preserve the State; but not at the unjust sacrifice of the liberty of the individual. In some cases and on some occasions, the loss of liberty is worse than the loss of life. I for one would claim that liberty is even more precious than life, and the most serious emergency should not enable the State to unjustly deprive the individual of his liberty. That is a great principle and that should be the lodestar or the Pole-star of our Constitution. The right to a writ of *habeas corpus* is a sacred right in which is enshrined the liberty of the individual : it gives him the right of appeal to the Supreme Judiciary. This article before us today destroys this right of the individual.

We want peace and order so that the State will be safe during an emergency. But what sort of peace are you going to have at this rate? What sort of security or stability are you going to have? The State will be preserved! But it may be that the peace that you thus visualise will be the peace of the grave, the void of the desert. If that is the peace the Drafting Committee's wise men have in mind, I would rather die than live in such a peaceful situation.

In our passion for making the Centre strong, we are misinterpreting it as the strength of the executive. If we want a strong executive, let us also have a strong legislature and a strong judiciary. I have pleaded that it is not the executive alone that makes the State. We have the Parliament and the Judiciary which, together with the executive, make the State. All my pleadings have fallen on deaf ears. I sometimes tell myself, "O Judgment, thou art fled to brutish beasts, And Men have lost their reason". Have we come to that stage? I hope not. I hope, for the good of India, for the good of our fellow men and women who have just emerged from the darkness of slavery into the light of freedom, we shall do something for their happiness and not merely be content with strengthening the hands of a group of people, a tiny coterie or caucus in power. That is not the idea which the Father of the Nation had in mind. As the House well knows he was all for decentralisation, and not for strengthening the Centre at all. He was for a decentralised State and for giving power to self-sufficient units.

We are discussing the provisions for an emergency. I therefore grant that the Centre should have certain powers. All I plead is that there should be adequate safeguards, judicial safeguards and parliamentary safeguards. None of these safeguards is here in the Draft article. But this re-hashed article has come before the House for consideration and for approval. I believe it will be approved in due course. I have closely followed the provision for emergency powers in the Emergency Powers Act, 1920 of the United Kingdom. It provides that Parliament must be summoned within five days. Secondly, the decree will expire at the end of seven days unless earlier approved by Parliament. On the same lines I have sought in my amendment No. 4 to provide that any order made under clause (1) of the article shall, before the expiration of fifteen days—India is a vast country of distances compared to England. So for seven days I have put in fifteen days be placed before Parliament for approval. If you mean business and if you mean to secure to individuals their liberty, and not merely the safety of the State and the security of the men in power, fifteen days would be adequate time to summon Parliament. I have also provided further on the same lines as the Emergency Powers Act of England that this order suspending the fundamental rights shall expire at the end of one week unless it has been approved earlier by resolutions of Parliament. This is a wise safeguard which I hope the House will consider in all earnestness.

My last amendment—I am not going to speak on my remaining amendments—is No. 6 of the Second Week. There I do not object to power being conferred on the President subject to Parliamentary regulation and control. Therefore the last amendment of mine is to the effect that the right to move the Supreme Court or the High Court for a writ of *habeas corpus* by appropriate proceedings shall not be suspended except by an Act of Parliament.

During the last world war, the British Government here were indulging in the severest forms of repression for the preservation of their Empire. Mr. Churchill went to the length of saying, "I have not become Prime Minister to preside over the liquidation of the British Empire," which shows that even Mr. Churchill feared at one time that the Empire was in danger and that it might be liquidated. Though they were thus engaged in a life and death struggle, the British Government did not suspend the right to move the courts for a writ of *habeas corpus*. The famous case of Talpade of Bombay is a case in point. This case came up to the Federal Court and the Chief Justice, Maurice Gwyer held Section 26 of the Defence of India Act *ultra vires*. This section was subsequently amended as a consequence thereof. It must be fairly fresh in the memory of my colleagues here. I therefore do not wish to dilate upon that matter. As I was saying, even the British Government

[Shri H. V. Kamath]

did not then suspend this important right. But we who are drawing up a democratic Constitution are contemplating a provision for suspending even that right in an emergency.

After all, most of our leaders are telling us that we are today passing through a crisis. By crisis they mean a sort of emergency: we have had trouble in Hyderabad, Kashmir, West Bengal and other parts of India. But the Central Government has lived and is getting on very well without proclaiming a state of emergency. None of the fundamental rights or right to move for *habeas corpus* has been suspended. Even here, on August 15, 1947, when the old Government of India Act was adapted under the India Independence Act, the emergency powers vested in the Governor-General and in the Governors were omitted from the Act as adapted. They were not embodied in this adapted Act of the Government of India and the emergency powers were not conferred upon either the Governors or the Governor-General under the Act of the Government of India, as adapted. We have tided over two fateful years, very difficult years, very critical years, without any of the emergency provisions or powers being vested in the Governor or in the Governor-General. Sardar Patel told us some months ago that this country is getting more stabilized. In one breath you say the situation is getting better and more stable, and in the very next you try to insert a clause in the Constitution which seeks to deprive the citizen of all fundamental rights in case of an emergency. Dr. Ambedkar might get up and reply: "Oh! It is just written in the Constitution; it will remain a dead letter. I hope we shall not be required to use it or to put it into operation." I hope we shall never use it. That is what he said on a previous occasion I agree Dr. Ambedkar might say that, the Prime Minister might say that, and other Ministers might say that. I readily grant they are all honourable men, they are all wise men and true, but a Constitution is not meant for Dr. Ambedkar or Pandit Nehru or Sardar Patel; the Constitution is meant not only for this generation: but we are building it for other generations to come, and not for Dr. Ambedkar and the present Government. I hope this Constitution will last for many generations. At times, however, apprehensions arise in my mind; looking at the Constitution as it is being built, as it is being framed by us here, sometimes I apprehend that this Constitution may not last very long. God forbid that my fears should come to pass. But I occasionally fear that the Constitution,—the whole of it, at any rate may not last many more years than one can count on the fingers one of one's hands'. That is what I feel: I hope I am wrong and I hope I am painting too gloomy a picture; but, Sir, I wish to plead with the House that by all means if you want to save the State, do save it, but do not unjustly deprive the individual of his rights, of his liberties, his fundamental freedoms, which we have in the opening chapter of the Constitution guaranteed to him. Towards the fag end of the Constitution we are taking away with one hand what we have given with the other. Is this the sort of liberty we have fought for? Is that the sort of liberty that we aspired after? Is that the sort of democracy that we are building.....

Mr. Vice-President: Will the honourable Member kindly bring his remarks to a conclusion? He has been speaking for 45 minutes.

Shri H. V. Kamath: If you think I am repeating, I shall bow to your ruling, but if I am not.....

Mr. Vice-President: I am sorry to say that the Member is repeating his arguments and I shall be very glad if he will kindly conclude his remarks.

Shri H. V. Kamath: I will take only two minutes more, Sir. I bow to the Vice-President's ruling and I shall conclude. I wanted to say much more but I shall reserve that for another occasion. I am afraid that the article, if it is adopted by the House as moved by Dr. Ambedkar, is fraught with grave danger to the rights and liberties of the individual guaranteed to him under the Constitution. I fear that by this one single chapter—Chapter XI,—we are seeking to lay the foundation of a totalitarian State, a Police State, a State completely opposed to all the ideals and principles that we have held aloft during the last few decades, a State where the rights and liberties of millions of innocent men and women will be in continual jeopardy, a State where if there be peace, it will be the peace of the grave and the void of the desert. I only pray to God that He may grant us wisdom, wisdom to avert any such catastrophe, grant us fortitude and courage. Let me conclude with the prayer of Mahatma Gandhi: "Sab Ko Sanmati De Bhagawan".

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That in part (vi) of amendment No. 18 above, for the proposed new clause in the proposed article 280, the following be substituted:—

'Notwithstanding anything contained in this article, the right to move the Supreme Court, as guaranteed by article 25 of this Constitution, by appropriate proceedings, shall not be suspended, nor shall any proceedings in respect of such right pending at the date of the Proclamation of Emergency in any court be suspended:

Provided that in the event of any cause of action arising in respect of any violation of any of the Fundamental Rights declared or conferred by Part III of this Constitution, against any person of authority, Parliament may, by a special Indemnity Act passed in that behalf, indemnify any such person or authority against the consequence of any such act done *bona fide* during the period while the Proclamation of Emergency was in force'."

Sir, I have as strong an objection as many of the speakers who have addressed this House on this subject to arming the President with such extraordinary powers extending even to the suspension of the one solitary right which by the express terms of the Constitution is guaranteed, namely, the right to move the Supreme Court for certain prerogative writs whereby any violation of the rights declared or conferred on citizens may be remedied. Here is one right more precious perhaps than any other because it makes other rights workable, real, concrete, and actually experiencable; so that if anybody feels aggrieved because of any of the fundamental rights mentioned in Part III being denied, such a person shall be in a position to move the Court which may give him appropriate relief or remedy.

As the article is now proposed a President would be in a position to suspend even this right by an executive order. The amendment of Dr. Ambedkar suggests that having made the order he must place it before Parliament as soon after making it as possible. I confess, I do not see that this is any improvement over the original draft, because, even if you lay an order *ex post facto* before Parliament, you only invite either acrimonious criticism, which may be of no use or avail whatsoever, of an act already done or make the relations between the Executive and the legislature strained. If you had suggested that before the order is made, Parliament would be consulted, or if you had even suggested that the remarks of Parliament may be given effect to by modification of the order, I could have understood.

Shrimati G. Durgabai: On a point of order, may I know whether the honourable speaker is speaking on the original motion or is moving his amendment?

Prof. K. T. Shah: I have moved the amendment.

Mr. Vice-President: He has moved the amendment.

Prof. K. T. Shah: That being the case, in the article and the amendment proposed by my Friend Mr. Kamath, I am suggesting further by my amendment that this fundamental right, which is the only one right guaranteed in the Constitution, shall in no case be suspended, notwithstanding anything that may have been said in the preceding articles. Whatever the emergency, this particular right should not be suspended. As another honourable speaker has mentioned, even if a war is there, the justice of the people, justice of this country shall not be stopped or suspended.

I realise, however, that in an emergency the officers of Government, both civil or military, may not be in a position to wait before taking action. They have to learn, however, that if we are going to live under a free democratic Constitution, whoever does a wrongful act will have to bear the consequences of that act. Anything that he might have thought was required in the interests of the country would not avail him as an answer to an act wrongful in itself. To guard, however, against any undue hardships being imposed upon officers, who act *bona fide* in the interests of the community and in pursuance of the orders issued for dealing with an emergency, if any fundamental right,—let us say, the freedom of movement of association, or expression,—is violated, any violation would not *ipso facto* be covered by the proclamation. But subsequently Parliament may pass an Act of Indemnity, enumerating the cases which might give rise to such prosecution, or such suits, or actions against individual officers, and extending the protection in its sovereign capacity as legislature to such persons, and providing a valid defence for any such charge.

This is a procedure very well known in the British Constitution which we have been copying almost *ad nauseam* in, and here is one case in the British Constitution, where I think we might as well take a lesson from it, and instead of giving a *carte blanche* as it were, to the President to do or allow any act to be done merely on the score of a Proclamation of Emergency, we would lay down, that though an officer may be acting primarily on his own risk under this order, on a proper case being made out, Parliament may consider the advisability of giving a general or special Indemnity.

What would happen would be, that public servants or officers of the State would be automatically restrained. Instead of using any force or extending their authority in any way they think proper or necessary, they would think twice before taking such steps as may not be permitted by an Act of Indemnity. Or Parliament may not pass an Indemnity Act at all. Here would be a very salutary restraining factor, which I think would be for the benefit both of sound administration, and also continued freedom of the citizen.

If you accept this idea, as I hope the sponsors of the article will accept, a provision of this kind, worded as they like, suited to the occasion will amply meet the case. I think much of the difficulty that the previous speakers have referred to, much of the apprehensions that many of us feel as regards the unnecessary extension of the executive authority, would be avoided by this means.

Nowhere in this Constitution is any mention made, so far as I remember, of such a provision as I am advocating here, that is to say, an Indemnity Act Time and again, those in authority, those responsible for the Draft Constitution, have characterised criticism in this House as being destructive or serving no purpose either for themselves or for the House. Here I make a present of this a constructive proposal, with the very respectable authority of the British Parliament and British History behind it. It is a matter of test whether the sponsors have sufficient regard for the freedom of the citizen to accept even such a suggestion as this. I leave it to their good sense.

(Amendments Nos. 20, 21, 22 were not moved.)

Shri B. M. Gupte (Bombay : General): I beg to move :

"That in amendment No. 78 of List II (Fourth Week) of Amendments to Amendments, in the words proposed to be added at the end of clause (3) of the proposed article 280 for the words 'one month', wherever they occur, the words 'two months' be substituted."

Sir, this is an amendment to an amendment moved by my Friend Mr. Thakur Das Bhargava. The only difference between my amendment and his is that I propose two months for the submission of the order to the Parliament while he has proposed only one month. Two months are preferable because that period is mentioned in the main article 275. No doubt, Dr. Ambedkar has respected to a certain extent the sentiments expressed in this House when the matter was debated last time. But, he has not gone far enough and has not mentioned any definite period within which an order under this article shall be submitted to Parliament. Under article 275, the main Proclamation of Emergency must be endorsed by Parliament within two months. I do not see why the same effective control should not be given to the sovereign legislature in this matter, which after all, would be the most important consequence of that Proclamation. The suspension of the remedy for the fundamental rights is a very fundamental matter and it should be incumbent on the executive to get it ratified within a short specified period, say two months. I do not see that there should be any difficulty about this. Most probably, the order would be issued shortly after the Proclamation is issued, i.e., most probably it may be issued in the intervening period between the issue of the Proclamation and the meeting of Parliament. Thus there would be no difficulty in the Proclamation and the order being simultaneously submitted to Parliament. Even granting that the order may have to be issued after Parliament has dispersed, what happens ? Parliament will have to be convened only for this specific purpose. I say, there is no objection. The only argument against this course would be the question of cost. I submit that in matters of vital importance, cost is of no consequence at all. We have deliberately chosen democracy as the form of our Government and after that we should not grudge the cost that might be necessary to make that democracy really effective. Of course, I do not mean to say that there should be wasteful expenditure. Those who are responsible for the conduct of the Government now or those who may be responsible for the conduct of Government hereafter must so arrange their business that no unnecessary expenditure is saddled on the public purse.

But at the same time in important matters, where important principles are involved, consideration of cost is of no avail at all. It cannot certainly be a decisive factor. The suspension of Fundamental Rights is not only a very important matter but a fundamental matter and I would therefore request Dr. Ambedkar to accept Pandit Bhargava's amendment, as amended by me.

Prof. Shibban Lal Saksena: (United Provinces: General): Mr. President, Sir, I beg to move :

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments at the end of clause (3) of the proposed article 280, the following words be added :—

'and if the House of the People, by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately.' "

If this amendment is made, clause (3) of Dr. Ambedkar's amendment would read as follows :—

"Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament, and if the House of the People, by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately."

[Prof. Shibban Lal Saksena]

During the discussion on this article on the last occasion I had proposed an amendment that for the words 'President may by order' the words 'Parliament may by law' be substituted. I had hoped that the Drafting Committee had been convinced of the mistake and they would make suitable amendments. I find an improvement has been made over the former Draft, and all the rights conferred by Part III of the Constitution shall not be abrogated automatically but only those rights which the President may declare as abrogated I think if this article forms part of the Constitution, it will still be an arbitrary denial of the liberties that we are giving in the fundamental rights. I therefore think that either the amendment which I had moved the other day and which has now been moved by Mr. Kamath to this very article 280 should be accepted or at least this amendment of mine to clause (3) of Dr Ambedkar's amendment should be accepted. This will at least have the effect that if the Parliament is not meeting and the President thinks that the emergency requires that he shall exercise such powers, this amendment will give him that right; but as soon as Parliament meets, he will bring forward that order and see that that is laid on the table of the House and the House of People shall be entitled to vary it, rescind it or alter it. This should not be objected to. What Dr. Ambedkar wants is that during an emergency, the powers of the President should not be fettered. I am not fettering them. In fact the very proclamation of emergency will come before the House of People within two months and will have to be renewed. So Parliament is the final authority. Then what is the harm if the abrogation of fundamental rights also—if they are made in an emergency—is brought before the Parliament as soon as it meets and Parliament must have the right—particularly the House of People—to amend it, vary or rescind it. Otherwise the most fundamental rights—the most cherished rights that are given in the Chapter on fundamental rights—shall be taken away. I value the rights guaranteed in article 25 very much—the rights of *Habeas Corpus* and other rights. As I said last time, when we were in jails in 1942, even then during the war the foreign Government did not think it fit to deprive us of the right of *Habeas Corpus*. So if the power is given to the President to abrogate this right, it will be a slur on our Constitution and it should not be allowed to be included in it.

I therefore think that if Dr. Ambedkar is not prepared to accept Mr Kamath's amendment, he should at least accept mine which will meet the point of view of his, that the President will be having the power in emergencies and even to suspend those rights but as soon as Parliament meets, then the order of the President will be liable to be rescinded by Parliament. This is the most modest amendment and if the Drafting Committee thinks over it, I hope they would accept it. Our learned Friend Pandit Kunzru had voiced his great opposition the other day about this article and he had said that this is a very dangerous article and the article should not have found a place in this book but if it is included, at least it must be so modified that the ultimate authority of Parliament is not questioned. If the Parliament has no right to vary or alter his order, then a fundamental right of the Parliament is infringed. You may say it is always open to the House to censure the executive but that is an extreme method and nobody would like to adopt it for simple variation of an order passed by the President. I therefore think that my amendment to this clause will entitle any Member who may like to move for a modification or alteration of the order of the President by a resolution. This is a very modest amendment and I hope Dr. Ambedkar will accept it.

Mr. Vice-President: There is amendment No. 3031 by the Honourable G. S. Gupta.

(The amendment was not moved.)

Shri H. V. Kamath: There is an amendment by Mr. Kunzru.

Mr. Vice-President: It has already been moved.

Shri R. K. Sidhva (C.P. & Berar: General): Mr. Vice-President, Sir, this is a clause which relates to emergency powers in the event of some grave emergency or a national peril existing in the country. Now, what is an emergency? My Friend Pandit Bhargava stated that an emergency can be interpreted in many ways. He is right. It is a very flexible word but it cannot be denied that an emergency is an emergency. Emergency means—according to Oxford Dictionary—a sudden juncture demanding immediate action. One cannot deny that a certain action has to be taken by a Government. May I know whether a democratic government, a government of the people, is going to take an action which will come into conflict with the wishes of the people? Are they going to take any action of such a nature which in the ordinary course it would be said that they want to suspend the Constitution because there is some small disturbance? That Government cannot exist for a day if it is going to be a democratic government. Therefore that apprehension does not stand for one moment.

I want to know, in the event of an emergency when there is a calamity and when the freedom of the country is threatened, I want to know from my friends who oppose this article whether they want, like Nero fiddling when Rome was burning, if they want our ministers should be listening to radios or to some music when things may be taking place in a distant part of the country which may disturb our very freedom? If that is the attitude of these friends who oppose this article, then I do not think they have really understood the meaning of this article. This article is to be applied only in the event of a national calamity and when our very freedom is threatened. My Friend Mr. Kamath said that our well-deserved freedom must be preserved and asked why these rights are being taken away, do you want the people to revert back to slavery? I say it is for the very purpose of safeguarding our freedom, our well-deserved freedom during an emergency that I want to give the Ministers sufficient powers to see that no danger comes to our freedom and that we do not revert back to slavery.

Shri H. V. Kamath: I do not object to that but only provide the necessary safeguards.

Shri R. K. Sidhva: My friends have quoted from foreign constitutions. In the Canadian and Australian constitutions there is no such provision. But there they have the convention that in the event of emergency, the Centre can take all the necessary powers from the provinces. It has by convention been accepted as an inherent power of the Centre to do so, in the event of an emergency. Every Government has such inherent power, this inherent right to take action in the interest of our freedom, for the purpose of maintaining our freedom. If we do not safeguard our freedom in this manner, then I may assure you that our freedom will be in danger. I will go further and say that with such things as are happening I want our government to be invested with all the powers so that we may see that our freedom is not lost Do my friends want that our freedom and our security may pass into the hands of our opponents and our enemies?

Pandit Thakurdas Bhargava: Is Parliament your enemy?

Shri R. K. Sidhva: No, I entirely agree with my Friend Pandit Bhargava. I do not consider him an enemy of the country. But there are people outside

[Shri R. K. Sidhva]

who are enemies of the country, in this country and also outside, mischief-mongers who are out to create mischief. I want to safeguard our freedom against them, and for that purpose I am prepared to sacrifice a little of my own freedom, for the purpose of keeping the country's freedom intact. I do not want anybody to disturb our freedom which we have won after a great struggle.

Sir, I may tell my Friend Mr. Kamath that even in America, in the United States Constitution, there is provision to this effect.

Shri H. V. Kamath: Have you read that constitution?

Shri R. K. Sidhva: I have read it, you can also read.

Shri H. V. Kamath: I have quoted from it.

Shri R. K. Sidhva: Yes, the American Constitution recognises the power in article 1, section 8, clause 18, on the same principle of emergency.

Shri H. V. Kamath: Is it the text or the commentary?

Shri R. K. Sidhva: I have given Mr. Kamath the section He cannot now argue that....

Shri H. V. Kamath: It is a misquotation.

Mr. Vice-President: I shall be glad if Members do not interrupt the honourable Member.

Shri R. K. Sidhva: Sir, I strongly support this article. But at the same time, I do feel that some of the objections raised by some of my friends have some justification, that the whole of Part III need not have been suspended There are in Part III certain clauses which even in an emergency, could be allowed to remain intact. For instance, under fundamental rights article 11 relates to untouchability. May I know whether in the event of an emergency, you want untouchability to be re-imposed? Also there is the article about titles. Do you want titles to be bestowed in an emergency? There is clause regarding *begar*. Do you want that in an emergency *begar* should continue? Article 18 says that no child below the age of fifteen shall be employed in mines. If it is an emergency, do you wish that a child of fourteen should go into a mine and work? And then there is article 19 about rights relating to religion, education and so on.

I can understand the argument of my friends as far as these rights are concerned, and I can appreciate that argument, that the Drafting Committee should not have suggested that the whole of Part III should remain suspended during an emergency. Certainly there are many rights, as for instances the right about freedom of speech, of free association etc., which cannot exist during an emergency. That is against the very principle of an emergency. But I do feel that the Drafting Committee need not suggest the wholesale suspension of Part III, where untouchability, titles and such other things are also dealt with. Emergency does not mean that the Government will not function for the day to day work also, but for the purpose of our retaining our freedom such laws, rights and privileges that are given to the people which affect the very existence of the country could be suspended, and must be suspended. But the extraordinary powers of the law can be suspended. With these words, I strongly support the article. I know this would mean taking away some of individual persons' rights, but I do not mind it, because I want and I am anxious to see that the freedom of my country is maintained, and I am sure the friends who have opposed this article are also equally

anxious to preserve our freedom. It is only a slight difference in the outlook. Some of my Friends, like Mr. Kamath may say that some other government may come into power and on the ground of emergency upset the whole Constitution. But change of government is always possible in a democracy. A future Government may bring in much worse laws, we cannot say what kind of Government it may be. But in the earlier stages, when we have attained our freedom after great struggle and when we know that there is danger, we should be prepared to lose a little right—although I may say I cherish my rights as much as anybody else—for the purpose of retaining our freedom. With these words, Sir, I strongly support the article.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, in supporting the amendment moved to the article by the Honourable Dr. Ambedkar, I should like to say a few words. In the first place, the first part of article 280 as now put forward meets the point of view put forward by the Committee on a former occasion, namely, that the mere existence of a war is not to result in a suspension of all fundamental rights. What the article says is:

"Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order"

It is not intended that the President will suspend all the rights such as were referred to by my honourable Friend Mr. Sidhva which are mentioned in the Chapter on Fundamental Rights. He is quite right in saying that there are rights that do not need a suspension during the period of the war. Such rights will not, and cannot, be suspended. But instead of singling out particular clauses, it is left to the President, who—I have no doubt—will act in a reasonable and proper manner, not in a spirit of vandalism against the Fundamental Rights guaranteed to the citizen in the Constitution.

The second part of the article says:

"An order made as aforesaid may extend to the whole or any part of the territory of India."

This is to remove any possible objection that the commotion, war or internal disturbance may not extend to the whole of India and may be confined only to a particular part, and therefore there is no need for suspending the Fundamental Rights in every part of the territory of India.

Lastly, it enjoins the President or the Cabinet to place the order before the Parliament as soon as may be after it is made. There is nothing to prevent Parliament from taking any action it likes The President may suspend, but yet the Parliament may say that there is absolutely no necessity for he suspension of this right or that right. Time and again, it has been mentioned before the House that it is a Cabinet responsible to the Parliament that is taking action in the name of the President. Parliament has a right to take any action it likes with reference to the course adopted. Under those circumstances, there can possible be no objection to the article.

In this connection, I will remind the House of a famous saying that "a war cannot be fought on principles of the *Magna Carta*". Freedom of speech, right of assembly and other rights have to be secured in times of peace but if only the State exists and if the security of the State is guaranteed. Otherwise, all these rights cannot exist. We are envisaging a situation threatened by war, in a country with multitudinous people, with possibly divided loyalties, though technically they may be citizens of India. We trust that the time

[Shri Alladi Krishnaswamy Ayyar]

will come when the citizens of India will not look to far-off countries but we cannot proceed on the footing that in regard to all citizens of this country their loyalty is assured. Freedom of speech may be used for the purpose of endangering the State and resulting in crippling all the resources of the country If only we realize that the country must exist, that the nation must exist, that the State must exist, if liberty and other things are to be guaranteed, there can be no possible objection to this article.

A reference has been made in the course of this Debate to the American Constitution. I do not know if Members of this House have read a recent book by Prof. Corwin one of the greatest authorities on constitutional law, on the President's powers. During the Civil War, President Lincoln suspended the Writ of *Habeas Corpus*. In the American Constitution, power is given to suspend the *Habeas Corpus*, but it is not mentioned whether the authority to suspend is the Congress or the President. But as a matter of fact the President did suspend the Writ of *Habeas Corpus* during the Civil War and the American people as a nation in their wisdom, never questioned the President's power.

I want to refer to another passage in regard to the President's powers. There is no country in which the President has more dictatorial powers than the United States. Prof. Corwin puts it in these terms on page 317 of his recent book:

> "The war power of the United States has undergone a three-fold development. In the first place, its constitutional basis has been shifted from the doctrine of delegated powers to the doctrine of inherent powers, thus guaranteeing that the full actual power of the nation is constitutionally available. In the second place, the President's power as Commander-in-Chief has been trnasformed from a simple power of military command to a vast reservoir of indeterminate powers in time of emergency—'an aggregate of powers'—in the words of the Attorney-General Biddle. In the third place, the indefinite legislative powers which are claimable by Congress in war-time in consequence of the development first mentioned may today be delegated by Congress to the President to any extent, that is to say, may be merged to any extent with the indefinite powers of the Commander-in-Chief."

That is the position today in America the most democratic country. Here we have the doctrine of Parliamentary sovereignty. Therefore, the Ministry must be acting in close liaison with the Parliament. The moment they act against the wishes of the Parliament, there is an end of their power so far as the powers of the President of the United States are concerned, they are unbridled. He cannot be questioned. Therefore, why quarrel with the powers of a Cabinet—I use the word Cabinet advisedly because inspite of repeated reminders. Members of the House seem to forget that the expression "President" in every article of the Constitution must be understood as a Cabinet responsible to the people. There can be no better and more profitable reading than that of Lincoln's life.

Now, I should deal with the various objections that have been raised in the course of the debate. My honourable Friend Mr. Bhargava's point has been answered in the previous part of my remarks, namely, that Parliament has the final voice in the matter. Parliament may rescind any action of the President. It may remove the Cabinet if it so chooses, because the Cabinet is as responsible to the House of the People during the war as it is during peace.

Its life depends upon parliamentary majority. There being continuous liaison between the Cabinet and the Parliament, this bogey of Parliamentary sovereignty need not be put forward at every stage. There is no question of denying the right of Parliament. The only question is how is the Parliament to govern. In times of peace it may govern by every day interfering with the executive; at another time it may govern by entrusting the power to the

President or the Cabinet in whom they have confidence. Therefore, it is times and circumstances that determine the manner of action of the Parliament whose authority and sovereignty nobody disputes.

Then an extraordinary suggestion has been made that we must pass an Act of Indemnity. What is the meaning of an Indemnity Act? In countries where parliamentary sovereignty obtains an Indemnity Act is generally passed after the war is over. In spite of all Acts and Ordinances, it may be that particular officers may have outstepped the limits of law. In order to guard against infringement of the law and people being molested by action for damages and criminal prosecutions, Acts of Indemnity are generally passed. I would in this connection refer to Professor Dicey's Book on "The Law of the Constitution" in which he explains the scope and principle of an Act of Indemnity. An Act of Indemnity is not normally passed before the war is over. If Professor Shah means to say that even before the war is over, you can pass an Act of Indemnity, it would be worse than suspension of fundamental rights, because you give a *carte blanche* to the executive. Thereby you guarantee to absolve them of all acts of lawlessness perpetrated by them. That certainly is not what Professor Shah wants. Therefore, I submit that this proposition which has been placed before the House by Professor Shah cannot meet with their acceptance.

The third point was a legal one raised by Pandit Thakur Das Bhargava, namely, with regard to article 279: "while a Proclamation of Emergency is in operation nothing in this Act shall restrict the power of the State to make any law or to take any executive action." As it is, if a law is passed during the period of Proclamation, it will automatically lapse with the end of the emergency: that is the meaning of article 279. Those who are for limiting the power of the President cannot quarrel with the provision as it is, because where the period is restricted to a particular duration, automatically the law will come to an end, unless there is a provision in the Constitution or in the particular Act giving it a fresh lease of life after the termination of the emergency. Therefore, if anything, my honourable Friend Pandit Thakur Das's amendment will give fresh life instead of cutting short the life of the law passed under article 279.

Therefore, under these circumstances, I submit that as the security of the State is more important, as the liberty of the individual is based upon the security of the State and as a war cannot be carried on under the principles of the *Magna Carta,* or principles of individual freedom, particularly in a country with multitudinous types of people with possibly diverse loyalties, this provision is very necessary. It will be the life of this Constitution. Far from killing the democratic Constitution—as one of the speakers said—it will save democracy from danger and from annihilation.

With these remarks I support the amendment.

Shri Krishna Chandra Sharma (United Provinces. General): Mr. Vice-President, Sir, I have listened to my honourable Friend Mr. Alladi Krishnaswami Ayyar with the attention he deserves. But what I could not understand is this, that in article 13 certain rights are given. In that very article there is a provision that those rights may be restricted. There are certain other rights given in article 15; in that very article there is a provision that the law can be made for the restriction thereof. Then again there is article 279 under which the rights given in article 13 can be done away with under emergency declaration. Now my respectful submission is that when there are no rights there are no remedies, and there is no need of article 280, but when there are rights left there must be remedies for them. So, I see no reason in enacting article 280 by taking away the remedy even for the rights that have not been curtailed or taken away under the emergency legislation.

[Shri Krishna Chandra Sharma]

We have heard a lot about emergency. Sir, when two world wars were fought, the right to approach the High Courts of this country for certain fundamental rights was never taken away, even though we were ruled by a foreign power who were fighting for their own safety and the safety of civilization and of the world and we were fighting for our independence against that power. I do not apprehend such an emergency would ever arise in this land; and there is no need to take away the rights which were not taken away even by the Britishers. After all, liberty is the sweetest thing in the world and you cannot take it away so easily. The end of all Government is the prosperity and well-being of the people. We have had enough of the police state. If under any Government or any constitution a state of emergency arises so often, that Government and that constitution must be ended. If the State is strong and the people are prosperous there can arise no such emergency. You cannot rule by curtailing the rights of the people; you can maintain the constitution only if the people are prosperous and law-abiding. By resorting to police methods no State can continue. Therefore I submit that this proposed article 280 will serve no purpose whatever and it has no precedent in any constitution. Even if there are precedents you have to look to the time and the circumstances in which these constitutions were framed. By enacting this measure you will only give a handle to people who are out to create chaos and anarchy. Sir, you cannot suppress liberty and do away with the authority of the courts. I submit that this article would serve no useful purpose and it should not be passed.

An honourable Member: The question may now be put.

Mr. Vice-President: The question is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I am not at all surprised at the strong sentiments which have been expressed by some speakers who have taken part in the debate on this article against the provisions contained in the clause as I have put forward. The article deals with fundamental matters and with vital matters relating to rights of the people and it is therefore proper that we should approach a subject of this sort not only with caution but—I am also prepared to say—with some emotion. We have passed certain fundamental rights already and when we are trying to reduce them or to suspend them we should be very careful as to the ways and means we adopt in curtailing or suspending them.

Therefore my friends who have spoken against that article will, I hope, understand that I am in no sense an opponent of what they have said. In fact I respect their sentiments very much. All the same I am sorry to say that I do not find possible to accept either any of the amendments which they have moved or the suggestions that they have made. I remain, if I may say so, quite unconvinced. At the same time, I may say that I am no less fond of the fundamental rights than they are.

I propose to deal in the course of my reply with some general questions. It is of course not possible for me to go into all the detailed points that have been urged by the various speakers. The first question is whether in an emergency there should be suspension of the fundamental rights or there should be no suspension at all; in other words, whether our fundamental rights should be absolute, never to be varied, suspended or abrogated, or whether our fundamental rights must be made subject to some emergencies. I think I am right in saying that a large majority of the House realises the necessity of suspending these rights during an emergency; the only question is about the ways and means of doing it.

Now if it is agreed that it is necessary to provide for the suspension of these rights during an emergency, the next question that legitimately arises for consideration is whether the power to suspend them should be vested absolutely in the President or whether they should be left to be determined by Parliament. Now having regard to what is being done in other countries—and I am sure every one in this House will agree that we must draw upon the experience and the provisions contained in the constitutions of other countries—the position is this. As to the suspension of the right of what is called habeas corpus the matter under the English law must of course be dealt with by law. It is not open to the executive to suspend the right of habeas corpus. That is the position in Great Britain. Coming next to the position in the United States, we find that while the Congress has power to deal with what are called constitutional guarantees including the suspension of the writ of habeas corpus, the President is not altogether left without any power to deal with the matter. I do not want to go into the detailed history of the matter. But I think I am right in saying that while the power is left with the Congress, the President is also vested with what may be called the *ad interim* power to suspend the writ. My friends shake their heads. But I think if they referred to a standard authority Corwin's book on 'the President', they will find that that is the position.

Pandit Hirday Nath Kunzru: Will you let me interrupt him, Sir? I am sure he is familiar with Ogg's Government of America. Perhaps he will regard that book as a standard book.

The Honourable Dr. B. R. Ambedkar: Yes. That is not the only book. There are one hundred books on the American Constitution. I am certainly familiar with some fifty of them.

Pandit Hirday Nath Kunzru: It is stated there that the best legal opinion is that the right to suspend the privilege of the writ of habeas corpus vests in the Congress and that the President may exercise it only where, as Commander-in-Chief of the Armed Forces he considers it necessary for the security of the military operations.

The Honourable Dr. B. R. Ambedkar: Yes. My submission is that in the United States while the Congress has the power, the President also, as the Executive Head of the State, has the *ad interim* power to suspend.

Now, in framing our Constitution, we have more or less followed the American precedent. By the amendment which I have made, Parliament has been now vested with power to deal with this matter. We also propose to give the President an *ad interim* power to take such action as he thinks is necessary in the matter of the constitutional guarantee.

Therefore, comparing the draft article and comparing the position as you find in the United States, there is certainly not very great difference between the two. Here also the President does not take action in his personal capacity. We have a further safeguard which the American Constitution does not have, namely, our President will be guided by the advice of the executive and, our executive would be subject to the authority of Parliament. Therefore, so far as the question of vesting all the power to suspend the guarantees is concerned, my submission is that ours is not altogether a novel proposal which is made without either reference to any precedent or made in a wanton manner without caring to what happens to the fundamental rights.

Now, having dealt with that question, I come to amendment No. 74 of Mr. Bhargava. I think that is an important matter and should therefore explain what exactly the provision is. His amendment really refers to article 279, although he has put it as an amendment to article 280. What he wants

The Honourable Dr. B. R. Ambedkar]

to that any action taken by the State under the authority conferred upon it by the emergency provisions to suspend the fundamental rights should automatically cease with the ceasing of the Proclamation. I think that is what he wants so far as amendment No. 74 is concerned. My submission is that if the article is read properly, that is exactly what it means. I would like to draw his attention to article 279. He will see that that article does not save anything done under any law made under the powers given by the emergency. In order that the matter may be clear to him I would like again to draw his attention to article 227. If he compares the two, he will see that there is a fundamental difference between the two articles. Article 227 is also an article which gives power to the Centre to pass certain laws in an emergency even affecting the State List. I would draw his attention to clause (2) of article 227. He will find at the end of it that 'all acts cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the same period. This clause does not occur in article 279. Therefore, not only any law that will be made under the provisions of article 279 will vanish, but anything done will also cease to be validly done. Thus, a person who was arrested under the provisions of any law made under article 279, would when the law has ceased to be in force not be governed by it merely because it has been done under any law made under that article. Under this article 279, not only the law goes, but the act done also goes.

Then I would draw attention to clause (2) of article 8. That again is an important article which must be read with article 279. Article 8 is an exception to the general provisions contained in this Constitution that the existing law will continue to operate. What article 8 says is that any existing law which is inconsistent with any of fundamental rights will be inoperative. Article 8 clause (1) deals with the existing law and clause (2) deals with future laws. Thus, 'any law made under article 279' would be a future law. When the emergency ceases any law made under article 279 will come under clause (2) of article 8 so that if it becomes inconsistent with the fundamental rights it would automatically cease.

Therefore my submission is that, so far as amendment 74 is concerned the fears expressed are groundless. There is ample provision in the existing law which would cover all the cases my honourable Friend Pandit Thakur Das Bhargava has in mind.

Pandit Thakur Das Bhargava: In article 227 (2) the reference is to a law made by Parliament. It has no reference to any action taken by the executive. Secondly, it speaks of law made by Parliament whereas under article 13 we have reference to a law made by a State as defined therein.

The Honourable Dr. B. R. Ambedkar: The State there means both, because the word 'State' used in article 279 is used in the same sense in which it is used in Part III where it means both the Centre, the provinces and even the municipalities.

Pandit Thakur Das Bhargava: Whereas in 227 (1) the reference is only to Parliament.

The Honourable Dr. B. R. Ambedkar: That is what I say. 279 will also be governed by 8. Therefore any law which is inconsistent with the fundamental rights granted will cease to operate.

Now, I proceed to deal with amendment No. 78 of Pandit Bhargava. In that amendment he has stated that the order issued by the President suspending the provisions of any of these fundamental rights shall be expressly ratified. He says that there must be express ratification by Parliament of an order issued by the President. The draft article proposed by the drafting Committee provides that the ratification may be presumed unless Parliament by a positive action cancels the order of the President. That is the real difference between his amendment and the article as I have formulated.

Pandit Thakur Das Bhargava: But it is very fundamental difference.

The Honourable Dr. B. R. Ambedkar: That is a very fundamental thing. In a sense it is fundamental and in a sense it is not fundamental because we have provided that the Proclamation shall be placed before the Parliament. That obligation I have now imposed. Obviously if the Parliament is called and the Proclamation is placed before it, it would be a stupid thing if the people who come into the Parliament do not take positive action and such a Parliament would be an unnecessary thing and not wanted.

Pandit Thakur Das Bhargava: Is it not necessary to say that the law will only be applicable for the period of the emergency and not for shorter period and not for six months after the proclamation?

The Honourable Dr. B. R. Ambedkar: I am coming to that, but so far as this question is concerned, it is a matter of mere detail whether the Parliament should by an express resolution say that we want the President to withdraw it, or we want the President to continue it, or we want the President to continue it in a modified form. Once Parliament is called and Parliament has become seized of the matter, is it not proper that the matter should be left to Parliament and its consent presumed to have been given unless it has decided otherwise? Where is the difficulty? I do not see anything with regard to the amendment.

An honourable Member: It is one o'clock now.

Mr. Vice-President: We are going to finish this article.

The Honourable Dr. B. R. Ambedkar: Mr. Gupte has moved an amendment which is an amendment to the amendment of Pandit Bhargava, No. 78. He wants that a definite period should be mentioned, that the Proclamation should be placed before Parliament within two months. Pandit Bhargava's amendment was one month, I think, if I mistake not and my original proposal is "as soon as possible". Well I do not know whether anybody wants to make this a matter of conscience and if this matter was not guaranteed, we are going to fast unto death. I think "as soon as possible" may be worked in such a manner that the matter may be placed before Parliament within one month, within two months or may be even a fortnight. It is a most elastic phrase and therefore, I submit that the provision as contained in the draft is the best under the circumstances and I hope the House will accept it.

Mr. Vice-President: I now place the amendments before the House.

Amendment No. 3028—Volume II Printed List.

The Honourable Dr. B. R. Ambedkar: I withdraw that, Sir.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. Vice-President: Amendment No. 3030.

Shri H. V. Kamath: I withdraw that amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. Vice-President: I now place before the House amendment No. 211 of Pandit Kunzru in the printed Consolidated List.

Pandit Hirday Nath Kunzru: I withdraw that amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. Vice-President: I place before the House the amendments in List No. 1.

The question is:

"That in amendment No. 15 above, in clause (1) of the proposed new article 280, for the word and Roman figure 'Part III', the words and figures 'articles 13 and 16' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"(i) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'the President may by order declare' the words 'Parliament may by law provide' be substituted.

(ii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'mentioned in the order' the words 'specified in the Act' be substituted.

(iii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'the rights so mentioned', the words 'any of such rights so mentioned' be substituted.

(iv) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'in the Order' occurring at the end of the clause, the words 'in the Act' be substituted.

(v) That in amendment No. 15 above, for clauses (2) and (3) of the proposed article 280, the following clause be substituted:—

'(2) An Act made under clause (1) of this article may be renewed, repealed or varied by a subsequent Act of Parliament.'"

The amendment was negatived.

Mr. Vice-President: The question is:

"(i) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the word 'mentioned' where it occurs for the first time, the word 'specified' be substituted.

(ii) That in amendment No. 15 above, in clause (1) of the proposed article 280, for the words 'the rights so mentioned' the words 'any of such rights so mentioned' be substituted.

(iii) That in amendment No. 15 above, for clause (3) of the proposed article 280, the following be substituted:—

"An order made under clause (1) of this article, shall, before the expiration of fifteen days after it has been made, be laid before each House of Parliament, and shall cease to operate at the expiration of seven days from the time when it is so laid, unless it has been approved earlier by resolutions of both Houses of Parliament.'

(iv) That in amendment No. 15 above, after clause (3) of the proposed article 280, the following new clauses be added:—

(4) An order made under clause (1) of this article may be revoked by a subsequent order.

(5) An order made under clause (1) of this article may be renewed of varied by a subsequent order, subject to the provisions of clause (3) of this article'.

(v) That in amendment No. 15 above, at the end of the proposed article 280, the following new clause be added :—

'Notwithstanding anything contained in this article, the right to move the Supreme Court or a Hight Court by appropriate proceedings for a writ of *habeas corpus*, and all such proceedings pending in any court shall not be suspended except by an Act of Parliament."

The amendment was negatived.

Mr. Vice-President: Amendment No. 19 falls because it is based on amendment No. 18.

Amendments Nos. 23, 24, 25 and 26 all fall because Amendment No. 3028 has been withdrawn.

Then I proceed to List No. 2.

The question is :

"That with reference to amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, after article 279, the following new article be added :—

"279-A. Any law made or any executive action taken under article 279 in derogation of the provisions of article 13 of Part III of the Constitution shall enure for such period only as is considered necessary by the State as defined in that Part and in no case for a period longer than the period during which a Proclamation of Emergency is in force.' "

The amendment was negatived.

Mr. Vice-President: The question is :

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, for the proposed article 280, the following be substituted :—

"280. Any law made or executive action taken under article 279 shall enure for such period only as is considered necessary by the State as defined in Part III of the Constitution and in no case for a period longer than the period during which a Proclamation of Emergency remains in force.' "

The amendment was negatived.

Mr. Vice-President: The question is :

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (1) of the proposed article 280, after the words 'a Proclamation of Emergency' the words, figures and brackets 'under article 275(1) of the Constitution' be inserted."

The amendment was negatived.

Mr. Vice-President: The question is :

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (2) of the proposed article 280, the following be added at the end :—

'for a period during which the Proclamation is in force or for such shorter period as may be specified.' "

The amendment was negatived.

Mr. Vice-President: The question is :

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, after clause (2) of the proposed article 280, the following new clause be added :—

'(2A) Any such order may be revoked or varied by a subsequent order.' "

The amendment was negatived.

Mr. Vice-President: The question is :

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the following be added at the end :—

'and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such order is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of one month referred to in clause (3) of this article and the order has not been approved by a resolution passed by the House of the People before the expiration of that period, this order shall cease to operate at the expiration of fifteen days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the order have been passed by both Houses of Parliament.'"

The amendment was negatived

Mr. Vice-President: The question is :

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the full stop occurring at the end be substituted by a comma and the words 'when it meets for the first time, after such an Order' be added thereafter."

The amendment was negatived.

Mr. Vice-President: Amendment No. 86 does not arise.

The question is :

"That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, at the end of clause (3) of the proposed article 280, the following words be added :-

'and if the House of the People, by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately.'"

The amendment was negatived.

Mr. Vice-President: The question is :

"That for article 280, the following article be substituted :—

Suspension of the rights guaranteed by article 25 of the constitution during emergencies

280 (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be mentioned in the order and all proceedings in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

"(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament."

Tht amendment was negatived.

Mr. Vice-President: The question is :

"That article 280, as amended, stand part of the Constitution.

The motion was adopted.

Article 280, as amended, was added to the Constitution.

Shri H. V. Kamath: This is a day of sorrow and shame. May God help the Indian people.

Mr. Vice-President: The House will now adjourn to Monday 9 a.m.

The Assembly then adjourned till Nine of the Clock on Monday, the 22nd August, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 22nd August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 284

Mr. President: I think we have to begin with article 284 today. The motion is:

"That article 284 form part of the Constitution."

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move:

"That for article 284 the following article be substituted:—

284. (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to the effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States Parliament may by law provide for the appointment of a Joint Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(2a) Any such law as aforesaid may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of clause (2) of this article.

(3) The Public Service Commission for the Union, if requested so to do by the Governor or Ruler of a State, may, with the approval of the President agree to serve all or any of the needs of the State.

(4) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question."

The article is self-explanatory and I do not think that any observations are necessary to clear up any point in this article. I will therefore reserve my remarks to the stage when I may be called upon to reply to any criticism that may be made.

Shri Lakshminarayan Sahu (Oraissa : General) : May I know, Sir, why the provision as to any such law by Parliament is introduced and also why mention has been made of Ruler in these provisions?

The Honourable Dr. B. R. Ambedkar: If I understand my Friend Mr. Sahu correctly, he wants to know why we have introduced the provision for Parliament to make law. He will understand that the basic principle is that each State should have its own Public Service Commission. But, if, for administrative purposes or for financial purposes it is not possible for each State to have a Public Service Commission of its own, power is left open for two States by a resolution to confer power upon the Centre to make provision for a joint Regional Commission to serve the needs of two such States which, as I have said, either for administrative or for financial reasons are not in a position to

[The Honourable Dr. B. R. Ambedkar]

have a separate independent Commission for themselves. Obviously, when such a power is conferred upon the Centre, it must be that the power so conferred must be regulated by law made by Parliament and it should not be open to the President either to constitute a Joint Commission for two States by purely executive order. It is for that purpose that power is given to Parliament to regulate the composition of any Commission which is to serve two States.

Shri Lakshminirayan Sahu: The other point as to why the 'Ruler' has been mentioned?

The Honourable Dr. B. R. Ambedkar: Because it may be that even a State in Part III may find it unnecessary to have an independent Public Service Commission for itself. Consequently, the door again there should not be closed to a State in Part III if that State were to agree to any State in Part I jointly to make a request to the President that a Joint Commission may be appointed. That is the reason why 'Ruler' is included in the provisions of this article.

Shri R. K. Sidhva (C. P. & Berar : General) : I want one clarification. In cause (3) it is stated "with the approval of the President, agree to serve all or any of the needs of the State." May I know if any local body wants to utilise the service of the Service Commission, will that be allowed?

The Honourable Dr. B. R. Ambedkar: Yes. There is a separate article for that, making provision that if a local authority wants its needs to be served by the Public Service Commission, it will be possible for Parliament to confer such authority upon the Public Service Commission also to serve the needs of such local authority.

(Amendment No. 2 was not moved.)

Mr. President: I take it that the other amendments relating to the original article now do not arise. Does anyone wish to move any other amendment?

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I have three amendments to move to this clause. Regarding the first amendment I find that if this amendment is accepted, it will lead to some drafting anomaly. So I would ask your permission to move it in another form. I am quite certain that my amendment, whether my amendment is reasonable or not, will never be accepted by the House. I therefore crave your permission to move it in a more proper form though there is no hope of it being accepted by the House. So if you permit me to move it in a slightly altered form I think the amendment will read better. I could not correct it before in time because these amendments came all of a sudden like so many air raids and it is impossible to be ready in time.

Mr. President: They were circulated a week ago.

Mr. Naziruddin Ahmad: Though these amendments were circulated last week, still there are a variety of bewildering things coming before the House in large numbers and it is difficult to keep pace with them. When the Drafting Committee takes months together to make up their minds, it is difficult to expect us to be ready instantly to meet the onrush of new amendments. I am guilty of being a little late. I therefore ask your special permission.

Mr. President: Very well, you may move it.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in amendment No. 1 of List I (First Week) in the proposed new article 284 for clause (2) the following clause be substituted:

"(2) Two or more States may by Resolution in their Legislative Assemblies or where there are two Houses, in both the Houses, agree that there shall be one Public Service Commission for that group of States."

I wanted to delete the latter part of this clause but that would have left the drafting in a state of unhappy condition. So I have moved it in this form. In essence there is no difference between the amendment already tabled and the amendment now moved.

Sir, I also move:

"That in amendment No. 1 of List I (Fifth Week) of Amendments to Amendments, in clause (2a) of the proposed article 284, for the word 'law' the word 'agreement' be substituted."

I also move:

"That in amendment No. 1 of List I (Fifth Week) of Amendments to Amendments, in clause (3) of the proposed article 284, the words 'or Ruler' be deleted."

The purpose of my first amendment is this that in the original article as it was in the Draft Constitution the essence of that clause was that two or more States may decide to have a common Public Service Commission by agreement. Now the basis of agreement has been taken away. In fact power is being given to Parliament to set up a Joint Public Service Commission for two or more States with their agreement expressed by Resolutions in their Legislative chambers. This is another instance of interference with Provincial affairs. This is absolutely needless. My amendment would restore the position with slight changes as it existed in the original draft article with the proviso that the agreement of the States will be based upon resolutions in their Legislative chambers. The object of my amendment is that the States in Part I should be enabled to adjust their own affairs so far as the appointment of Joint Public Service Commission is concerned. It would be entirely a matter between two States and it will be entirely a matter contractual between the parties. There is no reason for Parliament to interfere in this business. All that we should do is to allow the Provinces to function automatically and consider the mutual advantage or disadvantage and then to agree to appoint a Joint Public Service Commission and they will have the power under clause 2(a) to agree upon incidental matters, *viz.*, pay, leave and various other small matters. I should think that this is an attempt wantonly to take away or deprive the Provinces of their legitimate powers which were conceded to them in the Draft Constitution. If I may, I would draw the attention of the House to another article, the new article 287. This article is printed on page 9 of the printed list. In this new article the proviso which appears in the original article has been entirely omitted. The proviso was to this effect:

"Provided that where the Act is made by the Legislature of a State, it shall be a term of such Act that the functions concerned by it shall not be exercisable in relation to any person who is not a member of one of the services of the State except with the consent of the President."

Sir, this proviso to the original article 287 empowered the State Legislatures to legislate in the matter of Public Services Commissions. That power has been taken away in the proposed new article 287.

Then again, to keep up this policy, there has been introduced in the new article under consideration, *i.e.*, article 284—power for Parliament to supersede.

[Mr. Naziruddin Ahmad]

the discretionary power of the States to pass a law. The provision for Parliamentary law in clause (2) of the present article, and the deletion of the proviso in the old article 287 would show that there is a set policy of interfering with Provincial matters as much as possible. The effect of this interference at every stage would be to reduce the Provinces into a state of importance. The result would be that inefficiency, corruption and dissatisfaction which reign supreme in some of the Provinces would show no sign of abating. On the other hand, I submit these would be aggravated. It is giving the Provinces responsibility without power. The responsibility for good administration of the Provinces lies with the Provinces; but the powers, financial, legal, legislative and others, are to pass on to the Centre. As to money powers, we know the situation. The effect of these will be to create more and more dissatisfaction in the Provinces, leading to more and more irresponsibility and more and more inefficiency. I do not wish to say anything more on this subject, beyond the fact that I enter my humble protest against this

Then with regard to my amendment No. 65, it says that in clause (2a) of the proposed article 284, for the word "law" the word "agreement" be substituted. It is a corollary to the first amendment of mine. I desire to revert to the original scheme of the old article, that the whole matter should be settled by agreement and not by Parliamentary law, though it may be by Provincial law. So in clause (2a) the word "law" which clearly refers to Parliamentary law must be changed into one of "agreement". This is consequential to my first amendment and it is in keeping with the scheme of the original article.

Then I come to my amendment No. 66. This I submit, raises some important questions of principle and also some serious questions of drafting. This amendment says that in clause (3) of the proposed article 284, the words "or ruler" be deleted. These two words "or Ruler" have been introduced in the proposed new article 284. It is said that the Public Service Commission for the Union, if requested to do so, by the Governor or Ruler of a State, may agree to serve the needs of the State. Sir, I submit that the introduction of these two innocent-looking words "or Ruler" would altogether change the entire situation. By the introduction of these two words, the Indian States will all come in; or it is attempted to bring them in. But I think this will only lead to confusion and also lead to unnecessary complications. This article appears in Part XII of the Draft Constitution. In article 281 we have defined the word "State" and said that in this Part, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I of the First Schedule, that is to say, the Provinces. I submit that on a careful consideration of Part XII, it will be clear that this Part provided only for the purpose of the Provinces. The conception of the Rulers being included in this Part is absolutely foreign to the article. I submit that if we introduce the words "or Ruler" it will lead to confusion. The word, "State" clearly means "Province", not the Indian States. Even the introduction of the saving clause—".....unless the context otherwise requires" will not improve the situation. These are ordinary words of precaution. They do not extend the idea of the article. If we are to include the Rulers also, the entire structure of the article will have to be changed. This also shows the danger of the tendency to improve matters day by day, by introducing new things into the scheme. If we introduce the conception of an Indian State here, then it will be extremely difficult to find out whether the word "State" occurring in other places in this Part has been used as including the Indian States. It will be difficult for even trained lawyers or experienced Judges to say whether in every case the word "State" also includes a State in Part III

of the Schedule. The words "or Ruler" have been introduced only in a few stray articles. The question would be whether the word "State" throughout Part XII also includes the Indian States. That difficulty cannot be solved in this way, and as I said, it will lead to a great deal of confusion. If the Indian States are to be included in the scheme of things, then the whole Chapter should be re-drafted so as to serve that purpose. It cannot be achieved by stray interpolations of the words "or Ruler" into the body of only some of the articles.

Apart from the technical difficulty and the danger of creating confusion, there is another objection to the inclusion of the Indian States into the scheme of things. I understand that the Indian States are going to frame their own Constitution, and it is already known that there is an attempt on their part to induce the Constituent Assembly to undertake this drafting for them. If that is so, there is then a prospect of the entire subject of the States being dealt with by adequate legislation by this House itself. So, if it is necessary to admit the Indian States into the scheme of things, then the proper place would be in their Draft Constitution and not by stray, half-hearted and hasty introduction of words only here and there. This very attempt shows a change of mind and confusion. Words have been introduced here and there which must lead to a great deal of trouble. I submit, therefore, that we should not touch the States, except by thoroughly recasting the entire provisions here. We should rather leave this to the States, or to the Constituent Assembly acting on their behalf when it frames a Constitution for these States. In these circumstances, the best thing would be to leave out the words "or Ruler" which will clarify the situation and leave the matter to be dealt with by the Constituent Assembly on its own merits. However, I do not mean that there should be no law to govern the Rulers, or that there should be no provision for the appointment of a Joint Public Services Commission between an Indian State and a Province. But I should think that this half-hearted attempt to improve matters by the introduction of the words "or ruler" would dislocate the arrangement of the articles and would complicate matters. If it is necessary at the time of considering the Indian States constitution that an article of this nature is essential, that can be introduced by the Constituent Assembly at a suitable stage when we have an overall picture of the Constitution of the Indian States. At present, I think these words should be deleted and the question of the States being concerned in the matter should not be prejudiced. Sir, I feel that these constant changes of these clauses create a considerable amount of difficulty in the House. It is not my humble self alone that has been feeling this difficulty, but there are many honourable Members who are serious workers, who are also unable, to follow the amendments or the changes or their implications.

I submit that the House is entitled to be treated in a more humane fashion than this.

Mr. President: I have received a notice of two amendments today at about 9-15 in the morning. I do not know if they are in order. They are certainly out of time. But as they want only deletion of certain clauses—of clause (2) and clause (2a) of the proposition moved by Dr. Ambedkar—they do not really amount to amendments. If the Members so desire I might put those two articles separately to vote and if they wish they might vote against each of them. Does any other Member wish to move any of the printed amendments?

Shri G. S. Guha (Tripura, Manipur and Khasi States): I had an amendment—No. 3052.

Mr. President: Do you wish to move it?

Shri G. S. Guha: No, Sir, as it is generally covered by the new Draft articles.

Shri Brajeshwar Prasad (Bihar: General): Sir, I rise to accord my general approval to article 284. While doing so I would like to draw the attention of the House to some features of this article with which I am not in agreement

Clause (1) says that there shall be a Public Services Commission for the Union and a Public Services Commission for each State. Sir, I am not in agreement with the latter part of clause (1). I want that there should be administrative unification of the country. I am not in favour of the existence of provincial Civil Servants. I want that all officers in the services must be the servants of the Government of India and of the Government of India alone, so that the mischief of provincial autonomy may remain circumscribed within very narrow limits. Sir, our experience has been that the members of the provincial Public Services Commissions have not been able to prevent corruption, inefficiency and nepotism in the Provincial Governments. Therefore I am strongly opposed to the second part of clause (1), wherein provision has been made for Public Services Commissions for each State. I am opposed to State Commissions.

In clause (2), the procedure that has been adopted for the establishment of a Joint Commission is also not agreeable to me. I do not see any reason why a resolution by the Provincial Legislature should be necessary and why Parliament should be asked to frame a law or the establishment of a Joint Commission. The procedure prescribed in clause (2) is entirely different from the procedure prescribed in clause (3). If for the establishment of a Public Services Commission, which shall function for all the States it has not been felt necessary to seek the approval of the Provincial Legislature, if for the liquidation of the State Commissions it is not felt necessary to seek the approval of Parliament, I do not see any reason why a different procedure should be adopted for the establishment of a Joint Commission. The matter of a Joint Commission is not so important as the establishment of one Public Services Commission for the whole country. If a Governor and the President can, or if all the Governors and the President acting together, can liquidate all the State Commissions, I do not see any reason why Provincial Legislatures and Parliament should be asked to dabble in the establishment of Joint Commissions. If you ask the Provincial Legislature to express its opinion, it will hesitate, because it will feel that some of its powers will be taken away by the establishment of a Joint Commission. Everybody likes to keep power in its own hands. No one likes to transfer it to others.

As far as clause (3) is concerned, I would have very much preferred if the power would have been invested in the Governor in his discretion and in the Ruler in his discretion, because provincial Ministers will never agree to the liquidation of the State Commissions. But if the matter is left in the hands of the Governor in his discretion and the Ruler in his discretion, then probably in consonance with the needs of the time, they will take a broader view of things and be in favour of the establishment of a Joint Public Services Commission in the country.

Dr. P. S. Deshmukh (C. P. & Berar: General): We are this morning starting to debate and approve of articles dealing with Public Services Commissions. Sir, these Commissions are said to be a necessity of a modern State. These commissions are primarily meant to keep appointments away from day to day politics, party preferences and influences and the attempt is made, by having recourse to these Commissions, that the appointments shall be as far as possible on merit and there shall be no interference in their choice or

in their selection from day to day by the executive authorities of the States. On the whole, Sir, I am prepared to say that the Commissions in India, have not worked too badly; but there are devices by which the recommendations of the Commissions are often procured or set at naught. There have been complaints so far as the working of our Public Services Commissions are concerned in this respect. Not so much that they have been partial, or that there is any other allegation to that effect, but that the whole procedure is so circumvented, or some short cuts devised, by which the choice of the Public Services Commissions becomes more or less an automatic approval of the appointments already made. That is one kind of complaint and it arises out of the following method that is resorted to. Very often appointments are made by Ministers and Heads of Departments to temporary vacancies and since it is one of the rules that the head of the department, where the vacancy occurs should also sit as a member of the Commission and since no other member knows anything about the qualifications or the capacity of the particular candidate already holding the post, the word of the head of the department is bound to weigh and as a rule weighs with the rest of the Commission. In very many cases it is his recommendation that is automatically accepted. This evil has gone to such an extent that some people contend that vacancies are made for persons and persons are not sought for vacancies, although the provisions with regard to Public Services Commissions are complied with.

I have however a different point of view to urge. In all this paraphernalia of Commissions and our attempt to be very fair and impartial and give recognition only to sheer merit, I must point out that the rural communities of India have suffered tremendously. They have had no representation whatsoever. It is the advanced people who are going ahead and serving their self-interest and no attention is paid to these other communities. There are small minorities which organise themselves and make the life of the Government impossible by propaganda and otherwise because they can make their demands effective and respected. But so far as the huge majority communities are concerned, lakhs and crores of the population, where the percentage of education is hopelessly lower than in many cases some of the Scheduled Castes even, they have been left behind. In spite of the fact that there is an independent Government of India in power no attempt whatever is being made to give any representation to these communities in the public services. If we do not pay timely heed to this, I am sure it will be one of the factors leading to a revolution in India. It is a square fact which stares everybody in the face that sooner or later there is going to be a revolution in India. Whether it is going to be bloody or not will depend upon our present rulers. If today we neglect to end the persecution and exploitation of the rural communities, if we are not prepared to pay any attention to their demands, if they want to depend only upon Public Security Acts and their guns utilized increasingly for shooting people down when they agitate for their demands, there is no escape from a bloody revolution. We have to pay timely attention to their demands, for they get no education, they suffer from so many handicaps and yet they are made to compete with those persons who have high schools and colleges and everything else almost next door. In passing these provisions regarding the Commission I shall be grateful if the House pays a little more attention to this fact and does not commit the country to too many rigid clauses in which it will be very difficult for the provincial governments or legislatures or even the future Parliament to bring about any radical but desirable changes. There is a provision by which a member of the Commission will hold appointment for six years. The choice of these persons will be made by persons who are now in office and their successors would be precluded from effecting any change for a long time. So far as this item is concerned I am prepared to go to the extent of saying

[Dr P. S. Deshmukh]

that people have very little confidence in the impartiality or their being just and fair to the claims of these large communities who live in the rural areas, whose chances of higher education are very very remote. In making these provisions I would submit that we should not tie the hands of the future parliaments. The whole structure of appointments is going to be entirely different when there is going to be adult franchise. There are millions of people whose claims are not recognised today and it may not be possible to resist them hereafter. Today you are treating them with contempt. You think that it is only the first class B.As., Hons., or M.As., who are the only competent persons who must be considered. While giving every opportunity to merit you have to consider the claims of those persons who for no fault of their own have been left behind and have had no opportunities of coming forward. This is a vital question. People will think that these are matters of fishes and loaves. I beg to differ from it. It is not a question of fishes and loaves; it is a question of the administration of the country, not under the aegis of the British people but under your own people. Why should there be any hesitation that instead of A or B there is X or Y from your own kith and kin, a citizen of this country, who has been suffering from certain handicaps which other communities do not suffer? If you are not prepared to pay any attention to this, my submission is that you will be repenting it one of these days.

My submission is that so far as the provisions relating to the Commission are concerned they should not be too rigid. It should be possible for the future Parliament to scrap it if they want, if they think that it is not fair and just and does not answer to the demands and claims of various communities and people of India. When we are embarking upon passing these provisions I would like my honourable Friend to have this side of the question in mind and not bind the hands of the provincial legislature: I for one would like to abolish the provincial legislatures but so long as they are there you must not tie their hands in such a way that they will be tempted to tear the Constitution to pieces. That is the reason why such a matter ought to be left to the future people.

Some of my Friends are afraid when they consider the character of the future Parliament. My Friend Mr. Brajeshwar Prasad is already nervous. If we want that our Constitution should exist and continue and should not be materially altered, try and place as little obstacles as possible in the way of amending it by future parliaments. If you make it rigid, then along with the bad parts even the good ones will go. Even if you try and give extraordinary powers to the President to preserve your interests and those of the governing classes you will not be able to do so, because the whole Constitution will be torn to pieces because of these clauses, I do not want to say more except this much by way of preliminary remarks so far as the subject of the Public Service Commissions is concerned.

Shri Lakshminarayan Sahu: *[Mr. President, I stand to support the new article which is going to replace article 284 of the Draft Constitution. But while lending my support to it I must say that the Government should not have the power to reject the candidate selected by the Public Service Commission. At present it is found that a candidate selected by the Public Service Commission is sometimes rejected by the Government. I want that the provision should be made so rigid that the Government may not have the power to overrule the decisions of the Commission and reject the candidate selected by it.

*Translation of Hindustani Speech.

My second point is that the personnel of the Public Service Commission would always look up to the Government unless they are secured with regard to the tenure of their services. I would, therefore, suggest that the tenure of their service which is at present kept as six years should be increased. They must have security of tenure so that they may be independent and make selections properly. The members of the Public Service Commission will always follow the dictates of the Government unless they are provided with security of tenure. I, therefore, submit that the tenure of the Service of the members of the Public Service Commission should be increased. Moreover, I would also like that the members of the subordinate services too should be selected by the Public Service Commission. If the members of the subordinate services are taken through the Public Service Commission, nobody can complain of nepotism. But if the appointments to subordinate services are kept out of the scope of the Public Service Commission, there would always be complaint against one minister or the other of being guilty of nepotism in the appointments made by them. With a view to avoid such criticisms I want that the subordinate services may also be selected by the Public Service Commission.

I do not agree with the view just now expressed by Dr. Deshmukh that the Public Service Commission should not be made so rigid that it may not be changed in future. On the contrary I want that, right from now since we have been assembling in this Constituent Assembly House, we should begin to build the Public Service Commission in such a manner that it may act smoothly in future. As the article stands at present it provides that the members of the Commission may be removed. But such a removal would be after due enquiry and consequently this need not cause any apprehension in the mind of anyone.

One thing more I would like to submit here is about the mention of the rulers made in this article. The question of Hyderabad yet remains undecided. Thought must be given to the question as to what will be the future set-up of the State. Some rulers have been nominated as Rajpramukhs, but I do not agree with this. In future, when complete democracy obtains in the States, whether nominated rulers will remain in their offices or others will come in their places is a matter which should be considered When real democracy will obtain in the States the offices of the Rajpramukhs, that are held by the rulers now, will be held by persons selected by the people. I would therefore, like that the Drafting Committee should consider this matter and if possible make some changes in the articles in the light of what I have said.]

Sardar Hukam Singh (East Punjab : Sikh) : Mr. President, Sir, apparently there is much clamour for the ideal recruitment on merit alone, and in independent and impartial Commission will be the only security against any favouritism or nepotism. But there is another aspect of the picture as well which should not be ignored. India is a vast country and all regions are not equally developed so far as education is concerned. Then there are sections of the nation that are more backward than the others. It is no fault of theirs that they had not had equal opportunities so far as development in that respect is concerned.

I want to draw the attention of the House particularly to the Punjab. This province started in the race of education seventy years after the others had begun. The first private institution, Hindu College, in Calcutta was started in 1817 while in Bombay the first institution was started in 1827. But so far as the Punjab is concerned, our first private institution opened only in 1887. Similar was the case of universities. Under these circumstances, naturally the Punjab was left behind in this race and cannot be expected to compete with other provinces if regional considerations are ignored altogether.

[Sardar Hukam Singh]

Then there is another peculiarity or a mishap to which I want to draw the attention of this House. The recent partition has retarded the pace considerably. The East Punjab was economically much backward. An ordinary cultivator there has got only one acre or even less than that. That holding is not economical and that cultivator cannot afford to provide higher education to his children. About seventy per cent. of the students in the United Punjab used to come from West Punjab which is now included in Pakistan. With this partition those schools and colleges have been lost. Parents and guardians have been rendered destitute and they cannot afford to provide education for their wards now. You must have seen that the children of school-going age are hawking in the bazars and in the streets with parched gram or cigarettes on their heads. Their education has been arrested and in spite of the best intentions nothing has been done to rehabilitate them. The young and the old are struggling for their bare subsistence. With such handicaps is it possible for these Punjabis to compare favourably in any open competition with candidates from other provinces which are more advanced and which had a considerably early start? What would be the result then? Already the Central Secretariat is full of Menons, Swamis and Ayyangars. And in a few years we will see the provinces would be flooded with ambitious young men who would not be so familiar with the local usages or customs. Local problems would not be appreciated. The sons of the soil would be squeezed out and there would be fresh prejudices. In backward areas such as the Punjab growth will be stunted, and development arrested. There would not be harmonious progress of each component part of the country.

Another point I might submit. Before partition the Punjab representation in the Centre was mostly of the Muslims. With the partition that personnel has migrated to Pakistan. There is very meagre representation now. And if there is open competition for the whole country there is no likelihood of any improvement in this representation. If no impetus is given to regional recruitment, the backward—I mean educationally and economically—areas would become colonies for these educationally advanced regions of the country.

I appeal to this House therefore to consider this question dispassionately and make a special provision for the Punjab at least, because this refugee problem is not to be ignored. I press it again that it is not possible for these uprooted people, with the conditions under which they are living, to provide their wards with suitable education which can equip them for the competition that you require and for the recruitment on merit alone. Therefore my submission is that some consideration for regional recruitment must be provided so that backward areas also have opportunities to develop side by side till a stage comes when their young men also can stand in competition with other provinces.

Chaudhri Ranbir Singh (East Punjb: General): *[Mr. President, I cannot help agreeing with the views expressed by Dr. Punjabrao Deshmukh in support of this article. I do feel what open competition under the circumstances, can mean. A child born in the city listens to the Radio from his very childhood, he gets a newspaper daily at his place, and has got many a facility; the school is also at a distance of a few yards from his house. When that child attains the age of three or four years, he can learn many things in the school, in the bazar, which a country boy who has passed the eighth class cannot learn. When competition is held by the Public Service Commission, the same type of questions are asked, and the decision is made on the criteria whether he is able to reply to those questions or not. This country is a land of villages and is dominated by the rural population; but none can deny on the basis of facts

*Translation of Hindustani Speech.

that the townsmen have developed with greater speed and they are much more advanced than the people of the countryside, and if in these circumstances a man from rural areas is made to compete with a person of urban area and similar types of questions are asked of them, there cannot be any doubt that the former cannot compete with the latter successfully or on equal terms.

There are only two ways of setting this right; one method is that in the public services a certain proportion should be reserved for the candidates from the countryside and they should be allotted the reserved number of posts in the services, and for those posts only persons from among the rural population should be allowed to compete.

The other method is that while appointing the members of the Public Service Commission, it should be particularly kept in view that at least 60 to 70 per cent. of the members should be such as may sympathise with the rural people and understand their difficulties. I wish to give you a general illustration. Now a rule has been enforced in the matter of recruitment to our forces that the preliminary competition will be held through the Public Service Commission. You can imagine that a boy who may be very good at study may not necessarily be a success in the fighting line, for fighting can be done only by the person who is well built and has a strong heart. Through the Public Services Commission you will only be able to recruit good English-knowing people, but if such people are sent to the army, you may rest assured, that the army will never be successful in its job. The army's job is entirely of a different nature. In the case of a person who becomes a military officer we have to see how much sense of a sacrifice he has got, how much courage he possesses and how much physical strain he can bear. But if the recruitment to the army is made through a preliminary competition there is no doubt that the rural people will soon be left out even in the field of Military recruitment. There is no doubt that the persons formerly known as martial races belonged to the countryside; those people still join the army as soldiers. But the military officers are mostly urban people. The need of the hour is that the backward people of the countryside should be helped to advance forward, and for the present they should be given their due place as military officers on the basis of their population.

Nowadays there are so many villages, where there is not even a primary school. First of all, a villager's spending capacity is so little that he cannot send his children to the secondary or the higher schools in the city. Apart from this, you can just imagine how many villages are provided with facilities for primary education.

In these circumstances, if you want to act just like a machine, I have no doubt the fears expressed by Dr. Deshmukh will definitely come true. If the country is to progress on the basis of non-violence, we will have to take this into consideration according to the circumstances. As we have reserved a few seats for the backward classes or the schedule classes, we can perhaps adopt the same method in respect of the rural people. This method can be introduced either in respect of the Public Service Commission or in respect of the public services. It would be better if a certain percentage of posts is reserved and those posts are open only to the villagers for competition.

This is one thing more. Many of our people, who have been born and educated in the cities and can speak English well, are selected by the Public Service Commission in the competition; but most of those selected people are ignorant of the rural life and cannot put up with the difficulties of the rural life. There are no roads, there are no facilities that are available in the urban areas, it is not an easy task to go there. Hence those officers shirk going to the countryside and leave everything to their subordinates; in this way the

[Chaudhri Ranbir Singh]

villagers are deprived of proper justice. I therefore think that the sugestions made by Dr. Deshmukh should be kept in view while appointing the Public Service Commission.

I do not agree with Shri Sahu that the tenure of the Public Service Commission should be prolonged. Our ex-President of the National Congress, Acharya Kripalani, had declared that the Government is not successful. One of the reasons for this is that the Government is not co-operating with the Public Service Commission, and one of the main causes is that the Public Service Commission was recruited according to the needs of the old order, and the old regime had recruited them in accordance with their own views.

It is therefore essential that the services should undergo a change with the change in the Government. The Government should have an open hand in the matter so that it can remove the Public Service Commission whenever it is deemed necessary. I, therefore, support Dr. Deshmukh strongly.

So far as nepotism is concerned it will continue even in future, it is not so easy to check it as you imagine. There are numerous considerations before members of the Public Service Commission; I think we need not be too apprehensive of the evil. Nepotism can be checked only if their conscience becomes strong, their ideas change. Till the present ideas and minds of the Public Services Commission change, you cannot check it by prolonging the life of any Public Service Commission.]

Mr. President: I would like to remind honourable Members that the speeches which have so far been made on these articles have very little to do with the articles themselves. There have been speeches on the character of the public services, on the method of recruitment, who should be recruited and so forth. I will not allow any further digression. I would request Members who wish to speak to confine themselves to the articles under consideration.

Shri B. N. Munavalli (Bombay States): Mr. President, Sir, we are now discussing a subject of very great importance, *viz.*, that the Civil Services. "The Government of Great Britain is in fact carried on, not by the Cabinet, not even individual Ministers, but by the Civil Services." So, the importance of the Civil Services cannot be gainsaid. That is why the introduction of a Public Service Commission in our Constitution. The candidates are to be appointed on merits according to these articles. Even in other countries, nowadays, they have come to the conclusion that it is the merit system alone which can successfully be worked. Before that, in Great Britain, they tried the system of patronage. The relatives and friends and supporters of Ministers used to get jobs in the Government, and even in America people used to distribute the spoils amongst their friends and supporters and it is said that Andrew Jackson is the father of the spoils system. This spoil system continued for about fifty years or so since 1828 when Andrew Jackson became the President of the United States of America, but thereafter they found that it was very difficult to continue with the spoils system. So, they appointed a Commission of three members who were to hold examinations to fill up the posts that were vacant. The systems of examination in America and Great Britain are very different. In America, importance is given to practical side, but in Great Britain importance is given to general education. About seventeen hundred types of examinations are being held in America according to the various positions in different departments. The merit system came into existence in England since 1835 by law. So also in Japan it came into existence in 1888.

So, if we look to the various Constitutions, we will find that the Civil Services are established on merit by examinations. Here in India also, the same system is sought to be followed and accordingly article 284 has come into

existence which seeks to establish Public Service Commissions both in the Union and in the States. But the circumstances in India are quite different. We have to take into account many factors. If we recruit solely on merit and on merit alone, as has been rightly said by my honourable Friend, Dr. Deshmukh, the majority communities will be left with no representation in the government services, but there are certain things which will go a long way in removing such grievances. In filling up posts in government service, formerly there were three classes, *viz.*, advanced classes, intermediate classes and backward classes, so that there may be fair and equitable distribution. If tests are held for each category of classes and candidates are selected on merit from each category of classes, I do not think there will be much heart-burning amongst the people. But now what we find in the various provinces after the Congress came into power is that the microscopic communities which are very advanced are sweeping the overwhelming majority of the Posts in Government service, and so there has been a great dissatisfaction in the country so much so that, if timely remedies are not adopted, there is a great apprehension of a bloody or bloodless revolution.

So I think that the Public Service Commissions which will be appointed hereafter will take into consideration the various factors, to see that not only the advanced classes get proper representation but also the intermediate and backward classes also are getting representations according to their own merit and according to their own standard.

Shri Kuladhar Chaliha (Assam : General) : Sir, I shall be short if possible sweet and I must obey the directions of the President who wanted us to be brief. I give my general support to this subsidiary article and I think it is one of the best that can be evolved under the present circumstances. I have enough faith that we have a good many people amongst us who will be fair not only to the more advanced section of the people but also to those who are down-trodden and oppressed. The more suspicion that they will be forgotten is a charge which ought to be repudiated; we have some character and we have brains to use. The very fact that we have been suspecting all men in this way has led us to believe that we are a sort of people who cannot be just to others, to our neighbours or to our brethren, and this sort of charge ought to be repudiated on the floor of the House. I think this is one of the best articles that can be evolved out of the many suggestions that have come.

Shri Brajeshwar Prasad has very kindly stated that we should not have two Commissions, one Commission in the Centre and one Commission in the State, but that we should have one All-India Commission. It is a very healthy object and first of all we should see that it would come up to that ideal. He himself charged that all Provincial Commissions are corrupt and so forth and much has been brought up in this House and in that way we have reduced the Provincial Governments to almost a nullity by all these unfounded charges and it has produced a bad effect. I trust that none of us should level charges on the floor of the House against the Provincial Cabinet or against the Prime Minister; that is very bad and it has been causing a great deal of harm in the provinces, and elsewhere and in the public. I trust that these charges will not be made without proper scrutiny and in future men like Mr. Brajeshwar Prasad, responsible men, balanced men and men of great integrity will not do that and I trust that he will allow in others the same sort of integrity as he will to himself.

Sir, I feel that some suspicion is felt by Sardar Húkam Singh that Menons and Ayyangars are flooding the country. Yes, intelligence has always a certain advantage, but I also find that if I go to Army Headquarters the forbidding bearded Sikh or the sleek, fat Punjabee is there in large numbers; courage and fitness will always tell and because they are fit for all these services, they

[Shri Kuladhar Chaliha]

are holding these jobs Yet I feel that the All-India Public Service Commission will be just and fair to all sections in the provinces.

Sir, what I dislike in this article—and in this I fully agree with Mr. Naziruddin Ahmad—is there is an under-current flowing through all Dr. Ambedkar's amendments which wants to take as much power out of the provinces as possible and bring it to the Centre. Here in the Draft Constitution we had not left any initiative to the provinces. Now I find that even the little that was there has been taken out. If two or more States want a Joint Public Service Commission and if a resolution to that effect is approved by the Parliament and a law enacted, that will have to be made by agreement and even that is taken away. We have left no initiative to the provinces. Even if a few States can agree and do something in common, jointly, even that has been taken out of the statute. It is indeed unfortunate that somehow or other we are reducing our provinces to mere automatons; we have not left to the provinces any leadership or any initiative. Dr. Ambedkar's amendments clearly indicate that greater and greater power should be given to the Centre. I therefore feel like supporting Mr. Naziruddin Ahmad who has submitted two amendments and if they are accepted it will give more power to the Provinces and many States can have a Joint Public Service Commission and they can make rules by agreement. The new subsidiary article takes away these little powers.

Generally I think the article is very well conceived and as the President has said, we must not be irrelevant. I therefore support this subsidiary article with these remarks.

Shri Raj Bahadur (United States of Matsya) : Mr. President, Sir, I find from certain speeches delivered in the House on this article today that the very basis and the principles on which the creation of the Public Service Commission proceeds, have been attacked. My honourable Friends, Dr. Deshmukh and Shri Ranbir Singh have come forth with the suggestion that a sort of class distinction or discrimination should be recognized as between the urban people and the rural people, in the matter of recruitment to Government Services. While I stand here as no advocate of the urban people or of the rural people, I beg to express my emphatic opposition to all sorts of discriminations or class distinctions between the people of India.

Dr. P. S. Deshmukh : I did not suggest or make any class distinction. I wanted that the provision should not be too rigid.

Shri Raj Bahadur : I am glad if you did not. I think that you suggested that some sort of preference should be given to the rural communities because they are backward educationally and that the principle of selection on the basis of merit should be modified to that extent. It was a sort of distinction and discrimination which was not permitted even by our Constitution. It runs counter to some of the articles relating to Fundamental Rights which we have already adopted. We know that in article 9 we have specifically laid down that "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them". Similarly so far as employments are concerned, in article 10 that we have already adopted it is provided that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to office under the State". As such I plead, Sir, and if we go down deep to probe into the very basis and the principles on which the Public Service Commissions are created, we would find that the necessity to create these commissions was felt mainly on three grounds : firstly, that favouritism and nepotism was rampant when there were no such commissions and individual likes or dislikes whims and fancies came

into play; secondly, merit was not recognized, and instead of merit, birth, descent or other such things were recognized, as the basis of selection for Government jobs and lastly, canvassing was free. In order to eliminate all such defects, in order to secure the very best and the most deserving men for all the jobs in the State, we recognized the necessity of creating Public Service Commissions and thus they came into being. I feel, Sir, that merit and merit alone should be the sole criterion for selection for all appointments under the State. If we sacrifice the principle of merit and seek to modify it, it will turn out to be a dangerous precedent and a very dangerous principle. I at once recognize and I am in whole-hearted sympathy and agreement with the views of my Friend Dr. Deshmukh so far as the handicaps and the backwardness of the rural population in this country is concerned.

Mr. President: May I point out that the honourable Member is going beyond the article? We are not discussing appointments for particular classes or groups; we are discussing only the Public Service Commission.

Shri Raj Bahadur: I bow to the ruling of the Chair. I was simply mentioning that while discussing this article, the very basis and the necessity for the creation of the Public Service Commission was attacked. I want to defend that basis; I think article 284 is necessary. In a way, Dr. Deshmukh expressed himself opposed to the creation of Public Service Commission. Hence, the justification for me to make certain remarks in this connection. What I mean to say is that we must for the purpose of selecting men for the services recognise the principle of merit, and we must recognise the necessity of creating a Public Service Commission.

I perfectly recognise that there are serious complaints about the way in which in recent years Public Service Commissions have functioned. It is a general complaint that jobs are filled up already and the selection, and interviews are only a formal business in order to keep up the show. I do not know how far that complaint is correct: but the complaint is there. To that extent, Dr. Deshmukh's remarks are justified. What I mean to suggest is that there should be no emphasis on sectionalism or class distinctions. That is my principal objection to the views expressed by Dr. Deshmukh; and this is the only justification for my taking a few minutes of the valuable time of this House.

I would like to remind my honourable Friends who were very eloquent about the small percentage of the people from rural areas in the public services that this small percentage of the rural people and the preponderance of the urban people in the services is due to certain psychological conditions and certain traditions also. In our country, we have had an adage:

"Uttam Kheti madhyam banj,
Nikhad chakari, bhikh nidhan.

Agriculture is the highest, trade is mediocre, service is the lowest and beggary penury—amongst professions.

These were the principles and the attitude which we had all through adopted in the choice of our avocations in life and this is one of the reasons why we do not find many rural people in the services. The glamour that has now come to be attached to services and jobs under the Government is only of recent origin. This is why the Father of our nation always emphasised the necessity and desirability of adopting the healthy principle of "return to the villages". As a matter of fact, he always advocated that the glamour which has been attached to Government service must be eliminated and the attraction that we feel for urban life should be resisted. The centre of gravity must shift from the urban areas to rural areas. That is the only way in which we can solve the problem. If instead of this we give preference to certain sections of the people, we would be simply playing the game which the late foreign rulers of this country wanted us to play for their sake and their purpose. I

[Shri Raj Bahadur]

therefore submit in all humility that the only principle which should guide the Public Service Commission, which forms the basis of the creation of the Public Service Commission should be merit and merit alone.

I may add here a word about one of the amendments which has been moved by Mr. Naziruddin Ahmad. He has taken objection to the word 'Ruler' that has been used in sub-clause (3) of this article and in order to justify his remarks, he has referred to article 281 wherein the definition of the expression "State" is given. He says that the definition includes only those States as have been specified in Part I of the First Schedule. I submit we have not yet considered articles 281 and 282 It is therefore quite natural and necessary that when we come to consider these articles, the States mentioned in Part III may also be included and as such the remarks that he has made about his amendment do not hold good.

With these few words, I conclude.

Shri V. I. Muniswamy Pillai (Madras : General) : Mr. President, I stand before you today to support the motion moved by my honourable Friend Dr. Ambedkar.

It is admitted on all hands that there ought to be a Public Service Commission both in the Union and in the States. But, I feel that it must be the duty of this august Assembly to express in unequivocal terms whether the Public Service Commissions are to continue in the same manner as they have done in the past or they should have a better outlook in the future. So far as we know, the functions of the Public Service Commissions have not been performed so satisfactorily in so far as the unrepresented communities and the minorities are concerned. The recent recruitment to the Indian Administrative Service and the Indian Police Service is outstanding before us as proof that justice has not been done to these unfortunate communities. In the provinces, though there may be Ministers here and there, they are helpless in the matter of the services. As has been rightly pointed out, service is the soul of administration. We are all agreed that the best men must be got; but what happens in the functioning of the Public Service Commission is this. Though a Schedule Caste man might have passed all the examinations required, there comes the fact that the Service Commission says that he is not suitable for the post. According to the communal Government Order, that particular man is left out and the next community is called to take the post. This has been happening not only in the province where I live, but even in the Federal Public Service Commission I know as a matter of fact that members of the Harijan community, though they had obtained very good marks, and they had the required academic qualifications, still on some pretext or another, they were not given the chance. It is my humble opinion that the future outlook of this Commission must be far better. Due to communal distinctions in this country, some of these communities, though they may be intelligent and competent to hold any post, have not been given their due chance. For the several departments of the Government panels of candidates are created to choose from. Though the Commission may select the people, they say something as to the suitability or otherwise of the man thus banning the best man from service. It is this kind of thing that has greatly disappointed the young men of these unfortunate communities. As a matter of fact, I know Dr. Ambedkar was able to get a certain percentage for the Scheduled Castes in the various services. But, if we take stock of the present position, the number of Scheduled Castes people that are occupying posts both in the Centre and in the provinces is very negligible. It is to give a better outlook to the future Public Service Commissions that I plead before this House that proper directions must be given.

Mr. President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: I do not think there is anything that I need say.

Mr. President: I would put the amendments to vote. The first amendment is amendment No. 64, moved by Mr. Naziruddin Ahmad. He has substituted that by another amendment which I will read to you now.

"That in amendment No. 1 of List I (Fourth Week) in the proposed new article 284, for clause (2) the following clause be substituted:

(2) Two or more States may by resolution in their Legislative Assemblies or when there are two Houses, in both the Houses, agree that there shall be one Public Service Commission for that group of States."

The amendment was negatived.

Mr. President: Then, amendment No. 65.

Mr. Naziruddin Ahmad: That does not arise in view of this.

Mr. President: Then, I put amendment No. 66.

The question is:

"That in amendment No. 1 of List I (Fifth Week) of Amendments to Amendments, clause (3) of the proposed article 284, the words 'or Ruler' be deleted."

The amendment was negatived.

Mr. President: Then, I would put the proposition as moved by Dr. Ambedkar. Would Messrs Chaliha and Lakshminarayan Sahu like me to put the two paragraphs separately?

Shri Kuladhar Chaliha: No, Sir.

Mr. President: The question is:

"That for article 284 the following article be substituted:—

Public Service Commission for the Union and for the States.

284 (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two houses by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(2a) Any such law as aforesaid may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of clause (2) of this article.

(3) The Public Service Commission for the Union, if requested so to do by the Governor or Ruler of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(4) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question."

The motion was adopted.

Article 284, as amended, was added to the Constitution

Article 285

Mr. President: Article 285—Dr. Ambedkar.

Mr. Naziruddin Ahmad: Sir, I rise on a point of order. Mr. President you will be pleased to find that this is an amendment to the Constitution itself,

[Mr. Naziruddin Ahmad]

not any amendment to amendment and therefore under the rules it should not be allowed. We have certainly made some exceptions in pecial cases but these exceptions are now showing a tendency of becoming the rule. I submit therefore that this amendment should be ruled out on technical grounds alone. There is again a question of convenience. I think in form this amendment is most objectionable. The clauses of article 285 of the Draft Constitution have merely been repeated here with additions and alterations of a variety of sorts. The amendments however should have come as amendments to the original article. Instead the whole article is written with new ideas incorporated or interpolated and the old clauses and amendments have been presented as a new article. It takes a long time to find out what are the changes made.

Dr. P. S. Deshmukh : As in the Hindu Code Bill.

Mr. Naziruddin Ahmad : As Dr. Deshmukh aptly points out—like the Hindu Code Bill. Old clauses and new ideas have been blended together and presented as new with necessary interpolations here and there. It is extremely difficult to sort out what are the real changes made. Clause (2) has been changed in many places. Then there is article 285-A which is entirely new. Then article 285-B is composed of parts of old article 285 and the proviso of this article is entirely new. It purports to be a reproduction of 285(3) but it is now made a new article with entirely new features. Clause (d) of this article is entirely new. I think it is difficult for anyone to try to follow these changes. I therefore object not only on the ground of their being in breach of the rules but also on the ground they are in a form not readily intelligible and they should have been expressed as amendments to the Constitution itself. That would have made it easier for honourable Members to follow the changes.

The Honourable Dr. B. R. Ambedkar : This is not the first time when my Friend has raised a point of Order. You have been good enough to allow the Drafting Committee to depart from the technicalities of the Rules of Procedure and I therefore submit that in this case also you will be pleased to allow us to proceed.

Dr. P. S. Deshmukh : Sir, I rise to protest against this attitute of Dr. Ambedkar. You have allowed him some privilege and he is misusing that, Sir. He can and must show how he wishes to alter the original draft articles concretely and specifically and not proceed in the way he did with the Hindu Code Bill and substitute anything in any place without specifying how it compares with the original.

Shri M. Ananthasayanam Ayyangar (Madras : General) : My Friends who raised the point of order should know that the whole scheme of Public Service Commission has been altered and these are consequential changes. Therefore if others had not been altered, possibly this would not have required any alteration. Under those circumstances, these objections are not valid.

Dr. P. S. Deshmukh : I beg to submit that every amendment must be related to the original draft that was circulated.

Mr. President : So far as the Drafting Committee is concerned I have allowed a certain amount of latitude because many of the difficult articles about which there was likely to be difference of opinion or which required consideration were left over for the purpose of reconsideration and if as a result of reconsideration the Drafting Committee proposes new article, I do not think I should allow any technicalities to stand in the way of the new articles being placed before us. I therefore allow these articles to be moved.

Mr. Naziruddin Ahmad: There are a number of articles and these articles should be put separately.

Mr. President: That is a different matter and we can discuss them separately. Dr. Ambedkar may explain how the separate articles came into being. You move them together and we may take them separately at the time of voting.

The Honourable Dr. B. R. Ambedkar: Yes, they may be put separately

Sir I move :

"That for article 285, the following articles be substituted :—

Appointment and term of office of members.

285. (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor or Ruler of the State :

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown shall be included.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier :

Provided that—

(a) a member of a Public Service Commission may by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President and in the case of a State Commission, to the Governor or Ruler of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 285-A of this Constitution.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

Removal and suspension of a member of a Public Service Commission.

285A. (1) Subject to the provisions of clause (3) of this article, the Chairman or any other member of a Public Service Commission shall only be removed from office by order of the President on the ground of misbehaviour after the Supreme Court on a reference being made to it by the President has, on inquiry held in accordance with the procedure prescribed in that behalf under article 121 of this Constitution, reported that the Chairman or such other member, as the case may be, ought on any such ground be removed.

(2) The President in the case of the Union Commission or a Joint Commission and the Governor or Ruler in the case of a State Commission may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) of this article until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in clause (1) of this article, the President may, by order, remove from office the Chairman or any other member of a Public Service Commission if the Chairman or, such other member, as the case may be,

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office;"

And here I want to add a third one, as (c) :

"(c) is in the opinion of the President unfit to continue in office by reason of infirmity of mind or body.

[The Honourable Dr. B. R. Ambedkar]

(4) For the purpose of clause (1) of this article, the Chairman or any other member of a Public Service Commission may be deemed to be guilty of misbehaviour if he is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit from emoluments arising therefrom otherwise than as a member and in common with the other members of any incorporated company.

Power to make regulations as to conditions of service of members and staff of the Commission.

285-B. In the case of the Union Commission or a Joint Commission, the President and in the case of a State Commission, the Governor or Ruler of the State, may by regulation—

(a) determine the number of members of the Commission, and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the Commission and their conditions of service:

Provided that the conditions of service of a member of a Public Service Commission shall not be altered to his disadvantage after his appointment.

285-C. On ceasing to hold office—

Bar to the holding of office by members of Commissions on ceasing to be such members.

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either Under the Government of India or under the Government of a State.

Sir, these are the clauses which deal with the Public Services Commissions, their tenure of office and qualifications and disqualifications and their removal and suspension. I should very briefly like to explain to the House the matters embodied here, the principal matters that are embodied in these articles.

The first point is with regard to the tenure of the Public Service Commission. That is dealt with in article 285. According to the provisions contained in that article, the term of office of a member of the Public Service Commission is fixed at six years or in the case of the Union Commission, until he reaches the age of 65 and in the case of a State Commission until he reaches the age of 60. That is with regard to the term of office.

Then I come to the removal of the members of the Public Service Commission. That matter is dealt with in article 285-A. Under the provisions of that article, a member of the Public Service Commission is liable to be removed by the President on proof of misbehaviour. He is also liable to be removed by reason of automatic disqualification. This automatic disqualification can result in three cases. One is insolvency. The second is engaging in any other employment, and the third is that he becomes infirm in mind or body. With regard to misbehaviour, the provision is somewhat peculiar. The honourable House will remember that in the case of the removal of High Court Judges or the Judges of the Supreme Court, it has been provided in the articles we have already passed, that they hold their posts during good behaviour, and they shall not be liable to be removed until a resolution in that behalf is passed by both Chambers of Parliament. It is felt that it is unnecessary to provide such a

stiff and severe provision for the removal of members of the Public Service Commission. Consequently it has been provided in this article that the provisions contained in the Government of India Act for the removal of the Judges of the High Court would be sufficient to give as much security and as much protection to the members of the Public Service Commission. I think the House will remember that in the provisions contained in the Government of India Act, what is necessary for the removal of a Federal Court Judge or a High Court Judge is an enquiry made by the Federal Court in the case of the High Court Judges or by the Privy Council in the case of the Federal Court Judges, and on a report being made that there has been a case of misbehaviour, it is open to the Governor-General to remove either the Federal Court Judge or the Judge of the High Court. We have adopted the same provision with regard to the removal of Public Service Commission, wherever there is a case of misbehaviour.

With regard to automatic disqualifications, I do not think that there could be any manner of dispute because it is obvious that if a member of the Public Service Commission has become insolvent, his integrity could not be altogether relied upon and therefore it must act as a sort of automatic disqualification. Similarly, if a member of the Public Service Commission who is undoubtedly a whole-time officer of the State, instead of discharging his duties to the fullest extent possible and devoting all his time, were to devote a part of his time in some other employment, that again should be a ground for automatic disqualification. Similarly the third disqualification, namely, that he has become infirm in body and mind may also be regarded, without any kind of dispute, as a fit case for automatic disqualification. Members of the House will also remember that while reading article 285-A, there is a provision made for suspension of a member of the Public Services Commission during an enquiry made by the Supreme Court. That provision is, I think, necessary. If the President thinks that a Member is guilty of misbehaviour, it is not desirable that the member should continue to function as a member of the Public Services Commission unless his character has been cleared up by a report in his favour by the Supreme Court.

Now I come to the other important matter relating to the employment or eligibility for employment of the members of the Public Services Commission—both the Union and State Public Services Commissions. Members will see that according to article 285, clause (3), we have made both the Chairman and the Members of the Central Public Services Commission as well as the Chairman of the State Commission, and the members of the State Commission ineligible for reappointment to the same posts : that is to say, once a term of office of a Chairman and Member is over, whether he is a Chairman of the Union Commission or the Chairman of a State Commission, we have said that he shall not be reappointed. I think that is a very salutary provision, because any hope that might be held out for reappointment, or continuation in the same appointment, may act as a sort of temptation which may induce the Member not to act with the same impartiality that he is expected to act in discharging his duties. Therefore, that is a fundamental bar which has been provided in the draft article.

Then the second thing is that according to article 285-C, there is also a provision that neither of these shall be eligible for employment in any other posts. There is therefore a double disqualification. There is no permission to continue them in their office, nor is there provision for their appointment in any other posts. Now, the only exceptions, that is to say, cases where they could be appointed are these :

The Chairman of a State Public Services Commission is permitted to be a Chairman or a Member of the Union Commission, or a Chairman of any other State Commission.

[The Honourable Dr. B. R. Ambedkar]

Secondly, the Members of the Union Commission can become Chairman of the Union Commission or any other State Commission.

Thirdly, the Members of the State Commission can become a Chairman or a member of the Union Commission, or the Chairman of a State Commission.

In other words, the exceptions are : namely, that one man, who is a Member of the Union Public Services Commission, may become a Chairman of the State Public Services Commission : or a Member of the State Public Services Commission can become a Chairman of the Union Public Services Commission, or become a Member of the Union Public Services Commission. The principal point to be noted is this, that neither the Chairman nor the Member of a State Commission can have employment under the same State He can be appointed by another State as a Chairman or he can be appointed by the Central Government as the Chairman of the Union Public Services Commission or a Member of the Union Public Services Commission, the object being not to permit the State to exercise any patronage in the matter either of giving continued employment in the same post, or in any other post, so that it is hoped that with these provisions the Members of the Commission will be as independent as they are expected to be.

I do not think there is any other point which calls for explanation.

Shri Lakshminarayan Sahu : What about Members of Joint Commissions ?

The Honourable Dr. B. R. Ambedkar : A Joint Commission is the State Commission. That is defined in clause (4) of article 284.

Dr. Monomohan Das (West Bengal : General) : I would like to be clear on some points about 285-A. If the Supreme Court as being referred by the President reports that the Chairman or some other Member of the Public Service Commission should be removed, then will it be obligatory on the part of the President to remove him ?

The Honourable Dr. B. R. Ambedkar : Certainly.

Mr. Naziruddin Ahmad : You have asked the honourable Member to explain to the House the difference between the new draft and the original. That would have been helpful for a proper appreciation of the real changes.

The Honourable Dr. B. R. Ambedkar : If any point is raised in the course of the debate, I will explain it in the course of my reply.

Mr. Naziruddin Ahmad : I do not know whether to oppose or not to oppose.

The Honourable Dr. B. R. Ambedkar : You must have read both drafts The only thing you might not have read are the commas and semi-colons.

Mr. President : I will now take up the amendments.

Shri Jaspat Roy Kapoor (United Provinces : General) : Sir, I beg to move :

"That in the proviso to clause (1) of the proposed article 285, for the word 'one-half' the word 'one-third' be substituted."

The question of the formation and the personnel of the Public Services Commissions is of considerable importance. In fact, it is impossible to over-emphasize its importance. Entrusted with the task of selecting candidates to fill various posts under the Central and the Provincial Governments, the formation of both the Central and the State Public Services Commissions becomes of very great importance. On its proper formation and on the proper selection

of the Members of such Commissions depends the proper selection of persons who will be called upon to discharge the responsible and onerous duties of the Government in the various Departments. That being so, I think it is worthwhile that we should consider the various articles relating to this subject in detail and with very great care and caution.

The proviso to which I have just moved my amendment lays down that one-half of the members of every Public Services Commission shall be persons who at the dates of their respective appointments have held office for at least ten years, either under the Government of India or under the Government of a State, and so on. This means, Sir, that in actual practice, the official members shall almost always be in a majority in the Public Services Commissions. Ordinarily, the total strength of a Public Services Commission is either three or five, so that if there are three Members, half of them at least—which would mean two at least—would be Government servants.

Only one place is left to be filled by one who has not been in government service for ten years. Similarly, if there are five members, three at least shall always be government servants and only two can be recruited from outside that sphere. This I consider to be rather giving government servants undue representation on the Public Service Commission. The government servants views should not be so overwhelmingly represented on the Public Service Commissions. While it is necessary that we must have the advantage of the experience of government servants of ten years' standing, at the same time I think that their views should not be the determining factor in the selection of all candidates and that the views of the non-officials and representatives of other interests should also be properly represented on the Commissions. But it would not be so if by a statutory provision the majority of the members of all the Commissions shall always be persons of ten years' standing in government service.

The longer the period a person has been in government service the more conservative he becomes and develops the whims, caprices and even the idiosyncrancies of that class. They get out of touch with public opinion and the changing needs of the society. I think, therefore, it would not be safe and in the public interest to give government servants a permanent majority on both the Central and States Commissions. The freshness of the outlook of non-officials must also be brought to bear upon the selection of candidates in a fair measure.

My honourable Friend Dr. Ambedkar is not present here. (An honourable Member: He is here), if he is here, he does not care to hear anything that is said with regard to the articles he has moved, because he feels safe that it is not possible for any Member to carry the vote of this House against any one of his proposals. However, I hope that this House on this occasion would seriously consider whether it should not compel Dr. Ambedkar to accept some of the amendments which I will move. I have already moved one and some more I will move hereafter. It seems Dr. Ambedkar has developed a great deal of regard and affection for government servants. Perhaps it is due to the fact that he has been so long associated with the government and the cabinet. I do not grudge the government servants the affection and regard they have been able to win from Dr. Ambedkar. But I do think that Dr. Ambedkar has allowed himself to be rather unduly influenced by the views of government servants so far as this article is concerned, for we find that he has absolutely ignored the views and opinions of the Chairman of the present Federal Public Service Commission, the unanimous views of the Members of the F.P.S.C. as also the views of the Chairmen of the different provincial Public Service Commissions.

Let us see what their views on this subject are. There was a conference held last year in New Delhi, a conference of the Chairman and members of the

[Shri Jaspat Roy Kapoor]

F.P.S.C. and the Chairman of the different provincial Public Service Commissions. This is how they expressed themselves on this point. I am reading from the pamphlet which has been circulated to us by the Constituent Assembly Office containing comments on the draft provisions from various bodies.

"The proviso to clause 285(1) of the Draft Constitution provides that at least one half of the members of every Public Service Commission shall be persons who at the date of their respective appointments have held office for at least ten years in the Government of India or under the Government of a State. The Conference is of opinion that in order to provide for the representation of the interests involved this proviso should now be amended so as to provide one-third in place of one-half occurring in the first line of the provision."

This wholesome advice based on long experience of such responsible person as the Chairman of the F.P.S.C., unanimously supported by the other members of the conference has been absolutely ignored, and the views of the permanent officials of the Home Ministry have been allowed to prevail. How conservative the views of the officials of the Home Ministry are can be easily found if we refer to what they have suggested in their memorandum :

"The only further comments that we would like to offer are with reference to the recommendations made by the conference of Chairmen of the Public Service Commissions forwarded to the Constituent Assembly with the Federal Public Service Commission's letter, No.. .....dated.....

In paragraph 4 of that letter, it has been suggested that the provision for service personnel in article 285(1) should be altered from one-half to one-third. This Ministry is inclined to the view that from the point of view of public service (not from the point of view of the country as a whole but of course from the point of view of the existing public servants) the services be even more strongly represented on the Commission."

So if they had their way they would probably make the Public Service Commissions an absolute monopoly of the government servants and a close preserve for them. What we now find is that the Drafting Committee headed by Dr. Ambedkar has simply accepted the recommendations of the official members of the Home Ministry in absolute disregard of the saner counsel of the F.P.S.C. and the Chairman of other provincial Public Service Commissions. This I consider to be a highly unsatisfactory state of affairs.

Not only this. I would draw your attention to one more point with regard to this article. In this proviso what is wanted is not only that one-half of the members of such Commissions shall have ten years experience of government service, but in their case it is also necessary that at the time of their appointment they must be government servants, which means that if a person has retired from government service only a few months before a particular date he is not eligible for appointment as a member of the Public Service Commission. That is, he should not have had an opportunity of associating himself freely even for a month or so after retirement from government service. I do not understand the reason or the logic behind it. Let us take the case of a retired High Court Judge retiring at the age of sixty. After that retirement, along with his retirement he can be appointed to the Union Public Service Commission, but if unfortunately he has been out of office for even a month or two he shall not be eligible for such appointment. I submit that there is no sense in it, there is no logic in it. I would therefore submit that in order that interests other than government servants are properly and duly represented on Public Service Commissions, in the place of 'one-half' in the proviso we should have the word 'one-third'.

While discussing the previous article my honourable Friend Chaudhri Ranbir Singh was making out a strong case for the appointment of rural-minded persons on the Public Service Commissions. If we retain the word 'one-half'

there will not be a reasonable opportunity either for the appointment of a rural-minded member or an urban-minded member. I think honourable Members will agree that in the Public Service Commissions we should, if possible; have always a good educationist, a good public man and so on. But if we retain the word 'one-half' here it will be impossible to have a suitably formed Public Service Commission either at the Centre or in the provinces.

The next amendment that stands in my name is this which I beg to move.

"That in clause (2) of the proposed article 285, the words 'in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission' be deleted."

So that, after the deletion of these words, clause (2) would read thus :

"A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty years, whichever is earlier".

The object of this amendment is that the age of retirement should be uniformly at the age of sixty both in the case of the Union Public Service Commission as also in the case of State Public Service Commissions. I see no reason why there should be this difference between the ages of retirement in the two cases. If a person becomes unfit to continue to work as a member of a State Public Service Commission at the age of sixty, surely he does not become more qualified to discharge the more onerous and more responsible duties of a member of the Union Public Service Commission. If he is unfit at the age of sixty to act in one place, surely he is unfit to act as a member on the superior body. I think, therefore, that at least for the sake of consistency if not for any other reason it is necessary that the age of retirement in both the cases should be sixty.

My third amendment is :

"That clause (3) of the proposed article 285 be deleted."

Clause (3) runs thus :

"A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office."

I desire its deletion not because I am opposed to the contents of this clause but because it is absolutely redundant and unnecessary in view of article 285-C which has been moved by Dr. Ambedkar which forms part of article 285. Under article 285-C it is specifically laid down as to what particular employment could be held by retiring members of any Public Service Commission. Under its various clauses—which I need not read here as they are quite clear—it is not possible for a retiring member of a Public Service Commission to be reappointed to that particular post. He can of course be employed to other posts in the different Public Service Commissions, but he cannot be re-employed to the very post which he has vacated. Clause (3) of this article, therefore, is absolutely unnecessary and the Constitution may not be burdened with the retention of this unnecessary clause.

The next amendment that stands in my name is No. 10 (List I, Fifth Week).

Mr. President : What about No. 8 ?

Shri Jaspat Roy Kapoor : I am not moving No. 8 because it refers to the original article as it had been proposed, but has now been given up and, therefore, it will have no place now.

[Shri Jaspat Roy Kapoor]

I move my amendment (No. 10) and it is this :

"That in clause (b) of the proposed new article 285-B, the following words be inserted at the beginning :—

'in consultation with the Chairman of the Public Service Commission concerned'."

So that clause (b) of article 285-B would read thus :

"In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor or Ruler of the State, may by regulations—

(b) in consultation with the Chairman of the Public Service Commission concerned make provision with respect to the number of members of the staff of the commission and their conditions of service."

I think that this amendment of mine should be readily accepted because all that it seeks is that in making appointments of members of the staff of the Commission and in determining their salaries and conditions of service, etc., out of courtesy, if for nothing else the Chairman of the Public Service Commission concerned should be consulted by the President or the Governor or the Ruler as the case may be. It may be done not only out of courtesy, but I think it will serve a very useful purpose. The Chairman of these Commissions are the best persons to know what the requirements of the Commission are, what sort of persons they want on their staff, what should be the strength, salary and other conditions of service of the staff. It has been provided in the case of the appointment of the staff of the High Court, the staff of the Auditor-General and in other cases that while the appointment is to be made either by the President or by the Governor, the head of the office should be consulted. That is a necessary and useful provision and I think we must have it here in article 285-B.

Sir, my next amendment is No. 11. It runs thus :

"That in the proposed new article 285-C—

(i) for the word 'employment' wherever it occurs the words 'office of profit' be substituted; and

(ii) in clause (d), after the words 'State Public Service Commission' where they occur for the second time, the words 'or as a member of any other State Public Service Commission' be inserted."

I will take these two amendments one by one. In article 285 we have the word 'employment' throughout. It is intended thereby that a member of the Public Service Commission, after retirement, shall not be employed by the Central or provincial Commissions in any capacity whatsoever except in the capacities mentioned in the article itself. This is a very salutary provision and I am entirely in agreement with it. I wish that its scope had been extended, to which point I will later refer when I move another amendment. But I do not see why it should not be open to the Central or Provincial Governments to utilise the services of retiring members of the Public Service Commissions in an honorary capacity. I take it that the word "employment" would cover all employment, whether paid or honorary. Even if ordinarily the word 'employment' is understood to carry certain salary, I think to make the position clear it would be advisable to substitute it with the words 'office of profit'. I hold strong views on the subject that persons who have been in Government service for long on handsome salaries and may be in receipt of handsome pensions also should be expected to render honorary service to the State and to society. I therefore think that it is necessary to accept this amendment of mine.

The next amendment I have moved is :

"That in clause (d), after the words 'State Public Service Commission' where they occur for the second time, the words 'or as a member of any other State Public Service Commission' be inserted."

This clause will then read : "A member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission or as a member of any other State Public Service Commission....." The implication of this amendment is that a member of a State Public Service Commission, on ceasing to hold office as such, may be eligible for appointment as a member of any other State Public Service Commission. In clause (d) we find that the Chairman of a State Public Service Commission shall be eligible for appointment as Chairman of any other State Public Service Commission. It means that he shall be eligible for appointment to a parallel post. On the same analogy I think a retiring member of a State Public Service Commission should be eligible for appointment to another parallel post in another State Public Service Commission. I see no reason for making this distinction between the Chairman of a State Public Service Commission and a member thereof.

Now, Sir, my last amendment is this : Honourable Members may not have copies of it, because it was submitted by me this morning just before the session began. It reads thus :

"That at the end of the proposed new article 285-C, the following proviso be added :—

'Provided that a member's total period of employment in the different public service commissions shall not exceed twelve years'."

This amendment is more than important than my other amendments. I was confirmed in this view from what I heard Dr. Ambedkar say this morning in moving his own amendment. He said, while explaining article 285 that a person shall not hold office as a member of a Public Service Commission for more than six years. That of course is partially provided in clause (3) of article 285. But that clause refers only to the re-employment of a person to that particular post. So far as the other posts are concerned, that clause does not apply. So, according to article 285-C a member of a Public Service Commission can continue to be a member of one or other of the public service commissions for any number of years. I say 'any number of years' because, because for six years one can be a member of a State Public Service Commission. Thereafter, for another six years, he can be the Chairman of a State Public Service Commission. It comes to twelve years. Thereafter again he can be the Chairman of another Public Service Commission for a third term of six years, thus putting in a total eighteen years' service. He can next be a member of the Union Service Commission for six years, making his total service twenty-four years. If fortune favours him again for the next six years he can be the Chairman of the Union Service Commission. Thus for thirty years he could be in service or till he reaches 65 years of age. I submit this is not a satisfactory state of affairs. I hope it is not even the intention of the Drafting Committee, much less of the Honourable Dr. Ambedkar, that it should be open to the Government to go on conferring its favours on a particular member of a Public Service Commission who acts according to the wishes and inclinations of the Government.

This article 285-C of course makes a show of putting bar with regard to the employment of retiring members of the Public Service Commissions, but when we analyse it carefully, we find that only a show is made so far as the substance is concerned, we find that the Government can go on retaining a person in the service of a Public Service Commission, of course in different Public Service Commissions, for any length of time. I consider this article as it stands at

[Shri Jaspat Kapoor]

present to be more obnoxious than if there was a provision that members of the Public Service Commission shall be prmanent servants until they attain the age of sixtyfive.

Shri Brajeshwar Prasad : Until they die.

Shri Jaspat Roy Kapoor : If they were permanent, they would not be looking up to the President or the Governor for their future employment, the President and the Governors would in their turn be only acting on the advice of their Cabinets. If the members of the Public Service Commission were permanent, they would not have to look to the favours of the Government of the day concerned for their future, and they would act absolutely independently. They would neither be after the smiles of the Government nor would be afraid of their frowns. As it is, when the period of six years would be nearing completion, they would be looking to the Government of the day concerned for being reappointed to some other Public Service Commission, and it cannot therefore be expected that they would act in an absolutely independent and impartial manner, as I hope Dr. Ambedkar would certainly like them to work. It is necessary, therefore, that this temptation of being reappointed after every six years should not be put before the members of the Public Service Commission. If it is really the intention of Dr. Ambedkar that the term of service should be not more than six years, I would very much prefer to have the words "six years" rather than "twelve years" in my amendment, but if it is not the intention, I think it is necessary to accept the amendment I have moved limiting their term of service only to a period of twelve years and no further.

These are the various amendments, Sir, which I have moved and I hope Dr. Ambedkar would be good enough to give his serious consideration to them and accept them, if not all, at least the more important ones.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, Sir, I move :

"That in amendment No. 3 above, for the proposed new article 285-B, the following article be substituted :—

Conditions of service of members and staff of the Commission.

285-B.—(1) in the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor or Ruler of the State may, by regulations, determine the number of members of the Commission and their conditions of service and the number of members of the staff of the Commission :

Provided that the conditions of service of a member of a Public Service Commission shall not be altered to his disadvantage after his appointment.

(2) Appointments of the members of the staff of a Public Service Commission shall be made, and the conditions of service of those members shall be such as may be prescribed, by the Chairman of the Commission or such other member of the Commission as the Chairman may direct :

Provided that the conditions of service prescribed under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval, in the case of the Union Commission or a Joint Commission, of the President and in the case of a State Commission, of the Governor or Ruler of the State."

Sir, the purpose of my amendment is very simple. Article 285-B as moved by Dr. Ambedkar does not state how the members of the staff of a Public Service Commission should be appointed. My amendment fills up this gap. It lays down that the members of the staff of the Public Service Commission shall be appointed either by the Chairman of the Commission or by such other member of the Commission as he might authorise in this behalf. The House will remember that the Supreme Court and the High Courts have been given the right to appoint members of their staff. In the case of the Supreme Court they are to be appointed either by the Chief Justice or by such other Judge

as might be authorised by him in this connection. A similar provision has been made in connection with the appointment of members of the staff of the High Courts. As the Public Service Commissions will be very important bodies, it is desirable that they should be given the same freedom as will be possessed by the Supreme Court and the High Courts in connection with the appointment of the members of their staff.

The importance of the Public Service Commissions is manifest. They will deal with the recruitment of persons to posts under the State. The efficiency of the administration of the State will consequently depend on the manner in which recruitment is made. It is therefore of the utmost importance that the body making the recruitment should possess within limits as much independence as possible. I propose therefore that the staff of a Public Service Commission should be appointed by the Chairman of that Commission or by any other member authorised by him to make appointments.

The second point where my amendment differs from article 285-B moved by Dr. Ambedkar is the determination of the conditions of service of the staff of a Public Service Commission. The article moved by Dr. Ambedkar leaves full powers in this respect to the President in the case of the Union and Joint Commissions and to the Governor and rulers of States in the case of State Public Service Commissions. The Supreme Court and the High Courts have been allowed to determine the conditions of service with the approval of the President and the Governor of the States concerned. There is no reason why the same procedure should not be followed here. It may be said that the President or the Governor, whoever may have to deal with the subject, will if he is a reasonable man, if he wants that the staff of the Public Service Commission should be competent and contented, consult the Public Service Commission concerned. The same argument might have been used in the case of the Supreme Court or the High Courts, but these bodies have been allowed the power to determine the conditions of service of the members of their staff with the approval of the President or the Governor or ruler of a State as the case may be. There is no reason why any distinction should be made in this respect between the Public Service Commission and these bodies. I propose, therefore, that the Public Service Commission should have the power to determine the conditions of members of their staff but should secure the approval of the President or the Governor or ruler of a State in so far as the conditions of service, relate to salaries, allowances, leave or pensions. My honourable Friend, Mr. Jaspat Roy Kapoor has also moved an amendment on this subject. His object is to require the President and the Governors and rulers of States to consult their Public Service Commissions in respect of these matters before taking decisions. I go a step further and say that the power should be initially in the hands of the Public Service Commissions but that they should be required to fix the salaries, allowances and leave and pensions, with the approval of the President, the Governors or Rulers of States, as the case may be. I think that if for nothing else, at any rate, in order to secure uniformity and to show that the Constituent Assembly does not want that there should be any difference between the status of the Public Service Commission and the status of a High Court, it is desirable to accept my amendment which is preferable to Mr. Jaspat Roy Kapoor's. I hope, therefore, that the House will find no difficulty in accepting my amendment.

Sir, I should now like to say a word or two about two of the provisions laid before us by Dr. Ambedkar. The article as proposed by him requires that no member of a Public Service Commission should hold office in that Commission to which he belongs for more than six years. He has proposed that a member of a Public Service Commission on completing his tenure of office should be ineligible for further employment in that capacity. This position has been

[Pandit Hirday Nath Kunzru]

criticised. I am, however, entirely in favour of it. A Public Service Commission must be an independent body. Its members should not be able to look up to the executive for any favour. If the provision proposed by Dr. Ambedkar is retained then there will be no fear that a member of a Public Service Commission will be subservient to the wishes of the executive because he cannot secure an extension of his term of office; he can therefore be expected to discharge his duties independently and fearlessly. But if the term of office of a member of a Commission is allowed to be extended, or if, he is allowed to be re-appointed as a member then there is every fear that members of the Public Service Commissions in order to secure their re-appointment will try to curry favour with the executive. I am not, therefore, in favour of any change in the provisions suggested by Dr. Ambedkar.

The next point that I should like to refer to is the eligibility of the Chairman and members of Public Service Commissions for further employment under the State. The provisions of article 285 (c) have been criticised as being too wide or in some respects too narrow. My honourable Friend, Mr. Jaspat Roy Kapoor has proposed that a member or Chairman of a Public Service Commission should not be debarred from serving the State in an honorary capacity I confess that I had not thought of the subject before, but as I thought about it when he was speaking, it seemed to me that he was putting forward a reasonable suggestion. In one or two cases in the United Provinces it was wished that the Chairman of the Public Service Commission on his retirement might be usefully employed in an honorary capacity. The man was competent and it was thought that the community should not be wholy deprived of his services. I, therefore, agree with the view expressed by Mr. Kapoor on this point.

I part company with him, however, when he goes on to suggest other changes in article 285 (c). I think this article is a great improvement on the corresponding article contained in the Draft Constitution. It allows a member of a Commission to accept the Chairmanship of another Commission, whether it is a State Commission or the Union Commission. The fear was expressed that if this was done, the members of the Public Service Commissions might try to win the favour of the Executive and secure their appointment as Chairman of one Public Service Commission after another. What has to be borne in mind in this connection is this. The Chairmanship of a Public Service Commission is a position requiring great experience and ability and if it is felt that a man had discharged his duties either as a member of a Commission or as Chairman of a Commission so well as to justify his appointment as the Chairman of another Commission, I do not see why this should be objected to. It is to the advantage of the country that it should be able to use proved capacity in its service without thereby curtailing the independence of a member of a Commission. The proposal that a member of a Commission might for two terms be a member of the same Commission stands on a different footing, because this provision will certainly interfere with the independence of the member. But if the Chairman of a Public Service Commission in a province is appointed Chairman of the Public Service Commission of another province, there can hardly be any fear that his re-appointment will be due to the recommendation of the Premier or the Governor of the State to which the first Commission belonged. I do not think therefore that the provision that has been criticised requires any change.

I think that the articles as they are deserve to be accepted by the House except in respect of the change suggested by Mr. Kapoor. I hope that Dr. Ambedkar will see his way to accept the suggestion made by Mr. Kapoor that retired members of a Public Service Commission should not be debarred from serving the country in an honourable capacity.

Shri Jaspat Roy Kapoor: May I know what the honourable Member, Pandit Kunzru thinks with regard to my suggestion that the period of employment should be limited to twelve years?

Pandit Hirday Nath Kunzru: I have already dealt with that. A member of a Public Service Commission can remain in employment for eighteen years only if he has the good luck of being appointed as the Chairman of two Commissions successively. Had appointment to the Chairmanship of the Commissions been under the Central Government, then, my honourable Friend Mr. Kapoor's objection would have been valid. In the case of the Chairmanship of the State Commissions, however, the appointing authority will not be the same. There will be a different appointing authority for each Commission. Consequently, there need be no fear that a Chairman of a Public Service Commission in order to be appointed as Chairman of another Commission after completion of his tenure of office will be liable to be subject to any improper influence on the part of the executive or will not discharge his duties with perfect independence.

Mr. Naziruddin Ahmad: Mr. President, Sir, I have a lot of amendments; but I wish to move only one. I should rather desire that I should move it now and then take part in the general discussion at the end. That would be very convenient. In fact, there are a variety of sections and a variety of amendments most of which may not be moved. It would be convenient if you give me this permission.

Mr. President: Which amendment do you want to move?

Mr. Naziruddin Ahmad: I would move only amendment No. 69. It is very nearly a drafting amendment; but it seems to me to be important. I beg to move:

"That in amendment No. 3 of List I (Fifth Week), of Amendments to Amendments, in clause (1) of the proposed new article 285-A, for the words 'shall only be removed from office by order of the President on the ground of misbehaviour' the words 'may be removed from office by order of the President only on the ground of misbehaviour' be substituted."

May I have your permission to defer the general comments when all the amendments are moved?

Mr. President: Very well.

Shri H. V. Kamath (C.P. & Berar : General): Mr. President, the House is dealing with an important chapter of our Constitution today. Ever since we became free two years ago, unfortunately to the accompaniment of partition, we have found that the Public Services, many of them, at any rate, have been depleted considerably, and this question of the purity of the services and their administrative efficiency has come to the fore more pointedly than ever. Therefore, I feel that the more attention we bestow upon the consideration of this chapter the better it would be for the future of our country.

I have given notice of four amendments which now, by your leave, I shall move before the House. I crave your pardon as well as the pardon of the House for having sent them in only this morning, as a result of which my colleagues have not been supplied with copies of my amendments. I am entirely to blame for that; I would appeal to my honourable Friends to follow the amendments as I read them before the House.

The first amendment is to the effect.

"That in amendment No. 3 of List I (Fifth Week), in the proviso to clause (1) of the proposed article 285, for the words 'at least one-half' the words 'not more than one-half' be substituted."

[Shri H. V. Kamath]

The second amendment is :

"That in amendment No. 3 of List I (Fifth Week), in clause (1) of the proposed article 285-A, for the words 'misbehaviour or of infirmity of mind or body', the words 'misdemeanour or incapacity' be substituted."

The third amendment has two alternatives. If the first be unacceptable to the House, I would urge that the second alternative be accepted. The first one is to the effect :

"That in amendment No. 3 of List I (Fifth Week), sub-clause (b) of clause (3) of the proposed article 285-A be deleted."

Or if this be not acceptable to the House, alternatively :—

"That in the same clause 3(b) of the proposed Article 285-A for the words 'engages during his term of office in anybody's employment' the words 'take up during his term of office any other employment' be substituted."

My fourth amendment is :

"In article 285-B for the words 'the President the Governor or Ruler of the State' the words 'Parliament and State Legislature' be substituted, respectively."

If this were accepted 285 (B) would read as follows :—

"In the case of the Union Commission or a Joint Commission, Parliament and in the case of a State the Legislature may by regulation etc."

These are the four amendments to the article moved by Dr. Ambedkar before the House.

It is agreed on all hands that the permanent services play an important role in the administration of any country. With the independence of our country the responsibilities of the services have become more onerous. They may make or mar the efficiency of the machinery of administration—call it steel frame or what you will,—a machinery which is so vital for the peace and progress of the country. A country without an efficient Civil Service cannot make progress in spite of the earnestness of those people at the helm of affairs in the country. Wherever democratic institutions exist experience has shown that it is essential to protect the Public Service as far as possible from political or personal influence and to give it that position of stability and security which is vital to its successful working as an impartial and efficient instrument by which Government—of whatever political complexion - may give effect to their policies. It is imperative that whichever Government comes into power, the permanent services must carry out the policy laid down by the Government for the time being in office. In countries where this principle has been neglected, and where instead the spoils system has taken its place, inefficient and disorganised Civil Service has been the inevitable result and corruption has become rampant with all its attendant consequences. It is therefore of the utmost importance that the Public Service Commissions that we contemplate under these articles should be completely independent of the Government of the day whether at the Centre or in the States. Otherwise I am afraid the Civil Services will apprehend that amenability to Ministerial pressure and a correct attitude towards questions in which a little coterie or the group for the time being in power, is interested, will secure them promotions rather than merit or efficiency. I have often known that a Secretary to a Minister if he volunteers an opinion which is not palatable to the Minister in Office, the Minister puts him on the blacklist and he is not considered favourably for future promotions. Of course once a policy is laid down the public servants have to carry them out. But I know of instance where Ministers have looked upon with disfavour Secretaries or other servants, whose opinion was invited

criticising their policies : this is a very undesirable state of affairs and I am sure that sort of thing should not be encouraged. Therefore I hold that where there is any apprehension on the part of Civil Servants that, if they are amenable to Ministerial pressure, they are likely to be promoted, and that merit and efficiency count less, if that mentality seizes public servants, there is likely to be demoralisation throughout the ranks of the services.

It is, with that in view that I have proposed the first amendment. The draft is to the effect that at least one-half of the members of every Commission shall be persons who have been in the service either in the Government of India or the Government of a State. Mr. Kapoor moved an amendment seeking to reduce this to one-third. Mine seeks to make this minimum the maximum. It always happens that the minimum goes on increasing till it swallows or comprises the whole and if this article is passed there is no bar to all the members of the Commission being appointed from those persons who have held offices under the Government of India or of a State. Therefore I want that this minimum should be the maximum and in no case should this maximum be exceeded. That will at least be a safeguard against weightage of these Service Commissions by persons who have been in Government service and who have come—I will not say from the umbra but the penumbra of this Governmental influence, who have moved in a particular rut and who are likely to be always influenced by particular attitude of mind towards the Government in power. Therefore to preserve the impartiality and independence of the Public Service Commissions I have moved this amendment, the effect of which would be that the minimum of one-half would be the maximum and in no case would that one-half be exceeded, so far as the number of those who have held office under Government, is concerned.

As regards the point made out by my Friend Mr. Kapoor, that the age of 65 should be reduced to 60, for both the Union and State Commissions, I am of a different view. I feel that the figure must be 65 for both, that the age-limit of 65 should be laid down both for the Union Commission and for the State Commissions. We know that the age-limit of 55 for superannuation which was fixed by the British, has now been increased by the recommendation of the Pay Commission to 58; and the general trend in India—and perhaps in the rest of the world also—is towards an increase in the expectation of life and in the prolongation of youth. That is to say, in the twentieth century, the trend is towards the prolongation of youth though I would not venture an opinion whether we are going "back to METHUSELAH" of Bernard Shaw. But all the world over, longevity is tending to increase because of a modern methods of medicine and dietetics.

Dr. P. S. Deshmukh : Dietary but not diet.

Shri H. V. Kamath : Yes, Sir, who would say that our leaders today, you, Sir, including, who are over sixty, who dare say that any one of them who are leading us to day cannot grace the highest office in the land with credit and glory to the country? If that be so, then I think there is no reason why the Chairmanship or membership of the Public Service Commissions should be confined to the age-limit of 60, that the Chairman or the members should be asked to retire at the fairly early age of 60. I for one would like this age limit to be uniform for both the Commissions and be raised to 65.

Then my second amendment is more or less verbal in that it seeks to substitute the words "Misdemeanour and incapacity" for "misbehaviour and infirmity of mind or body". Taking the second first, "incapacity". I would invite the attention of the House to the article which we have already passed

[Shri H. V. Kamath]

regarding the removal of the Vice-President of India. The word used there is "Incapacity" and that word refers to both mind and body. The word "infirmly" I feel is rather a medical or scientific term and not, if I may say so, a constitutional term. Incapacity would be the more appropriate word.

As regards the word "misbehaviour" that word has a sort of conversational or colloquial ring about it. But the House is familiar, in law and constitutional law with the expression "grave misdemeanour" of officers or of high dignatories and so on. I therefore, feel that the word "misdemeanour" would express the sense intended here in this article, far better than the word "misbehaviour". I would however leave it to the far wiser men who are busy drafting the Constitution, and I would only request them to consider this matter with the consideration which I believe it deserves.

My third amendment deals with sub-clause (3)(b) of article 285-A. Firstly, it deals with the deletion of the sub-clause, because in my humble judgment, this will be comprised in the term "misdemeanour". A person who, while holding the office of Chairman or member of a Public Service Commission takes up any other employment can certainly be charged with misdemeanour. If this view be not acceptable to the experts of the Drafting Committee, I would only plead with them, and I am sure they will realise that these words, "any body" are so very vague, clumsy and ugly. I do not know how Dr. Ambedkar in spite of his profound knowledge of the English language tripped and stumbled and fell in this manner. I have never come across this sort of ugly and clumsy words as "anybody's employment" in any constitutional treatise. I feel the idea would be much better expressed by "any other employment." Further, depending on my meagre knowledge of the English language, I may say that "engaging in an employment" is not quite correct. You may take up an employment—I am however, not quite happy about my own amendment in this regard—but you generally engage in the work or service; but to say "engaging in an employment" is not King's English, or constitutional English. I hope this will also receive the attention of the wise men of the Drafting Committee and that they will clothe their idea in better language when it comes in its final form before the House.

Then my last amendment, No. 4, is an amendment of substance. Its effect would be that instead of the President or the Governor or Ruler of a State having the power, this power to make regulations as to conditions of service of the members and staff of the Commissions will be vested in the Central Parliament and the State Legislatures. I would request the House to turn for a moment to the original draft of the article 285 as it stood in the Draft Constitution. I invite the House to look for a moment at clause (2) of this original article 285. That provides that matters affecting not merely the number of Members of the Commission but their tenure of office, their conditions of service and the number of members of the staff of the Commission shall be vested in the President or the Governor. The House will see the difference between the draft as it has come before us today and the draft as it originally stood. The tenure of office has been taken out of the purview of the President and the Governors. In article 285 we have provided for the tenure of office of members on the three Commissions—Union, State or Joint. Clause (2) of article 285 deals with that matter. That means to say that the Drafting Committee has felt the need for bringing this matter, namely the tenure of office, before the Constituent Assembly. I desire that matters relating to the number of Members of the Commission, their conditions of service and the number of members of the Commission and their conditions of service—regulations in

regard to these matters—must be left to either Parliament or the State Legislatures. I do not for one moment dispute or question the proposition, that so far as appointment is concerned, it should be made by the Governor or the President in consultation, if necessary, with the Chairmen of the various Public Service Commissions. But so far as these matters are concerned, *viz.*, how many members there should be on the Commission, the conditions of service of these Members and of their staff—of course Parliament cannot certainly appoint these persons—must be left to Parliament or the Legislatures to deliberate upon and to decide. After Parliament has framed the rules in this regard, the Governor, Governors or the President would be asked to make appointments accordingly. I feel that unless the Members of these Commissions are absolutely sure that their conditions of service will be secured throughout their tenure and entirely independent of the executive, they will not put their heart into the work and they will not bring to bear that deep interest in those problems that confront them from day to day, which is so necessary for the efficient discharge of their public functions.

I am glad to find that article 285-C is an improvement on the original draft. The original draft was comprised in clause (3) of article 285. That provided for certain exemptions by the President and the State Governors in so far as the bar to the appointment of Members of the Commissions on ceasing to hold office was concerned. It is very salutary, nay, essential that Members of these Commissions must not be eligible to any office in the Government of India or the Government of a State. The old Government of India Act did provide that the Governor-General could make exemptions where he deemed it necessary or fit. But I think it was a very wise move not to exercise this power through the Governor-General in cases where it was absolutely uncalled for. About a month ago, some of us were agitated on learning of an appointment of a Member of the Bombay Public Services Commission to an ambassadorial post. I do not wish to mention the name. He was appointed to this post even before he had resigned his office. After he was appointed, he resigned his office naturally. But this sort of irregularity, to say the least, which might smack of nepotism and personal favouritism, must not be countenanced if you wish to make the services strong and efficient. If a Member of the Public Services Commission is under the impression that by serving and kowtowing to those in power he could get an office of profit under the Government of India or in the Government of a State, then I am sure he would not be able to discharge his functions impartially or with integrity. This appointment which was made recently was a bad one in principle, and I am sure though the Governor-General must have given his approval, is no reason why that particular person was deemed so necessary that the very salutary rule with regard to the bar to the appointment of Public Services Commission members was set at naught. I am glad, however, that the present draft of the article makes no such exemptions and the Members or the Chairman of the Public Services Commission will not be eligible to any appointment under the Government of India or the Government of any State after they cease to hold office.

Lastly, I would like to observe that most of the democratic countries in the world have set up Public Services Commissions to free the matter of appointments from nepotism or favouritism and the exercise of political patronage, and in order to protect Ministers against the charge—it may be unfounded or ill-founded—of using their positions to promote family or group interests. The public here have sometimes been made to feel that family or group interests have been promoted at the expense of the national; and to protect the Ministers against such a charge, it is necessary that the Public Service Commissions must be kept completely independent of the executive, and further that the

[Shri H. V. Kamath]

recommendations made by these Commissions in the matter of appointments must normally be given effect to, and in every case when Government or a Minister, makes an appointment contrary to the recommendations of the Public Services Commission, he must give adequate reasons in writing as to why he disregarded the recommendations of the Commission.

Instances have happened during the last two years, and Ministers were asked questions in the Legislature as to why certain persons were appointed contrary to the recommendations of the Federal Public Services Commission. The answers were to my mind unsatisfactory and created grave doubts in the minds of many honest people as to why Ministers should go out of their way to make appointments without any regard to the recommendations made by the F.P.S.C. I hope under the new set-up that is coming in our country this sort of thing will not prevail, that we will have a better and purer dispensation and that the Public Service Commissions both in the Union Centre and in the States will function in such a manner that firstly, the members of these Commissions will discharge their duties absolutely independently of the governments of the day, with impartiality, integrity and with wisdom and, secondly, the Services will be manned by such persons as will not be amenable to ministerial pressure or ministerial patronage at the cost of efficiency and the administrative purity of the State.

(Shri Kuladhar Chaliha did not move his amendment.)

Dr. P. S. Deshmukh : Sir, I move :

"That in amendment No. 3 of List I (Fifth Week), of amendments to amendments, in sub-clause (b) of clause (3) of the proposed new article 285-A, the word 'body's' be deleted."

The amendment is somewhat on the lines of the amendment that has been moved by my Friend Mr. Kamath. He has correctly characterised the wording as very unhappy, and if there is to be an improvement which can be acceptable to Dr. Ambedkar I think the dropping of the word "body's" would be a great improvement. But if Dr. Ambedkar agrees I would not mind accepting my Friend Mr. Kamath's amendment.

So far as the whole article is concerned I would very strongly like to support the amendment moved by Mr. Jaspat Roy Kapoor, especially the first one which refers to curtailing the number of government servants on the Commissions to one-third instead of one-half. I wish it were possible for you to give me permission to move for the deletion of the whole provision. It is a pity that nobody has taken into account what this proviso means. I do not expect that you, Sir, would condescend to be the Chairman of any of these commissions even of the Union Commission. But if by any chance you were, even persons like you, Sir, who have taken any part in the liberation of the country will not be eligible to be appointed on the Commission so far as half the portion of it is concerned.

Appointments are going to be confined only to government servants who have ten years' standing. This means that the choice would have to be confined to only old servants and all those who have been appointed by the present Independent Government of India will have to wait till 1957 before any of them will be eligible for appointment in this preserved half. It puts a definite premium on those who, contrary to the interests of the country, served the British Government and enslaved the country in the interest of the British if we are going to preserve half of the commission for them in those terms. It is an obnoxious provision and I do not think any Congressman would like it to remain so as to exclude all patriots from half of that body.

Even those who had refused government services on patriotic grounds alone will be debarred from entering the Commission to the extent of this half. The least possible thing that should be done is to accept Mr. Kapoor's amendment although I think the House will agree with me that the whole proviso should go.

It is a pity that the present rulers of India are in such great love with the permanent services. The ambassadorial posts ought really to go to non-official workers and leaders who have sacrificed themselves in the interests of the country. None of them are considered fit. We might have different ideas and ideals of administration. But it is totally wrong that such posts should go more and more to persons who have not had the country's interests at heart when the time came and I consider that there is every reason to urge that this policy ought to be altered as also the ideals with which our present rulers are actuated. The House ought to be more careful in passing articles without sufficient consideration. This provision is a shadow of our slavish past which ought to be wiped out from this article.

Shri B. Das (Orissa : General) : Sir, the Draft Constitution has provided three instruments by which the integrity of our administration would be maintained. The first is the Supreme Court and the Chief Justice of India, the second is the Auditor-General, who will maintain the purity of our finances, expenditure and the collection of taxes; and the third is the Federal Public Service Commission which will maintain the purity and integrity of our services. It has already been observed by other Members that in the past as a reward for their loyalty people had become members of the Public Service Commissions. It has not on merit but on loyalty to those who ruled the country in the past. The provisions of article 285 and the duties specified in article 286 remove favouritism from the Home Ministry and even the Home Minister.

There is one thing which I do not like. A government servant with ten years' standing can be a member of the F.P.S.C. It means that if he joined the service in his 25th year he will remain for 30 years. He might get rusty and the onus of proving his uselessness will be left to the members of Parliament to move a resolution in the House for dismissal of that member of the F.P.S.C. So far as I can see the Draft Constitution is enamoured of the age of thirty-five. Whether it is the Governor or the Governor-General or the High Court Judges or the Judges of the Supreme Court or the Members of the Federal Public Service Commission the age should be thirty-five.

If I have my inclination I would support the idea of my honourable Friend Mr. Jaspat Roy Kapoor that only one-third of the members of the Federal Public Service Commission should be officials. The rule is there that fifty per cent of the members should be officials, but today as far as I can gather most of the members of the Federal Public Service Commission are officials. My Friend Dr. Deshmukh said that they will continue for another six years. I do hope that steps will be taken simultaneously with the promulgation of this Constitution that *only* 33 per cent or 50 per cent of the members of the Federal Public Service Commission will be allowed to be filled by the appointment of officials and the rest left for others who are not officials. At the same time a High Court Judge or a very high official or even the President or the Governor-General should examine how these people have come to the Federal Public Service Commission, whether they have come by favouritism or whether they do satisfy under the rules and conditions of recruitment of high officials under the Draft Constitution to continue as members of the Federal Public Service Commission for the next five or six years.

The evil tradition is there. It is a very bad tradition—a tradition of nepotism. The Home Department in the past have thrown away the recommendations of the Federal Public Service Commission. As far as I am aware,

[Shri B. Das]

the Home Ministry has made new Rules of recruitment by which the recommendations of the Federal Public Service Commission will have to be accepted. It is for the Governor-General and the President to see that the recommendations of the Federal Public Service Commission as such are accepted. We know today the Government of India contains people who are the wife's brother or sister-in-law's cousin or something like that of all people. All such nepotism should go. And to maintain the integrity of the administration and the security of the Government of India only those shall be recruited that will be recommended by the Federal Public Service Commission—not as it exists today but as it will be reorganised after 26th January 1950.

I do hope that in spite of article 285 or 286 it will be possible for us to examine the question of the continuity of some of the old fossils—retired gentlemen—who have entered the Federal Public Service Commission not by merit but through loyalty in other spheres of life, on communal basis of life, etc. It should be done away with. Without that the Constitution will prove a failure.

Mr. Naziruddin Ahmad: I want to speak. You said that you will permit me.

Mr. President: I want to close the discussion and the voting on this today. There is hardly any time now as there are only five minutes to one. There are some other articles dealing with the Public Service Commission and you will have an opportunity in the next article.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, there are just a few points on which I would like to say a word or two in reply to the criticism made on the articles which I have submitted to the House.

The first criticism is with regard to the composition of the Public Service Commission. The reservation made there that at least one-half of the members of the Public Service Commission should have been servants of the Crown has been objected to on the ground that this is really a paradise prepared for the I.C.S. people. I am sorry to say that those who have made this criticism do not seem to have understood the purpose, the significance and the functions of the Public Service Commission. The function of the Public Service Commission is to choose people who are fit for Public Service. The judgment required to come to a conclusion on the question of fitness presupposes a certain amount of experience on the part of the person who is asked to judge. Obviously nobody can be a better judge in this matter than a person who has already been in the service of the Crown. The reason therefore why a certain proportion is reserved to persons in service is not because there is any desire to oblige persons who are already in the service of the Crown but the desire is to secure persons with the necessary experience who would be able to perform their duties in the best manner possible. However, I am prepared to accept an amendment if my Friend Mr. Kapoor is prepared for it. I am prepared to say "Provided that as nearly as may be one-half" instead of saying "Provided that at least one-half."

Shri H. V. Kamath: Why not say "not more than one-half"?

The Honourable Dr. B. R. Ambedkar: No, I have done my best.

With regard to the second question, that persons who have been in the Public Service Commission should be permitted to accept an honourary office under the State, personally I am not now inclined to accept that suggestion. Our whole object is to make the members of the Public Service Commission independent of the executive. One way of making them independent of the

executive is to deprive them of any office with which the executive might tempt them to depart from their duty. It is quite true that an office which is not an office of profit but an honorary office does not involve pay. But as everybody knows pay is not the only thing which a person obtains by reason of his post. There is such a thing as "pay, pickings and pilferings". But even if it is not so, there is a certain amount of influence which an office gives to a person. And I think it is desirable to exclude even the possibility of such a person being placed in a post where, although he may not get a salary, he may obtain certain degree of influence.

Now I come to the amendment of my Friend Mr. Kunzru. I quite agree with him that there is obviously a distinction made between the services to be employed under the Public Service Commission and the services to be employed under the High Court, the Supreme Court and the Auditor-General. I would like to explain why we have made this distinction. With regard to the staff of the High Court and the Supreme Court, at any rate those who are occupying the highest places are required to exercise a certain amount of judicial discretion. Consequently we felt that not only their salaries and pensions should be determined by the Chief Justice with the approval of the President but the conditions of their service also should be left to be determined by the Chief Justice. In the case of the Public Service Commission much of the staff—in fact the whole of the staff—will be merely concerned with what we call "ministerial duties" where there is no authority and no discretion is left. That is the reason why we have made this distinction. But I quite see that my argument is probably not as sound as it might appear. All the same I would suggest to my honourable Friend Pandit Kunzru to allow this article to go through on the promise that at a later stage if I find that there is a necessity to make a change I will come before the House with the necessary amendment.

Sir, my attention is drawn to the fact in the cyclostyled copy of my amendment to article 285-A in sub-clause (3) (b) the words ought to be 'in any paid employment'. They have been typed wrongly as 'in any body's employment.' I hope the correction will be made.

As I said to Pandit Kunzru, the Drafting Committee will look into the matter and if it feels that there are grounds to make any alteration they will, with the permission of the House come forward with an amendment so that the position may be rectified.

Mr. President: I will now put the amendments to vote first.

The question is :

"That in amendment No. 3 above, in the proviso to clause (1) of the proposed article 285, for the word 'one-half' the word 'one-third' be substituted."

Shri Jaspat Roy Kapoor: In the place of this I accept the suggestion made by Dr. Ambedkar to have 'as nearly as may be one-half'.

Mr. President: Then I shall put that to vote. The question is :

"That in amendment No. 3 above, in the proviso to clause (1) of the proposed article 285, for the words 'at least one-half' the words 'as nearly as may be one-half' be substituted."

The amendment was adopted.

Shri Jaspat Roy Kapoor: I beg leave of the House to withdraw amendment No. 5.

The amendment was, by leave of the Assembly, withdrawn.

Shri Jaspat Roy Kapoor: I beg leave of the House to withdraw amendment No. 6.

The amendment was, by leave of the Assembly withdrawn

Shri Jaspat Roy Kapoor: I also took permission to withdraw my amendments Nos. 10 and 11 and also the one given notice of this morning.

Mr. President: They refer to article 285-B to which we have not yet come. Amendment No. 1 of Mr. Kamath falls to the ground since an amendment to add 'as nearly as may be one-half' has been accepted.

Shri H. V. Kamath: If you hold it falls through, I have nothing to say.

Mr. President: There is no other amendment to article 285.

The question is :

"That proposed article 285, as amended, stand part of the Constitution."

The motion was adopted.

Article 285, as amended, was added to the Constitution.

Mr. President: Now we come to article 285-A. The first amendment is, that Mr. Naziruddin Ahmad, No. 69.

The question is :

That in amendment No. 3 of List I (Fifth Week), of Amendments to Amendments, in clause (1) of the proposed new article 285-A, for the words "shall only be removed from office by order of the President on the ground of misbehaviour" the words "may be removed from office by order of the President only on ground of misbehaviour" be substituted.

The amendment was negatived.

Mr. President: Amendment No. 2 of Mr. Kamath. The question is :

"That in amendment No. 3 of List I (Fifth Week), in clause (1) of the proposed article 285-A, for the words 'misbehaviour or of infirmity of mind or body', the words 'misdemeanour or incapacity' be substituted."

The amendment was negatived.

Mr. President: Amendment No. 3 of Mr. Kamath. The question is :

"That in amendment No. 3 of List I (Fifth Week), sub-clause (b) of clause (3) of the proposed article 285-A be deleted."

The amendment was negatived.

Mr. President: The next amendment of Mr. Kamath. The question is :

"That in amendment No. 3 of List I (Fifth Week), in sub-clause (b) of the proposed article 285-A, for the words 'engages during his term of office in anybody's employment' the words 'takes up during his term of office any other employment', be substituted."

The amendment was negatived.

Mr. President: The next one is the amendment of Dr. Deshmukh. It does not arise now, because those words are not there.

Now I will put article 285-A to vote. Members will remember that in sub-clause 3(b) there is a misprint 'in any body's employment' for 'a paid employment'. The question is :

"That proposed article 285-A stand part of the Constitution."

The motion was adopted.

Article 285-A was added to the Constitution.

Mr. President: Now we come to article 285-B. I will put amendment No. 9 to vote.

Pandit Hirday Nath Kunzru: Sir, in view of the assurance given by Dr. Ambedkar I do not want my amendment to be put to the vote.

The amendment was, by leave of the Assembly, withdrawn.

Shri Jaspat Roy Kapoor: Sir, I beg leave of the House to withdraw my amendment No. 10.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I will put amendment No. 4 of Mr. Kamath.

The question is :

"That in amendment No. 3 in the proposed new article 285-B, for the words 'the President and in the case of a State Commission, the Governor or Ruler of the State' the words 'Parliament and the State Legislature' be substituted respectively."

The amendment was negatived.

Mr. President: The question is :

"That proposed article 285-B stand part of the Constitution."

The motion was adopted.

Article 285-B was added to the Constitution.

Mr. President: Then we come to 285-C. Amendment No. 11.

Shri Jaspat Roy Kapoor: I beg leave of the House to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: There is another amendment by Mr. Jaspat Roy Kapoor.

Shri Jaspat Roy Kapoor: I beg leave of the House to withdraw that amendment also.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is :

"That proposed article 285-C stand part of the Constitution."

The motion was adopted.

Article 285-C was added to the Constitution.

Mr. President: The House will now adjourn till nine o'clock tomorrow morning.

The Assembly then adjourned till nine of the Clock on Tuesday, the 23rd August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 23rd August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Articles 286 to 288-A—(Contd.)

Mr. President: We shall now proceed with the consideration of article 286 and the subsequent articles.

The Honourable Dr. B. R. Ambedkar: Sir, I move:
with your permission, move amendments Nos. 12, 16, 17 and 19 together? They all relate to the same subject. There may be a common debate and then you might put each amendment separately.

Mr. President: Yes, I agree.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 286, the following article be substituted:—

Function of Public Service Commission

286.(1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointment, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India or, as the case may be, of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President or, as the case may be, the Governor or Ruler of the State may refer to them:

Provided that the President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Ruler, as the case may be, as respects other services and posts in connection with the affairs

[The Honourable Dr. B. R. Ambedkar]

of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted

(4) Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any backward class citizens in the Union or a State.

(5) All regulations made under the proviso to clause (3) of this article by the President of the Governor or Ruler of a State shall be laid for not less than fourteen days before each House of Parliament or the Houses or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."

"That for article 287, the following be substituted :—

'Power to extend functions of Public Service Commission

287. An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also of any local authority or other body corporate constituted by law or public institution."

"That for article 288, the following be substituted :—

Expenses of Public Service Commission

288. The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the State."

"That for amendment No. 3075 of the List of Amendments the following be substituted :—

'That after article 288, the following new article be added :—

Reports of the Public Service Commission

288-A. (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reason for such non acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present anually to the Governor or Ruler of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor or Ruler or each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor or Ruler, as the case may be, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State."

The article are self-explanatory and I do not think that at this stage it is necessary for me to make any comments to bring out any of the points, because the points are all very plain. I would therefore reserve my remarks towards the end when after the debate probably it may be necessary for me to offer some explanation of some of the points raised.

Sir, I move.

Shri Jaspat Roy Kapoor (United Provinces : General) : Mr. President, I beg to move :

> in amendment No. 12 above, clause (2) of the proposed article 286 be deleted ubsequent clauses be renumbered accordingly."
>
>) of article 286 reads thus :
>
> duty of the Union Public Service Commission, if requested by o to do, to assist those States in framing and operating schemes any services for which candidates possessing special qualifications

I desire its deletion because, whatever is provided herein is already covered by clause (3) of article 284 which we have already adopted yesterday. Clause (3) of article 284 reads thus :

"The Public Service Commission for the Union, if requested so to do by the Governor or Ruler of a State may, with the approval of the President, agree to serve all or any of the needs of the State."

Obviously, Sir, whatever is provided in clause (2) of article 286 is provided for in clause (3) of article 284. Clause (3) of article 284 is apparently of much wider import than clause (2) of article 286. Hence, obviously this clause (2) is unnecessary and redundant. The deletion of this clause (2) of article 286 will not in any way affect the unusual length of article 286, for, even after its deletion, it will continue to be pretty long enough and the Drafting Committee need not have any apprehension that the habit which it has got into of drafting long articles and providing in the Constitution every little detail will be materially affected. Of course, we know that the Drafting Committee has an inexhaustible store of words and phrases; but they need not pour out the whole of it in this Constitution by providing every little detail and making it a very cumbrous one. I think, therefore, that in order to remove an unnecessary and redundant thing, it is necessary that this clause (2) should be deleted. That is all I have to submit in this connection I do not wish to move amendment No. 18 with reference to article 288.

(Amendments 14, 15, 74 and 75 were not moved.)

Sardar Hukam Singh (East Punjab : Sikh) : Mr. President, I beg to move :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, the proviso to clause (3) of the proposed article 286 be deleted."

In my humble opinion, this proviso is not in consonance with the spirit of the other articles. We are prescribing a very vast field where the Public Service Commission has to be consulted, and we have included transfers, promotions, and other things as well. This is a very good ideal. If we are providing that the Public Service Commission should be consulted even in these matters, then, we should not leave this loophole, by which the majority party may find it easy to secure regulations from the President or the Governor that they need not consult the Public Service Commission. In my opinion, even though it is provided here that the Governor and the President shall have the power to frame regulations, they would be guided by the advice of their Ministers, and the Ministers would represent the majority party. These regulations will be changing from time to time and there is scope when, with the object of extending favouritism and nepotism, they might make such regulations as may suit their convenience. My objection is that because this is only a consultative body, it is not necessary that the advice of the Public Service Commission must be acted upon. There is a provision in article 288-A that the Public Service Commission shall present to the President annually a report and that the President shall cause a copy thereof together with a memo. explaining if in any cases the advice of the Commission was not accepted, the reasons for such non-acceptance, to be laid before Parliament. The reasons shall have to be given. Therefore that provided a good check and if this proviso is not there, we shall have very wholesome effect on the working of this article. In my opinion this proviso should be deleted.

Shri Lakshminarayan Sahu (Orissa : General) : Sir, I want to make a little change because the wording here is not properly done. I want to substitute the words 'having a scale with a maximum of 250 or more' for 'carrying a maximum of Rs. 250.

Mr. President : Yes.

Shri Lakshminarayan Sahu : *[Mr. President, my amendment reads thus :—

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, for clause (3) of the proposed article 285, the following be substituted

(3) The Union Public Service Commission as respects the All-India Services and also as respects other Services and posts in connection with the affairs of the Union, and the State Public Service Commission as respects the State Services and also as respects other services and posts in connection with the affairs of the State, shall be responsible for all appointments, carrying a maximum of Rs. 250 (Two Hundred and fifty rupees)."

The idea that has led me to move the amendment is that we are providing for the formation of a Public Service Commission solely with a view to ensure the smooth and efficient running of our Republican Government. If that is not the view, there is no need for creating a Public Service Commission. We ourselves can manage everything. But when a democratic form of Government is established many political parties dominate the field and they adopt undesirable methods for appointments in the services. We are going to form the Public Service Commission solely with a view that political parties may not be in a position to adopt such methods. A body must be created to decide about the appointments in Services, so that no one may be able to suggest that the Services are working under the influence of any political party.

In view of all this, we find that the creation of a Public Service Commission is essential; and when it is essential to create such a Commission, Our Constitution should contain some provision that the Commission should have complete control over the appointments to services. It is the opinion of some persons that when we are going to establish a Republic here, we must trust the Government. They contend that a democratic Government cannot function unless the people trust it. But I have heard that even in England and in the Dominions, where a democratic form of Government is obtaining, the Public Service Commission have a large measure of control over the appointment in services. I, therefore, think that this amendment should be accepted.]

Dr. P. S. Deshmukh (C. P. & Berar : General): Mr. President, I rise to move amendment No. 82 of List III Fifth week of Amendments to Amendments : "That in clause (3) of the proposed article 286, for the word 'shall' the word 'may' be substituted." Yesterday when we were about to embark on the discussion of these articles dealing with the Public Service Commission, I had urged on the floor of the House that the provisions with regard to the Commissions may not be made as stringent as they were proposed to be and this amendment of mine is in the same line. I want that in this proposed article 286 where a very large number of things are going to be made obligatory and compulsory there should be a choice left with the Legislatures and the Parliament as to whether the Public Service Commission should be consulted compulsorily or should be left to deal exclusively with these matters or not.

Now the various matters mentioned in clause (3) are very important and if all these are made compulsory, there would be very little latitude left for the Governments of the various States as well as the Parliament to vary the terms and conditions of recruitment to Public Services or to alter them in any way as it may be necessary according to the circumstances that may arise. The first clause says :

"The Union Public Service Commission or the State Public Service Commission, shall be consulted—(a) on all matters relating to methods of recruitment to civil services and for civil posts;"

*[ ] Translation of Hindustani Speech.

This would mean that if the Public Service Commission say that mere passing University or other Examination is the final criterion of merit, that will have to remain there irrespective of the fact that the State Legislaure or Parliament thinks otherwise. I have always contended that these University qualifications have been made a fetish by the British Government because they wanted to reduce the Indian Nation to a clerkdom. There is no other criterion still thought of by our present Government. This is most unfortunate. People's capacities cannot be measured by mere passing of examinations or obtaining the highest possible marks. But those communities who have had the advantage of English education, because they were prepared to be more servile than the rest, think it is a preserve of theirs, and whenever anybody gets up and speaks on behalf of the millions who have had no chances of education, they consider it as a threat to their monopoly on the part of the rest of the communities and accuse the advocates as communal and communally-minded. There is no communalism in this. Neither I nor anybody who speaks on their behalf want any particular community to dominate, where as those who oppose this move are interested only in particular communities. They want to preserve communalism while accusing us of communalism because they have had the advantage of education which they fear will be taken away. They think and urge that merit is or can be tested only by examinations. But so far as the masses of the country are concerned, the millions of our populations who have not had even the chance to get primary school education, they have no place so far as the public services are concerned, so long as the present system lasts.

Shri Mahavir Tyagi (United Provinces : General) : The illiterates have no place.

Dr. P. S. Deshmukh : We have got to take count of the fact that the stages of advancement of the various communities in India vary a great deal. Why have we proposed reservations in the case of the Scheduled Castes ? That is because we have been convinced that there have been insurmountable obstacles in their progress. Why have we proposed reservations for the tribal people ? That is also for the same reason. There are also, in the same manner as the tribal people and the Scheduled Castes, millions of people in our country whose handicaps and obstacles are in no way different from those of the tribal people and the Scheduled Castes; and I wish to leave room for such people to come in and inequalities resulting from the present systems rectified.

I say this because it is for the first time in the history of the country that the real representatives of the people are going to govern the country hereafter, and therefore their hands should not be fettered. It should be possible for the elected State legislatures and the elected Parliament—elected on the basis fixed by this very House, with its very limited franchise, for even here there are not many people who represent all that the masses of India think and feel—let these future State legislatures and Parliament have the power to make changes in the conditions for the recruitment of the services. It is no use copying the phraseology or immitating the ideology of the British. These will not suit as here in India. India has not become England, and it is no use copying England. There the whole people has progressed together, similarly and simultaneously; not so in India. Even today more than 85 per cent. of the people of India are without the facilities for education as they live in the villages, and we are asking these people to compete with people who have these facilities near by. This is quite impossible. It is like having a one-mile race between two persons one of whom had already gone ahead half-a-mile, and another who had yet to start. That is quite unequal, unfair and unjust; and if you persist in this injustice and in this unfairness, then I am sure it is not going to be beneficial to us.

[Dr. P. S. Deshmukh]

These are all important matters that are provided for in article 286. They relate, firstly, to methods of recruitment; secondly, to principles to be followed in making appointments as well as promotions and transfers; thirdly, to all disciplinary matters affecting a person and including memorials and petitions; fourthly, to any claim by or in respect of a person who is serving or has served under the Government or the Government of State or under the Crown in a civil capacity; and lastly, to claim to pensions etc. It is clear that the whole field of recruitment and allied issues are to be determined by the Public Services Commission so as to preclude even if Parliament or the State legislatures want to change any of the above conditions in any way. I do not say that it should be left altogether vague, but I only say that the Legislatures or the Parliament should be in a position to alter these various things whenever and wherever they want to do so.

It is apparent, Sir, that we want to clothe with every possible power the President of the Union. Here also in this proviso we find that the President is empowered to keep back any cases which he in his discretion thinks need not go to the Commission. I wish rather that we gave this power to the Parliament and to the State Legislatures and not to an individual.

Sir, there is also another amendment which with your permission I wish to move, which is of course, more or less in the same strain and in furtherance of the same objective as the one I have already moved; but it proposes a particular and a specific provision in article 286.

Mr. President: No. 86?

Dr. P. S. Deshmukh: Yes, Sir. I move:

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, the end of clause (4) of the proposed article 286 the full-stop be substituted by a comma and thereafter the following be added:—

'or for the purpose of bringing about a just and fair representation of all classes in Public Services of the Union or a State.'"

There is also an alternative amendment, *i.e.* No. 88 which I would like to move also:

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, after clause (4) of the proposed article 286, the following new clause (5) be inserted, and the existing clause (5) be renumbered as clause (6):—

'(5) Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments are made and posts reserved for purposes of giving representation to various classes according to their numbers in the Union or a State.'"

These two amendments, Nos. 86 and 88, are as I said alternatives, and if one is accepted, I would not press the other, although I personally would urge that No. 86 which is more specific would be preferable.

The purpose of this amendment is to secure a just and fair representation of all classes in the public services of the Union and the States, and not leave it to bare competition and according to the sweet choice of the Public Services Commissions themselves. Now, if we examine the systems of recruitment to the public services, we know that as a matter of fact certain provinces, because the public of those provinces were more alive to their rights, agitated that they were not having any share in the administration of their province and as a result of their agitation, the Governments of those provinces had to yield. This has happened particularly in that enlightened and advanced province of Madras where the various communities were grouped in various groups and each group was

given, according to the basis of its population, representation in the government services. This has worked very well, with the result that Madras has become one of the most advanced provinces in the whole of India. That is the reason why we find Delhi being crowded by Madrasis, because their standard of education has gone up due to the fact that all the communities have advanced equally with the others and not disproportionately as elsewhere. There you do not have the disproportionate advancement which you find in other provinces where the suppressed communities have always been content with their lot, where they have not agitated to get more places in the government and where the advanced communities have never been charitable to consider their claims or to give them any help. This has happened particularly in the province of Central Provinces & Berar where we find that even today in the whole department of education there is hardly a person belonging to any other community except one particular community. There are departments after departments where ninety per cent and more of the incumbents come from a specific community.

Sir, if this is not communalism, what is communalism? And these people who now fill every place in the department see to it that anybody else, who wants to come in, is effectively prevented from doing so. Is this not communalism? A community which is only 3 to 5 per cent. of the population, is it destined to govern the whole province so far as every department is concerned? Would it not be charitable to give at least a few places to the other people who have never been given what they have been asking for? Those Members of this House who are taken in by the sweet name of merit and efficiency, I can tell them that in efficiency neither Madras nor Bombay has suffered to that extent that it will be detrimental to the country. There might have been a slight falling-off of the standard, but that much we have always tolerated. When we were not able to compete with the British people we asked for places for Indians from the British. We wanted increased recruitment in the I.C.S. We struggled for it and we have passed resolutions to this effect even at the Sessions of the Indian National Congress. But when the same thing is done by other people we call it communalism. I submit there is ample room for doing justice to all. In Madras or Bombay where this principle has been practised, it has not led to any ruin of efficiency or to any very great danger or damage to the administration. If that is our experience, there is no reason why other provinces should not be wise also before the event and try and give sympathetic consideration to the other sections of the populations. The contention is on behalf of more than 85 per cent. of the population and so it cannot be called communal. If you do not want to name the communities, or castes, there are other devices by which you can do it. But I submit, this demand ought to be considered more sympathetically, and since we have adopted the basis of population for representation, the basis of population should also be followed so far as recruitment is concerned.

I have urged what I wished to without specifying any community, without trying to go against any particular community. All that I want is that Parliament and the Legislatures should be free to see that there is a fair proportion of representation for all classes and communities in India. I had not specified that any single community should be given preference or priority—I want that there should be a fair distribution so that the unity and freedom of India will be real and genuine. It appears to me that the development in India has been lop-sided, one-sided. About 80 per cent. of the people take no part so far as your cultural affairs are concerned, so far as the civilized things of life are concerned. There is a black-out so far as they are concerned; an iron curtain between them and the rest; unless every community, especially the larger and more popular communities advance equally and the advanced communities afford them opportunities for development, the advancement of India will be impossible. All that I demand is fairness and justice for the millions of people who are not in a position to come forward and compete with you, and in saying so I do not

[Dr. P. S. Deshmukh]

introduce any communalism, I do not introduce any discrimination. These things have been tried, they worked well and there is no reason why they should not work well on a larger scale.

When my Friend Shri Lakshminarayan Sahu got up yesterday, there were evil forebodings in the shape of failure of electric lights. I think even Providence wants to give a warning against the passing of this article. The same thing happened when Dr. Ambedkar got up to speak. I hope that a little more care is taken, a little more wisdom expended on the final draft of these articles, and I hope my amendment—either No. 86 or 88 will be accepted. It will do no harm to the structure of the Public Services Commission as envisaged by the Drafting Committee. After all they had to say in clause 4 :—

"(4) Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any backward class of citizens in the Union or a State."

All that I wish to add is because the "Backward classes" are likely to be defined in a very limited and restricted manner, it is not the claim of only the Scheduled Castes that they are backward, it is not the tribal people alone who should be considered backward; there are millions of others who are more backward than these and there is no rule nor any room so far as these classes are concerned. In those communities education is at a low ebb. In the whole of India there is 15 per cent. of literacy. If you analyse it you will find about half a dozen communities have got literacy to the extent of 90 per cent. and the others are illiterate to the extent of 98 per cent. There are communities whose populations may be millions but whose literacy standard may not go beyond 5 per cent.

There is no use trying to look at England or at America. I am surprised that my honourable Friend Shri Lakshminarayan Sahu, the great sponsor of the cause of the agriculturists, should come forward to propound a different view and not take these facts into consideration. (*An honourable Member* : *"Better fight for the education of the illiterates"*). The heavens are fighting for the education of illiterates. We know how precious little is being done so far as that is concerned. You cannot do that in a day. That method by itself would not do. You could have as well told that to the Scheduled Castes themselves that by and by they will be educated and by and by the advanced classes will come to their senses and untouchability will automatically disappear. So do not agitate do not demand anything. It will all come to you may be in a hundred years hence. "You need not ask for reservations." I am afraid that advice cannot satisfy any one. We should know that the same demand the same insistent demand is there and will be there whether you like it or not, and the more you want to prevent or suppress it the more insistent and irresistible it will become.

Sardar Hukam Singh : Sir, I am not moving my amendment No. 83.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I beg to move :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, after the proviso to clause (3) of the proposed article 286, the following new proviso be added :—

"Provided further that the Public Service Commission of the Union shall always be consulted where the service carries a maximum pay of Rs. 500/- per month and the State Public Service Commission shall always be consulted where the service carries a maximum pay of Rs. 250/-"

I also move the next amendment No. 85.

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, clause (4) of the proposed article 285 be deleted."

With regard to my first amendment for the addition of a new proviso to clause (3) of the proposed article 286, the first proviso to clause (3) provides that the President or the Governor or the Ruler as the case may be, may direct that on questions relating to certain classes of services "it shall not be necessary for the Public Service Commission to be consulted." It gives the President, the Governor and the Ruler the discretion to decide what questions relating to particular kinds of services or what services shall be placed before the Public Service Commission and in such cases it would be optional on the part of these authorities to place these questions before the Public Service Commission.

My amendment tries to provide a limitation. The grant of unrestricted power by the first proviso to choose at the discretion—not of the President or the Governor or the Ruler, but at the discretion—of the Ministry for the time being in power, would be dangerous. The very object of a Public Service Commission is to provide the country with a competent and reliable machinery through examination and otherwise to select fit candidates without fear or favour. The very utility of the Public Service Commission is its independence, its aloofness from politics and its elevated status. It would be for the House to consider how far the President, Governor or Ruler should be allowed to exempt questions relating to particular services from being placed before the Public Service Commission.

There should, I submit, be some limitation. Had it merely been a question of the personal responsibility of the President or the Governor or the Ruler, things might have been different. A President or a governor or a Ruler of a State will have no personal axe to grind and in that case things may have been left to his discretion. But the power which is attempted to be conferred upon these authorities by the existing proviso is to leave no discretion in them but to allow the Ministry functioning to use their sacred name to serve their own personal ends. We already know and it is freely given out that there is considerable amount of jobbery in giving appointments from the highest to the lowest quarters. Sometimes, the Public Service Commission is by-passed by giving anticipatory appointments—temporary appointments—and then there is an attempt to face the Service Commission with an accomplished fact saying that here was a candidate in an unhappy situation who had worked for some time and has obtained experience and so on and should on that account receive special consideration. There is a tendency— very natural tendency—on the part of Ministries both at the Centre and in the Provinces to by-pass even existing rules, and if we allow the Proviso to stand as it is, it will mean that a particular Ministry may think it necessary to exempt a particular class of Service from the jurisdiction of the Public Service Commission. That is, I submit, a sufficient justification for introducing some kind of Limitation. The qualification I seek to introduce through the new proviso is that where a service carries a maximum pay of Rs. 500 in the case of Union Services and a Service carries a maximum pay of Rs. 250 in the case of State Services, it shall be compulsory on the part of the Central or the State authorities to submit the mater to the Public Service Commission.

I want to raise the question of limit as a principle and the limit which I have attempted to put of Rs. 500 and 250 is merely as a basis for a discussion. I am concerned first with the principle ; as to the actual limitation which may be accepted by the House, I am not very much concerned. I have only suggested it as a starting point for the debate. I submit that the power to the President or the Governor or the Ruler to exempt some class of cases from the

[Mr. Naziruddin Ahmad]

jurisdiction of the Public Service Commission must be accepted on principle The post of a peon or a petty clerk or a small post does not obviously require to be placed before the Public Service Commission.

So I have admitted two important principles—that there must be some cases where these authorities should have some discretion and that there must be some cases which must be taken out of the jurisdiction of these authorities from withholding them from the purview of the Public Service Commission The principle which I want to establish by means of this new proviso would be that in certain classes of superior services, it would be compulsory on the part of these authorities to place these matters before the Public Service Commission. I invite a discussion as to the principle and then as to the actual pay or other limit to be laid down, that would be a matter for adjustment if the principle is accepted.

We hear of many scandals in the matter of appointments which show the need for extreme caution in this respect and for not allowing free scope to Ministries to restrict the scope of the Federal or State Public Service Commission. There has always been a tussle between the executive and the Public Service Commission. There has always been a desire to by-pass the Public Service Commission and the original proviso, if left untouched as it is, will increase the danger of the Public Service Commission being by-passed.

The next amendment which I have moved relates to clause (4) of article 286. This clause relates to appointments reserved for backward classes, in respect of which it says that the Public Service Commission need not be consulted. This again raises a very important question of principle. There is a doubt as to the exact import of clause (4). We are passing the Constitution in such a great hurry that it is impossible to give detailed and proper consideration, but I presume—as many honourable Members will do—that clause (4) seeks to take out of the jurisdiction of the Public Service Commission matters relating to appointments of the backward classes. I concede that backward classes require special treatment. No one would grudge that. The very fact that they are backward requires that their case should be treated with some amount of sympathy and statesmanship. In fact, the backward classes are backward educationally, morally, financially and in other respects.

Dr. P. S. Deshmukh: Morally they are better.

Mr. Naziruddin Ahmad: Yes. I stand corrected. Dr. Deshmukh's suggestion that they are morally better is certainly right. It was an unconscious error of mine which led to the statement. So I am thankful for the correction. Educationally and in other respects they are really backward. In this respect, they require some amount of special treatment. The special treatment which I would suggest would be that with regard to those classes some minimum standard of efficiency should be laid down for a job, because we cannot demoralize the efficiency of the public services. Supposing there is a backward class candidate who has a minimum qualification needed for the job in hand and there is another class of candidate who has superior qualifications, in that case the backward class candidate may be accepted because he has to be protected and has the necessary minimum qualification. In this way the backward classes will have some protection.

But there is no reason why they should be totally excluded from the purview, of the Public Services Commission. The Commission may be given the choice of selecting backward class candidates from those possessing minimum qualifications to the exclusion of candidates of other classes possessing superior qualifications. In this way we can serve the backward classes and the Commission can ensure proper efficiency of candidates. So I suggest that their cases should go to the Commission for their recommendation but directions

should be given as to the sufficiency of certain qualifications for the service in question. So I see no justification for excluding these classes from the jurisdiction of the Commission.

Then, Sir, my honourable Friend Dr. Deshmukh's amendment seeking to replace "shall" by "may" will have serious consequences on the operation of article 286(3). In the context the word "shall" is very much better. For instance, clause (a) relates to methods of recruitment. This raises a question of principle and it is better that the executive must consult the Commission in deciding the method of recruitment though the executive may not be bound to accept their views. In this respect I think "shall" is a much better word.

Then, clause (b) refers to the principle to be followed in making appointments. This also is a question of principle on which the Commission should be consulted. Clause (c) refers to disciplinary action. These cases, I submit, should be compulsorily placed before the Commission before taking any action. Sometimes clerks or officers incur the displeasure of higher officers and are sacked. These people will have their remedy in courts of law, for damages or reinstatement. But it is better that these cases should be compulsorily placed before the Commission, so that injustice may be redressed and it will also reduce the number of cases in court.

Sub-clause (d) relates to the case where an officer sues or defends a suit relating to an act done or purporting to have been done in his official capacity and incurs costs. In such cases also the opinion of the Public Service Commission should be taken compulsorily. Then cases about pensions and other claims should also be compulsorily placed before the Commission. I therefore submit that we should have the word "shall" instead of "may" as that will ensure justice in all cases.

The other amendment of Dr. Deshmukh requiring fair representation of the different classes is one which deserves acceptance. In fact although distinctions between classes and communities have been done away with, there may be some remnants here and there and the decision of the Commission with regard to fair representation of different classes would be welcome and it would be above criticism. So this amendment, I submit, should be accepted.

With regard to article 288-A, unlike other hasty interpolations in the Constitution, this is very good. This provides for a report by the Public Service Commission to the President or the Governor or the Ruler about cases where their recommendation is not accepted or is disregarded. Cases are not rare where their recommendations are disregarded or appointments are made without reference to them. Parliament is unaware as to how things are shaping, and questions, if asked, are naturally disallowed on the ground that they go too much into administrative details. Article 286-A provides an automatic check upon action taken by the Government and appointments made without consultation with the Public Service Commission or in disregard of their recommendations. The report would be placed before Parliament for necessary action. I think this is a healthy step. Members of Parliament, as well as the public at large should judge in what cases the recommendations of the Commission were disregarded justly and in what cases unjustly and wantonly. I therefore support this new clause. With regard to the other articles we have to accept them because the Members have not the time or the opportunity of moving as fast as the Drafting Committee is moving.

With these few words I suggest that my amendment be fairly considered and not brushed aside with a remark by the Chairman of the Drafting Committee that he does not feel it necessary to reply. In the opening remarks the Chairman sometimes says that the articles are self-explanatory and in the end he says that he does not consider that any reply is called for. In the

[Mr. Naziruddin Ahmad]

midst of these remarks we do not know where we are. I ask the House to consider the amendments on their merits and reject those that are improper or unjust after full consideration.

With your permission, Sir, I shall move amendment No. 91 also, *viz.*,

"That in amendment No. 16 of List I (Fifth Week) of Amendments to Amendment in the proposed article 287, for the words "or other body corporate" the words 'or other body corporate' not being a company within the meaning of the Indian Companies Act 1913, or banking companies within the meaning of the Banking Companies Act, 1949' be substituted."

Article 287 reads thus :

"An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or public institution."

I submit that this article authorises a reference to a Public Service Commission of all matters of service relating to local authorities. It is a very necessary provision. The local authorities often appoint persons who are under qualified, for party or personal reasons. Reference of such cases to the Public Service Commission for their opinion would be very proper.

But I have objection to the inclusion of "other body corporate". A body corporate is one like the Damodar Valley Corporation, or the Industrial Finance Corporation. They are semi-government authorities established by Government under the authorities of specific Acts. In such cases also, a reference to the Public Service Commission may be desirable. But there are other classes of body corporate such as public or private Limited Companies. They are private bodies though "bodies corporate", and their affairs concern the shareholders But, for the protection of the interests of the shareholders and the public at large some Government control is provided. With regard to the appointments that such concerns make for carrying on their affairs I think it would be improper to introduce the system of reference to the Public Service Commission. In business, efficiency is the sole test. It may be that a man who is not very literate may have high professional experience. I know of experts who work in coal mines and in steel and iron factories and other such undertakings who, by mere look can tell the quality of coal or the percentage of iron or steel in a sample of iron ore. They are experts in their line and paid highly though not possessing the usual academic qualifications. If their cases are placed before the Public Service Commission they will be absolutely nowhere. They are not graduates of any university and, according to all accepted standards, they will be nowhere. In fact, the appointment of managers and managing agents or experts to look after the affairs of a business concern does not require any qualifications except experience and efficiency. They are known to their employees but cannot be ascertained or judged by the Public Service Commission Reference of such cases to the Public Service Commission would create difficulties and deadlocks and lead to inefficiency and delay in the execution of the business of the company concerned. I should therefore think that 'companies' within the meaning of the Companies Act are corporate bodies, but I believe they are not intended to be governed by this article. I think their inclusion was not intended. But this will be the logical meaning of the words "or other body corporate" in the article. Public companies and banking companies would be certainly 'body corporate'. But obviously they are not fit subjects to be brought within the jurisdiction of Public Service Commission. Therefore this limitation on the Commission would be desirable. If we introduce words which are needlessly comprehensive, without limiting their application, the result will be that in private business houses and concerns of that type State interference will be

intolerable and would lead to inefficiency. I therefore submit that this exception should be clearly provided in the Constitution.

Shri R. K. Sidhva : (C. P. & Berar : General) : Mr. President, Sir, I beg to move :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments at the end of the proposed article 286, the following new clause be added :—

'(6) The Commission shall submit to the Legislature every year a report setting out all cases, the Government's reasons in each case, and the Commission's views thereon, where there is difference of opinion'"

Sir, my amendment is very simple. Under the article as moved by my Friend, Dr. Ambedkar, it is not incumbent upon the President to consult the Commission on all matters. In certain matters, he has the prerogative to do what he likes, and then it is just possible that his views might run counter to the views of the Public Service Commission.

Mr. President : Mr. Sidhva, does not 288-A cover your point ?

Shri R. K. Sidhva : 288A simply says :

"It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament."

This simply says that where the Government does not accept the recommendations of the Commission, it should be laid before Parliament. My amendment is that, in the event of the Commission not accepting the Government's views, it should also be brought before Parliament, so that Parliament may have the view-points of both the Public Service Commission and the Government. What may happen is that sometimes the Government may feel that their views are correct and the Commission may not accept them. In other cases, the Commission might feel that the Government's views are not correct. So there may be conflict. So I would like that the Houses of Parliament should be acquainted with the views of both sides, so that they may be in a position to judge whether the Government was in the right or the Commission was in the right.

Shri Raj Bahadur (United State of Matsya) : Sir, the honourable Member is hardly intelligible to us, as he is literally facing the Chair.

Shri R. K. Sidhva : I was saying that in some cases the Government might feel that they are in the right and the Commission might feel that they are in the right, and so it is but fair that Parliament should be acquainted with the views of both sides, so that Parliament may be in a position to know whether the Commission was right or the Government was right. Therefore the amendment that I have moved is an improvement on the amendment that has been moved by my honourable Friend, Dr. Ambedkar. We all certainly want the Commission to have a free hand in the matter of appointments and I would like to go further than what the article lays down. The proviso to clause (3) of article 286 says :

"Provided that the President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Ruler, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

Thus under this clause the President or the Ruler or the Governor may not consult the Public Service Commission in any matter and may frame rules which may be in conflict with the functions of the Public Service Commission.

[Shri R. K. Sidhva]

While there is an article providing for that, it is very necessary that Parliament should know as to how the Public Service Commission is functioning, whether there has been any interference by the Government. At present, we hear of interference in the work of the Public Service Commission by the executive wherever they would like their favourites to be appointed. We know that now-a-days a member of the Ministry concerned sits with the Commission and some of the incumbents who are actually in service acting in their respective posts are being sent along with others who have applied through the public advertisement and are not selected. I do not say that they should not be preferred if they are competent and if they are better than those who have applied to the Public Service Commission through public advertisements. These are matters which we are experiencing today, and while I appreciate the improvement upon the present system brought about by these new articles, I do feel still that the Commission should not be fettered by any kind of administrative disability. The Commission should be free to decide what they think fit. But Parliament should be in a position to judge whether the Public Service Commission has decided matters independently, judiciously and impartially; and from that point of view there should not be any interference by the President the Ruler or the Governor which means the executive, since they have to act on advice tendered by their Ministries. Experience has shown that in this important matter of appointments, there has been favouritism in many cases. It is not anyhing new that I am saying. We must see to it that this favouritism does not continue and for that purpose we must see to it that rules are so framed that the least scope is allowed to the Commission to indulge in any kind of favouritism. That is why an improvement has been made in this article by the Drafting Committee, but I do feel that there is still some lacuna in this matter. Therefore my amendment seeks that, where the views of the Government and the Commission are at variance, the Parliament should hear both sides.

In view of the remarks made by me, I hope the Drafting Committee and particularly Dr. Ambedkar will consider my amendment favourably in the interests of the Parliament knowing both sides. I hope the Drafting Committee will accept my amendment.

Sardar Hukam Singh : Mr. President, Sir, I beg to move :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, after clause (4) of the proposed article 286, the following Explanation be added :—

'*Explanation.*—Backward class of citizens would mean and include class or classes of citizens backward economically and educationally.'"

These words "backward classes" have been used in our Draft Constitution in the various articles that we have passed. Now, in clause (4) of this article 286, it is said that.

"Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any backward class of citizens in the Union or a State."

I wholeheartedly support this clause. This is a very wholesome provision, but my difficulty is that the term 'backward classes of citizens" is not defined anywhere in the whole Constitution. This phrase has been used in some places and in my humble opinion, it does not convey any definite meaning. It is so vague that it might be interpreted differently by different Governments different authorities. In article 10(3) it is stated :

"shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State".

The second phrase is found in article 37 and there the words used are different. It runs as follows :

"The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation"

The Scheduled Castes and the scheduled tribes have been defined in the interpretation clause under article 303 but there is no definition of those backward classes. Here the words used are "weaker sections". I feel some difficulty whether these weaker sections mean the same thing as backward classes, or these would have a different meaning so far as article 37 is concerned.

Then I wish to bring to the notice of the House the following :

"The State shall promote with special care the educational and economic interests of the weaker sections"

Then we have passed another section namely article 301. There it is provided that :

"The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to. "

Here also the Commission that is to be appointed shall investigate the conditions of socially and educationally backward classes. Here the word "economically" is absent. It is not provided as to who would decide who are the backward classes. I endorse the remarks of my honourable Friend, Dr. Deshmukh that there are regions in this vast country and there are classes of persons who are as backward as the Scheduled Castes and unless we provide for the development of their interests and bring them forward along with the other sections, when they could compete with other sections of the community, they would remain backward and the country would not grow harmoniously. Therefore, I submitted yesterday, it is very essential that we should define here who would be the backward classes. This must be defined at some place at least. We can provide that the President shall have authority to appoint a Commission which would prepare a schedule, as there is one for the other Scheduled Castes and Scheduled tribes, or a special tribunal should be appointed or some officer deputed to go into the conditions of these citizens and then decide; otherwise if that is not done, there would be difficulty and some persons might be suffering from certain difficulties in a certain region; they might not be looked after as backward classes while persons in similar conditions might be given advantages and their development might be looked after in another region. Therefore, I have by this explanation only tried to give some kind of definition. It is not conclusive and it is not exhaustive; it does not say who the backward classes are but it only indicates that backward classes must include classes backward economically and educationally.

I have not included the word "socially" purposely because I thought perhaps most of the classes who were backward socially might be included in Scheduled Castes and scheduled tribes and even though some are left out, the object can be achieved by amendment of that schedule. Therefore, my purpose here is that it should be made clear that backward classes should mean and include all those persons and all those classes who are left behind and cannot keep pace with the other section of the community because they are economically and educationally backward in this respect. I request my honourable Friend, Dr. Ambedkar to remove this difficulty of mine whether a definition would be provided somewhere to define who would be the "backward classes" under this Constitution because this phrase has been used in so many places.

Shri Lakshmi Narayan Sahu: *[Mr. President, Sir, I beg to move:

"That in amendment No. 14 of List I (Fifth Week) of Amendments to Amendments to the proposed clause (3) of article 286, the following be substituted:

"(3) The Union Public Service Commission with regard to All India Service and also in regard to other services and post, in connection with the affairs of the Union, and the State Public Service Commission in regard to the State Services and also in regard to the services and posts in connection with affairs of the State shall be consulted in respect of all appointments, transfers and disciplinary matters relating to these Services."

I have moved this amendment because so long as we do not make the Public Service Commission a very strong body we cannot run the administration of the province or of the country in a proper way. I know of a Director of Public Instruction who earned the displeasure of the Cabinet and the Prime Minister for transferring some Inspectors of Schools and he was pressed to call back those people. The D.P.I. was openly called but he said that they should not interefer in the matter. The result of it all was that the D.P.I. resigned and left his job.

I know of another case wherein efforts were made to remove a Civil Service man who was working efficiently in the province. The people made their own efforts and sent a telegram to the Governor to this effect that it would not be proper to transfer him. The transfer was stayed for two months but after that period he was removed.

Therefore in the circumstances, I can only plead for a very strong Public Service Commission so that such lapses may not occur. Dr. Deshmukh is a little displeased at this. He is in favour of such a provision as may not give great powers to the Public Service Commission. What more can be done? I want that things should not find a place in the Constitution which can be done advantageously by means of rules. Therefore the real amendment should be moved. It includes the rules in an abridged form. I would like to say that so long as the Public Service Commission is not made a strong body there will always be something wrong, with the selection of candidates. We see what type of selection they have in the railways. Everywhere there is difficulty and everyone dislikes the system. I have nothing more to add in this connection. With these words I move this amendment.]

(Amendments 18 and 76 were not moved.)

Mr. President: I think these are all the amendments. The amendments and the articles are now open for discussion.

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, I have noted with considerable satisfaction some of the changes that have been introduced in these various articles as compared with the draft as it originally stood. I should particularly like to point out the change which has been incorporated in clause (5) of article 286 as well as the change embodied in article 288-A.

However, certain thoughts arise in my mind in connection with these changes which have been introduced. Article 286, as it originally stood, provided,—I invite the attention of the House to clause (4) of the original article,—"Nothing in this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Union or a State." This has been suitably and wisely modified so as to refer only to the backward class of citizens and not to the various communities. In this view, I am sorry I am not able to agree with the proposition that has been adumbrated by my honourable Friend Dr. Deshmukh. Though it is difficult not to be in sympathy with the general view he has expressed, I feel, constitutionally there is a difficulty, in so far as the incorporation of that proposition in this artcile is concerned. The House

*[ ] Translation of Hindustani Speech.

will recollect, Dr. Deshmukh I am sure is well aware, that this Assembly long ago adopted article 10 in the Chapter on Fundamental Rights, which provides, firstly, that there shall be equality of opportunity for all citizens in matters of employment under the State, secondly that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State. The only exception to this provision, is what we have already adopted, "Nothing in this article shall prevent the State.....

Dr. P. S. Deshmukh : What I have suggested would be the right fulfilment of these fundamental rights; it would be in no way contradictory.

Shri H. V. Kamath : I am sorry Dr. Deshmukh did not hear all I had to say and chose to interrupt before I concluded my say in the matter. I was pointing to clause (3) of article 10 which lays down that nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens, but not for *any community*. The class referred to explicitly in this Clause (3) of article 10 which is an exception to the general rule propounded, is any backward class of citizens. Now, if Dr. Deshmukh seeks to include not merely these backward classes of citizens—I for one hate this very term "backward class"; it connotes a stigma which I hope we, in this country, will do away with at the earliest possible opportunity; I hope that are long no class of citizens will be called backward in our country.

Dr. P. S. Deshmukh : It is only descriptive.

Shri H. V. Kamath : I do hope that all citizens will be equally backward or equally forward and there would not be any particular class of citizens to be dubbed as backward.

Chaudhri Ranbir Singh (East Punjab : General) : This is not so today.

Shri H. V. Kamath : I say in the future. I hope Chaudhri Ranbir Singh listens to me patiently and makes his remarks when the time comes. I do not mind interruptions; but I hope he will hear me first and then make any interruption.

Now, Dr. Deshmukh suggests that we should incorporate in this article 286 his amendment No. 86, adding "or for the purpose of bringing about a just and fair representation of all classes in Public Services of the Union or a State," and his amendment No. 88, adding, "nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments are made and posts reserved for purpose of giving representation to various classes according to their numbers in the Union or a State. Unfortunately, this provision if accepted by the House, will militate against what the House has already adopted in article 10 providing for reservation only to backward classes. I wish article 10 had been adopted in a different manner, but article 10 having been adopted already in the form in which it was adopted, it is too late now, unless that is revised so to make a provision in this fashion, firstly to give representation to all classes as well as the second one; otherwise it will conflict with article 10 (1) (2) and (3) which we already adopted. I for one would not mind even weightage being given to those people who are really backward for the transitional period, but a constitutional provision of this nature in this article would militate against the article which we have already adopted. It can be safely left to be regulated by Parliament. I am sure the future Parliament in this country will deal fairly and squarely with all communities, and there should be no difficulty about leaving the matter of making provision in this regard to the future Parliament.

I should however like to say that the draft of the articles that have been brought before the House by Dr. Ambedkar seems to my mind to be far too

[Shri H. V. Kamath]

ponderous, like the ponderous tomes of a law manual. A document dealing with a Constitution hardly uses so much padding and so much of verbiage. I have this morning received a copy of the Bonn Constitution, the latest Constitution, of Western Germany adopted in 1949 and this is a little pamphlet of 52 pages containing 146 articles. Compared to this our Constitution is three times as big—perhaps four times,—and packed and crammed with matter a good deal of which could have been easily left out. For instance, in 288 itself so much has been packed, God alone knows why. Could we not have said 'All recommendations or proposals made by the Public Services Commission shall be given effect to except for reasons stated by the President or Governor'? That one sentence would have been adequate to our purpose.

All this verbiage reflects the mind of lawyers who have spent most of their lives in arguing and bandying words with each other in Courts and does not reflect the spirit of a people, the fighting spirit of a people who have been through the fire and steel of the freedom struggle, and who have solemnly assembled to infuse our Constitution with life and light. Unfortunately our Drafting Committee has been weighted with men who have led a sheltered existence, who have been hardly touched by the effulgent light of a deathless ideal and who have spent most of their lives in the service of Government. Perhaps it is difficult for them to compose a document which should be, to my mind, not a law manual, but a socio-political document, a vibrating, pulsating and a life-giving document. But to our misfortune that was not to be, and we have been burdened with so much of words, words and words which could have been very easily eliminated.

There is one other point *viz.*, that clause (5) requires,—correctly too,—that all regulations made by the President or Governor under clause (3) should be laid before Parliament. In this connection I may remind the House what the Drafting Committee failed to do in another connection; that was with regard to article 280 in which it was provided that the regulations, rules, decrees made by the President would be laid before Parliament but the vital part of this clause (5) that they shall be subject to such modification whether by way of repeal or amendment as Parliament would deem necessary—that was completely omitted in the Draft of that article which was passed. That was a vital matter compared to this, affecting as it did the lives and liberties of millions of men and women in this country. This refers only to a few thousand persons in the services. It gives us an insight into the mind of the Drafting Committee, in that that the lives and liberties of millions of men and women are a mere trifle compared to the rights of a few thousands of servants. That is the way in which this Constitution is being drafted. Regulations dealing with the Fundamental Rights of millions do not come before Parliament for repeal or alteration, but mere rules as regards public services do. I am sorry for this state of affairs.

Further, I feel that as for the subject matter in clause (4) of this article, the Public Service Commission might be consulted as regards the reservation of appointments and posts for backward citizens. When posts are reserved for a particular class, of course I am not sure whether there would be weightage in the services for these classes—if there is, well and good—but if there is reservation on some basis either of population or some other, then the number is first fixed—so much for this class, so much for that etc.

Now, Sir, suppose the President takes it into his head that so many posts should be filled by nomination. There should be a certain proportion for nomination, as it used to be, for instance in the case of the I.C.S. in the olden

days, that so many posts will be filled by nomination and so many by open competition. Here also the President will have to decide what proportion will be recruited by nomination and what proportion by open competition. Unless this number is decided, it will be difficult for the President to finally fix the relation between nomination and competition. Therefore, in that connection he will have to consult he Public Service Commission, and there is nothing wrong, or derogatory to the dignity of the President, if he thus consults the Commission as to the number of posts which have to be reserved. Considering the importance that we have attached to the Commissions in our Constitution, it would have been better that the Commission should be consulted about this matter also, besides the matters mentioned in clause (3) of article 286.

Then, finally a few words about the point set forth in article 288A. I hope, Sir, that this article before us, although the Constitution has not yet come into force—and I do not know when it will come into force—but I hope that this article, if it is passed by the House today, in future, even before the Constitution comes into force, even before the Constitution is enforced or given effect to in January or February next, that even during the interregnum also, I hope appointments will be made accordingly, that the recommendations of the Federal Services Commission here or the other Commission will be given that weight and that consideration by the Government which they deserve and that they will not be set at naught or disregarded or slighted without adequate reasons being given. My Friend, Mr. Sidhva or Mr. Naziruddin Ahmad,—I think, has pointed out that on many occasions the recommendations, the proposals of the Federal Public Service Commission have been by-passed and disregarded. I am also aware, and even high-placed officials have told me, officials of the Government of India have also told me, that because of this indifference to the recommendations, because of this sort of callousness on the part of the Government towards the recommendations made by the Commissions, these Commissions themselves are falling into disrepute. That is not the testimony of any non-official or a man in the street, but that is what I have heard from some of the highest officials under the Government of India. The Commissions make recommendations, and the Ministers snap their fingers at them and make their own appointments. That is why I warn this House, that these Commissions do not command the respect which they should. And another point is, because of this, there is ministerial nepotism and favouritism. Some of the Ministers have become rank nepots This sort of thing must be put an end to. Otherwise this is bound to lead to demoralisation in the services, because the services will think, "Well, our ability and our integrity and our efficiency are of no avail. They do not matter, so long as we are not *persona grata*, so long we do not have the necessary pull with the Minister so long as we are not in the good books of the Ministers." Well, if that be the feeling, then woe betide this country when the services have this kind of mentality, when they are affected by this kind of mentality.

Finally, as I have said, the vision of the Drafting Committee has been clouded, and their judgment warped by mere legalistic considerations, but in spite of that, they have produced an article which though very wordy, I consider is sound. I hope that our government, and our State, will have regard for this article, not merely in the letter, but also in the spirit which is so very sadly lacking today.

Shri Phool Singh (United Provinces : General) : Mr. President, Sir, I rise to give my support, my whole-hearted support to the two amendments moved by Dr. Deshmukh. The other point of view expressed in this House is for giving greater powers to the Public Service Commission, and the opponents hold that efficiency and merit should be the only tests in recruitments. It is not a fight for a few loaves and fishes for those who are ultimately to be appointed to these posts. Self-Government, means government of the people, and if the legisla-

[Shri Phool Singh]

tures are to be manned by the toiling masses, to make good laws, the proper execution of these good laws depends upon the services, and hence the importance of the services. Much has been made of merit in this case; but equal merit pre-supposes equal opportunity, and I think it goes without saying that the toiling masses are denied all those opportunities which a few literate people living in big cities enjoy. To ask the people from the villages to compete with those city people is asking a man on bicycle to compete with another on a motor-cycle, which in itself is absurd. Then again, merit should also have some reference to the task to be discharged. Mr. Tyagi interrupted Dr. Deshmukh by saying that it is a fight for the illiterates. I think, however sarcastic that remark may be, he was probably right. Self-Government means a government by the people, and if the people are illiterate, a few leaders have no right to usurp all the power to themselves. This cry, this bogey of merit and fair-play is being raised by those who are in an advantageous position and who stand to suffer if others also come into the picture.

Sir, I can quote numerous instances where a mess has been made by those who claim to be efficient enough. To give an example. The U.P. Government legislated that petty proprietors should not transfer their land without the permission of the court. Now it depended upon the court. If the Magistrate happened to be a man who came from a poor family, he was very conscientious and would not permit the transfer. But in the case of those who are either themselves money-lenders or big capitalists, or who had nothing to do with the masses, it only meant the expenditure of a few more rupees to be given to the Peshkar. I can give another instance. In the U.P. as late as last year, one very big official got the canal stopped at the time when the harvest was about to ripen. This resulted in the loss of many lakhs maunds of good rice. This is what happens if you appoint people who can compete in examinations, but who have nothing to do with the task in hand, who know nothing about the task that is going to be allotted to them. Sir, efficiency, I say, should have something to do with the task that the man is called upon to discharge.

A few years back I complained that all the commodities that the grower had to sell are being controlled, whereas he is offered no facility whatsoever in the production of food grains. I quoted the example of cane-crushers. Cane crushers could be had at Rs. 20 before the war. During the war its hire went up to Rs. 250 though everything else was being controlled. My complaint went up to the Government and then to the Secretariat. It was, I may tell you, the month of October, and everybody in this House knows that the crushing season does not start before November. The Secretariat reported that all the cane-crushers had already been let out. There were no cane-crushers left to be hired. This will always happen when you man the services with people who do not know their jobs.

It is not a question of competition. If you want to run the country properly, if the administration is to be efficient as my friends want it to be, then you must have people in the job who know something about the job and who come from the masses. Otherwise the administration will lose touch with the masses. That is why in almost all the countries of the world fresh blood is being recruited to services constantly and a judge's son does not necessarily become a judge or the deputy collector's son does not necessarily become a deputy collector. The practice should be that those, who have been in the services for a long time should be asked to go and settle in the villages while men from the villages should be called to run the administration because they alone know the difficulties of the masses, they alone can feel for the masses and they alone can interpret their sentiments.

If I may be permitted to refer to the clauses moved by Dr. Ambedkar, they give all the powers to the Public Services Commission and make the Government defunct to that extent. I do not know what is the difference in those few persons who have been appointed by the highest Government officials as compared to those few persons who have been elected by the whole country and who have a record of service behind them. If the Prime Minister can make mistakes, I think the Public Services Commission can commit greater mistakes. I can quote numerous instances in which the Public Services Commission has gone astray and in which the integrity of the Public Services Commission can be questioned. If the whole country cannot be trusted, if the whole record of service of a man is not enough to authorise him to make appointments, I am sure the appointments to the Public Services Commission of a few people will not serve the purpose. With these few words I support the amendments moved by Dr. Deshmukh.

Kaka Bhagwant Roy (Patiala and East Punjab States Union) : *[Mr. President, Sir, I am here to support the amendment of my Friend Mr. Sahu, I fail to understand, when Public Service Commissions will operate in the States and Unions, why the vacancies to be filled should not be under their control. Often, it has been seen that the vacancies which are to be filled by nominations are not filled on the consideration of merit. I have had experience of Indian States. The vacancies are filled there either by the relatives or friends or by those who flatter the government. Hence I am afraid lest the same may happen hereafter as well. Recently it has been heard, and I suppose it is a matter of two or three months, that some vacancies of I.A.S. were to be filled. Though a board was constituted for the same still some of the vacancies were filled by those who did not come under its jurisdiction. For this the reason given was that since the vacancies were filled in a hurry hence it was unavoidable. But later on it was revealed that they were either relatives or friends of the officers. Therefore, I want to emphasise that, since you are appointing Commissions and entrusting them with powers, such things should not happen there. The things that are happening these days bring a bad name to the Government and to the Congress. High Officers and responsible people are recruiting undeserving candidates who are not fit enough, with the result that the prestige of the Congress is suffering tremendously in the country and abroad. It is right that you are giving powers to Public Service Commission to fill the vacancies by deserving hands, but it will be ruinous for you to give this authority to anybody other than this. It is better for recruiting capable people, but it will not be better if you would like to give this authority to any body else besides this body. I would ask you to accept Mr. Sahu's suggestion that the limit of two hundred and fifty or five hundred rupees be placed; you would be at liberty to increase or decrease the figure. By doing so their hands will be bound and they would not be able to do what they desire.

So far as Mr. Naziruddin's amendment is concerned in article 287, I support it. If the Public Service Commission will meddle in the affairs of private firms and companies, then their working will be set at naught. I think that perhaps the Public Service Commissions will not be able to understand the difficulties of their business and their daily routine. Their interference will hinder their business and difficulties will arise in the business. Therefore I would request that this amendment should be accepted].

Shri Brajeshwar Prasad (Bihar : General) : Sir, I rise to support all the articles that have been moved by the Chairman of the Drafting Committee. While doing so, I would like to point out certain aspects of the provisions that are going to be incorporated with which I am not in full agreement.

The powers of the Public Services Commissions are going to be of an advisory character. They are going to be bodies which will recommend to the

*[ ] Translation of Hindustani Speech

[Shri Bajeshwar Prasad]

Ministries concerned, Ministries of the Government of India and of the Provincial Governments. Their recommendations may be accepted or may not be accepted. I want that the powers of the Public Services Commissions must be of a mandatory character. All matters relating to appointment, promotion and transfer must be solely and exclusively vested in the hands of the Public Service Commissions. The Ministries should have nothing to do with these things. I am referring here not only to Provincial Ministers but also to the Central Ministers. In England powers have been vested in the hands of the Whitley Councils. I would like honourable Members of this House to know that half of the Members of the Whitley Commission are appointed by the Services themselves. In Canada, Australia and South Africa, in all the Dominions, appointments, promotions and transfers lie exclusively in the hands of the Public Service Commissions. I want that the same procedure should be incorporated in our Constitution.

I am not going to repeat the argument that there has been corruption, inefficiency and nepotism in the Provincial Governments regarding appointments, promotions and transfers. There is another reason why I am very keen about it. I want that the basic foundations of our Civil Service must be laid on a sound basis. It is not only a question which affects the life of a handful of persons as has been made out by Mr. Kamath. It is the backbone of the administration. If your Civil Services are not efficient, if they are not independent, then every thing will go down. I am of opinion that the future of India lies not in the hands of parliamentary politicians but in the hands of the civil services. I am of opinion that with a view to secure the independence of the Public Service Commission, the principle ought to be incorporated that a person belonging to any political party should not be recruited to the public services. I would have gone one step further and suggested that a person belonging to any political party should not be allowed to become a member of the Public Service Commission itself. But now those articles have been passed. Therefore, the only course left open to me is to suggest that a member of any political party should not be allowed to be recruited to the services.

Today the position is that the Public Service Commissions have got no control over the services after their appointment. They are not free or competent to protect them from political and other influences. I want that the future Public Service Commissions of India should be in a position to protect civil servants not only from the influence of Ministers but from all kinds of political influences. An eminent writer has compared the Indian Civil Service with Plato's Philosopher Kings. I also want our civil services to be above board and enlightened. I feel that not only regarding appointment, promotion and transfer, but also regarding all matters concerning discipline power should remain in the hands of the Public Service Commission. I fail to see why, this procedure which has not led to any conflict or confusion of authority in the Dominions and in England, should not be incorporated in our Constitution. When the ideal is easily within our grasp, I think it is not right or proper to choose the second best. The Drafting Committee ought to have laid before the House what they considered to be the right course on this question. It is for the House to make compromises. Political considerations ought not to have been allowed to enter into the drafting of these clauses.

With these observations, I support the articles.

Prof. Yashwant Rai (East Punjab : General) : *[Mr. President, Sir, I have come here to support the amendments moved by Dr. Deshmukh.

*[ ] Translation of Hindustani Speech

After two thousand years the Harijans of this country had begun to entertain the hope that they too would get the same rights as others did. In spite of the fact that twelve to seventeen per cent. of posts have been reserved for us in the services, injustice is done even now.

It was as the result of Dr. Ambedkar's efforts that some students were sent to foreign countries and the Central Government spent a lot of money on them. Such examples as I am going to state prove that injustice is being done even now. A Harijan youngman who has come back after obtaining the degree of M.A., M.Ed. was getting a salary of Rs. 180 per month before going abroad, but I regret to say that on his return no Public Service Commission selected him for any better job, and he is even now rotting on a salary of Rs. 220 per month only, although on this student alone the Central Government spent an amount of forty thousand rupees.

In the circumstances, I cannot believe that the Federal Public Service Commission or other Commissions will not do injustice in the case of Harijans. I believe that there will certainly be injustice in their case. We see that in the subordinate services the principle of providing friends and relatives alone is followed. Recommendations are made for relations. I have seen that even the Ministers speak to the Members on the phone in regard to their candidates and secure interviews for them. In the circumstances, I think that until some special provision is made under this clause, there will always be injustice in the case of Harijans and backward communities. I want to impress that there should be some representatives of the Harijans on the Federal Public Service Commission and the commissions which are formed in the States and provinces so that they may watch over the interests of the candidates who apply for different posts and who may prevent any injustice being done to Harijans.

After thousands of years the Harijans for the first time under the leadership of Mahatma Gandhi and thanks to Swami Dayanand felt encouraged to take to education and they began to hope that untouchability would be eradicated from society and that they would enjoy equal rights with others. If we want to achieve these objects and to form a classless society, we should include a provision to that effect in the Constitution. Mr. Kamath has said that in article 10 of the Fundamental Rights it has been stated that there shall be equality of opportunity for all irrespective of caste, creed and colour. We see that untouchability has been abolished under the clause regarding untouchability. But this has had no effect in the rural areas. You can find for yourselves that in the rural areas 85 per cent. of the people, who will have to follow this Constitution, are uneducated.

Therefore, if you want to give equal status to those communities which are backward and depressed and on whom injustice has been perpetrated for thousands of years and if you want to establish Indian unity, so that the country may progress and so that many parties in the country may not mislead the poor, I would say that there should be a provision in the Constitution under which the educated Harijans may be provided with employment. I have examples of high-caste matriculates holding the same posts as Harijan M.A.'s. Therefore in the circumstances as demand for the representatives of Harijans in the Public Service Commissions and for a special provision for them is not an unreasonable one.

Therefore, I support the amendments moved by Dr. Deshmukh.]

Shri S. Nagappa (Madras : General) : Mr. President, I support article 286. In doing so, I just want to bring to the notice of the House certain points which

[Shri S. Nagappa]

are very important. Among the functions of the Public Service Commission there is also a clause : "To conduct examinations." When I think of these examinations, I wonder. The results are always topsy-turvy For instance, if First Class M.A. appears before a Service Commission, the First Class become, Third Class and the Third Class man becomes First Class. At times the way in which people are examined—anything that can be said will not be an exaggeration. The questions are so silly that I think sometimes even the questioner does not know what the answer is. For instance, they may ask : "what is the distance between sun and the moon ?"; "what is the number of stars in the sky ?"; "why is milk white" and such like questions. And another thing Physical disqualifications. "Your nose seems to be very straight Your fingers seem to be longer than what is expected." These are the grounds on which these people are disqualified. "Oh, you do not know how to tie a tie or wear a collar. You do not know how to put on boots" These are the things on which our candidates are examined. Sir, I would prefer to have a curriculam prescribed and text-books laid down for these people. There should not only be an oral examination, but some sort of written examination also

As regards the Scheduled Caste candidates I cannot describe the miseries which they have to undergo at these examinations for selection But after all these troubles and miseries do they get selected ? No, because the intention is to by-pass them and give those places reserved for the Scheduled class people to the candidates belonging to the community next in the list. In order to favour their people they have their own methods, back-door or open door. The services form an essential part of the machinery of administration Therefore the services are the bones of contention between different classes of people in the country. Everyone should therefore have equal opportunity. It is no use merely defining or adopting any article in the Constitution. We have to see that every letter and every word in the Constitution is translated in action in the true spirit with which it has been drafted. Only then all that we do here will be justified and will be equitable

Injustice of this kind done constantly and continuously to these poor, down trodden people, it not because people have no sympathy for these people, but unfortunately it is all lip-sympathy which they show to the fullest extent possible It does not go to the material side of it. So, Sir, all this injustice is done. The main reason is that there is not a single member of the Scheduled classes in any of the Provincial Public Service Commissions or in the Federal Public Service Commission. May I ask why this injustice has been done ? Is it because candidates are not available from this community ? I can give you dozens and dozens of persons possessing higher qualifications and having higher status than the present Members of these Commissions. What is the character and what is the conduct of the existing members ? Ceaser's wife must be above suspicion, but I am sorry to say that the present Commissions are not above suspicion They have their own backdoor methods. They have their own ways. Well, Sir, people holding Cabinet rank go to the extent of ringing up these Commission Members and, ascertaining who the candidates for a particular posts are, see that their own candidates are preferred, irrespective of whether the most suitable person is a Harijan or a non-Harijan. This is how things are taking place. Such things were going on when we had foreign masters. But now everyone should realise and should feel that he is in a free country and that freedom is common to all, whether a Harijan or non-Harijan, whether he is rich man or a poor man. Only then will we deserve this independence.

Mr. President : I have heard many Members making complaints against the Ministers.....

Shri S. Nagappa : Now I will go to the next point, Sir.

Mr. President : I have heard many members making complaints against Ministers, against members of the Public Service Commissions and against other authorities who are not present in this House to defend themselves. I would only point out that it is not fair to make sweeping charges against persons charged with public duties. I hope honourable Members will bear this in mind. The public will of course take such statements as one-sided statements made by individual Members.

Shri S. Nagappa : Thank you very much. I bow to your ruling. I will not touch them even with a pair of tongs.

I will now give a description of the backdoor methods employed. If the executive want to make to some thirty or forty appointments, they say that there is an emergency and cannot wait for selection by the Public Service Commission, and then make the appointments. After an year or so they ask the Service Commission to advertise for these very posts. Now, along with the raw graduates from the colleges, these people who have one year's office experience also apply and naturally they get selected. This is the sort of backdoor method going on in every province. I cannot say about other provinces But this is what is going on in my own province of Madras. Hundreds of appointments are made in this way.

Mr. President : This is exactly the thing to which I objected. I would ask the honourable Member to ventilate his grievances in this respect in the proper place. Here he has to confine himself to the article under discussion which relates to the Public Service Commission and not to appointments which have been made or are likely to be made by any Ministry.

Shri S. Nagappa : Now, Sir, as regards its functions I would request the House to make the Service Commission more efficient. They interview the candidates today and inform them about the results months hence. They must be more efficient. They must move quickly. They can have more staff if they want.

I am very much thankful to the Honourable Dr. Ambedkar and the Drafting Committee for bringing in this particular provision, *viz.*, "appointments and posts are to be reserved in favour of any backward class of citizens in the Union or a State". Now, as my Friend Mr. Kamath has pointed out, what is the basis of the reservation ? Whether it is population or some other basis must be prescribed. I would prefer, in order to be just and equitable, that the reservation should be on population basis.

Another thing is that "backward classes' include so many classes. I would request Dr. Ambedkar to state clearly who all come under this category. I think he has in mind Scheduled Classes, Scheduled Tribes and other backward classes. If there are any others I would request him to explain now.

From this clause I see that certain categories of jobs are excluded. While it may be necessary from the point of view of the administration to so exclude them, the executive must bear in mind that in the clause there is reservation for the backward classes and that the spirit of this clause must be translated in action by the executive and a certain proportion of such posts also is given to the backward classes.

I am glad that there is another provision by which these things are to be brought before Parliament for scrutiny. But what is the good of it ? These things will be coming before Parliament after the action has been taken. This

[Shri S. Nagappa]

is not a preventive method. Parliament will have an opportunity only to scrutinise what has taken place. I would request the Members of this House to support this clause as it is and I would request my honourable Friend, Dr Ambedkar, to be good enough to explain as to what "backward classes" mean who are the people who come under that category. I would request him to be good enough to explain this.

Shri Raj Bahadur: Mr. President Sir, the discussion on this article has brought into the forefront certain vital question of principle as well as of national policy. It appears to me that clause (4) of article 286 is only a painful reminder to us of the cancer from which our body-politic has suffered for such a long time—I mean to refer to the curse of caste system. The amendments Nos. 86 and 87 moved by my Friends, Dr. Deshmukh and Sardar Hukam Singh, are also pointers in the same direction. It has to be recognised without any hesitation that there has been injustice and inequity in the distribution of jobs and services amongst the different classes and castes in our country. As I submitted the other day, there has been a certain amount of favouritism and nepotism on the part of those who happened to be in power. But apart from that certain psychological conditions and traditions that have prevailed throughout our history are also responsible for this alleged injustice.

Nevertheless I would submit, Sir, that we should rather go to the root of the evil. The remedy for the evil does not lie in providing a few jobs or posts in services of the State to persons living in rural areas or to persons living in urban areas. The remedy perhaps lies elsewhere. We can, however, trace the cause of these injustices or inequities to the evil of caste system, the evil that was responsible for our prolonged slavery, the evil that has resulted in our degeneration morally and politically, the evil that has resulted in creating so many watertight compartments, the evil that has created other evils like untouchability etc. It is only a symptom of that evil that all communities are not represented in the services in an equitable or just manner. To ask for representation, however, on class or caste basis in the services is to remedy that disease only superficially But we have got to cure the disease from its very roots.

I would submit, Sir, that if we want the best sort of Government in our country, then we must have the best men possible to man our services,—the best men available, the most deserving and the most honest men that we can lay our hands upon. We cannot gamble with our freedom. We cannot afford to gamble with the peace, progress and tranquillity of our nation, by simply trying to provide jobs for a few persons belonging to certain classes either in the urban or in the rural areas.

My main objection to the amendment proposed by Dr. Deshmukh does not therefore, proceed from any lack of sympathy for the injustice—which I recognise—from which certain classes of people have been suffering from. My objection is based on the ground that the proposed amendments obviously seek to perpetuate the evil from which we have been suffering and which we want to eradicate. The amendments clearly recognise representation on the basis of castes and classes in the services of the State. It is high time that we do away with such representations. It is high time that we recognise that our safety, the safety of our freedom, the safety of our country lies in our unification, in making our nation a homogeneous whole. I would submit that if, for the sake of argument, we recognise the principle that appointments should be made on the basis of castes and classes, let us think where it would lead us. It is obvious that in that case we would shift the centre and focus of our loyalty and allegiance. It would shift from that to the nation as a whole, to loyalty and allegiance to the interests of a group or a class or caste. Our allegiance to the nation would

become only secondary. Our primary allegiance would be to class or caste. This is an evil from which we have suffered so long, an evil that led to the partition of the country. This would also kill all incentive for progress. If you say that representation in the services should be on the basis of caste or class, then you remove all incentives to self-development. All incentive for efficiency will be lost.

Dr. P. S. Deshmukh: I did not say that representation should be on the basis of caste or class.

Shri Raj Bahadur: Your amendment says :

> "or for the purpose of bringing about a just and fair representation of all classes in Public Services of the Union or a State."

There you recognise the principle of representation in the services on the basis of class. If you do that, all incentive to progress, all incentive to efficiency, goes. When this incentive to progress and efficiency goes, the whole nation degenerates. In such a case we would also remain infected with the evil of separatism and with the evil of group or class prejudices.

I would submit, Sir, that this evil would go even further than that and would permeate into all aspects of our national life. Elections would then be fought not on the basis of loyalty or service to the nation, not on the basis of the will and capacity for sacrifice for the cause of the nation, but on the basis of class loyalty. Can we afford to do that? I respectfully submit that we cannot. We have had enough of it, and it is time that we try to remove all class or caste distinctions. My honourable Friend Shri Phool Singh, while supporting Dr. Deshmukh's amendment, quoted instances where people got into jobs for which they were not fit. I submit that in quoting those instances he went against his own viewpoint. That only shows that people have been appointed on considerations other than merit. To say that the people of the urban areas alone are good or the people of the rural areas alone are good is not correct. We find good and bad people everywhere. We find efficient and inefficient people in all classes and in every walk of life. To brand one as entirely good and another as entirely bad is not wisdom. On the other hand it is sheer non-sense in my opinion. No man is entirely good or bad. One of our famous poets has said :

> In man whom men condemn as ill,
> I find so much of goodness still,
>
> In man whom men proclaim divine,
> I find so much of sin and blot,
>
> That I hesitate to draw a line,
> Between the two where God has not.

We are all mixtures of good and evil. We are all mixtures of efficiency and inefficiency, of perfection and imperfection. God alone is perfect. Hence we should better do away with all sorts of class prejudices and caste loyalties. That is the only way in which we can strengthen our nation.

We are responsible not only to the present generation but also to posterity, the coming generations. If we try to perpetuate class distinctions, the evil from which we have been suffernig so long, I think we would not be acting faithfully to our posterity. As such I find myself in total disagreement with the principles underlying the amendments moved by my honourable Friend, Dr. Deshmukh

[Shri Raj Bahadur]

I want to add one word more, Sir, about certain remarks that have fallen about the discriminations and handicaps which are being experienced by the rural communities and by the Scheduled Castes. I have already submitted, that we have got to recognize that these inequities do exist, but I submit that they are simply symptoms of the disease and if we want to do away with these inequities or injustices, we must not try or proceed to cure those symptoms of the disease, we must try to get to the disease itself, we must try to go to the root of the evil and kill the evil itself, instead of simply fumbling our way here or there for superficial remedies. I would submit that these jobs, services, posts and seats in the Legislature have always served as "apples of discord" for our nation. We must beware of that apple of discord. We must try to make this country into one compact and strong unified nation. We must try to see that fissiparous tendencies and all sorts of causes which are responsible for our disunity must be eliminated. I would therefore request Dr. Deshmukh and Sardar Hukam Singh to withdraw their amendments.

So far as Sardar Hukam Singh's amendment is concerned, I submit Sir, that to me it appears that this amendment defeats the very purpose with which it has been moved. His amendment reads: "Backward class of citizens would mean and include class or classes of citizens backward economically and educationally." "Backward classes" may mean anything, backward educationally, economically, socially or otherwise. Why try to specify or restrict its meaning here? I think in its present form it is a much wider term and should be left as it is. I submit that it is time that we should try to eliminate all sorts of class distinctions and class prejudices. The real remedy to my mind is that we should try to strike at the very root and at the very foundation of this caste system. We should try to exterminate it as early as practicable, by an effective piece of legislation so that no class distinctions, discriminations, or caste or communities are recognised any further in any form, and further make it compulsory that a person born in one particular so-called caste shall not marry himself or his sons or daughters in that particular caste. It should be made penal for him to marry in his own so-called caste. For the present this appears to me to be the only remedy. By enacting a piece of legislation alone we can do away with this evil of caste system. The evil cannot be eradicated by superficial remedies.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, a healthy efficient and honest public service is the very backbone of a Government or its administration. Therefore if we scan this clause a little carefully it will pay us very well.

I believe that whatever complaints have been placed before us regarding the administration of this service here and the manner in which Public Service Commissions have been acting, all those loop-holes are sought to be plugged by the various amendments that have been made in the present Section 266 of the Government of India Act. Mr. Nagappa said—I do not agree with him—that the President Public Service Commissions, whether at the Centre or in the Provinces, are so bad as he would like to depict. No Public Service Commission or State Commission can do ample justice or absolute justice to one or two applicants. Whosoevers' application is not accepted, certainly he turns against the Public Service Commission, forgetting that he is one of many and that he could have stood the test prescribed by them. There may be hardships, may be some cases where hardship has really occured, which the persons who undergo that hardship might not deserve. Therefore it is no good quarrelling with individuals. It is true that proper men should be selected even for these public services; provisions regarding the staff and other matters have already been made. We are now at this stage of laying down the functions, of seeing to it that those functions are discharged properly.

Now as regards the qualifications and the manner of appointment, it has been left to the President in the one case and the Governor or the Ruler of a State in the other case; but in all these cases they will act only on the advice of their Ministers. Popular Governments will be there, but once they appoint, they will have nothing more to do in the regulation or in the conduct of the members of the Public Service Commissions. They are absolutely free and their freedom cannot be interfered with by the executive from time to time. That is the guarantee. Even for their removal, we have got other procedure and they could not be arbitrarily interefered with. This will no doubt be prescribed by the President or Parliament in the earlier clauses that we have passed, steps having been taken to ensure that great integrity and honesty prevails in the matter of administration of these Public Service Commissions.

Now, what are their functions? Some of the complaints that have been laid before us by Mr. Nagappa are due to certain provisions in Section 266 of the Government of India Act. It is not as if every appointment that is to be made for public services under the present Government of India has to be done by the Public Service Commission. There are certain exceptions. Under the present Act the Governor-General can lay down rules and regulations withdrawing certain classes of appointments from the purview of the Public Service Commission. It is also carried over and a similar provision is found in the draft article 286. But a safeguard has been put here which is wanting in the present Government of India Act. The safeguard is that wherever a particular appointment is taken away from the purview that is with respect to that appointment, the Public Service Commission need not be consulted unlike the provision in the earlier clause. Clause (3) of clause 286 says: "The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted etc.", and then "Provided that the President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union and the Govenor or Ruler, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted". A similar provision exists in the Government of India Act today, but it might have led to a number of abuses, in the matter of selection by the Ministry without consulting the Public Service Commission. This is sought to be remedied in the provision in clause (5) which says: "All regulations made under the proviso to clause (3) of this article by the President or the Governor or Ruler of a State shall be laid before the Parliament or before the respective legislatures." There is that safeguard. It comes before the scrutiny of the legislature and amendments will be made from time to time.

The other objection that Mr. Nagappa raised was that appointments are made a year in advance and later on the appointments are advertised by the Public Service Commission and the departments try to push those people whom they have appointed without any examination on the score that they are experienced. Such things do occur. It is not exclusively the fault of the Minister concerned. I have heard the honourable Mr. Santhanam telling me that he wanted a selection to an appointment made by the Public Service Commission and they have not been able to find time to select and it has been there for nearly seven or eight months and he has to hold up the appointment for that purpose. There are certain cases where the Public Service Commission on account of want of staff of too many applications having been received, have not been able to find time. These are exceptional cases but these must in the very nature of things be exceptional. I hope in the years to come there will not be any ground for

[Shri M. Ananthasayanam Ayyangar]

complaint of the nature that Mr. Nagappa made and the rules that we are now framing under clause (5) will avoid those inconveniences and with the best of intentions, I am sure, such things would not be repeated in the future.

Then, as regards the manner in which these Public Service Commissions are to work, the first requisite is that all appointments shall be made in the interests of public administration on merit and merit alone. But, having regard to the conditions of our country, there must be some provision in favour of those persons who are not even economically and socially advanced and may not be able to come up to the mark. There must be some limitation no doubt. With regard to appointments which require enormous skill and capacity, certainly, these rules cannot be relaxed, because public interests demand otherwise. Take, for instance, the case of an eminent surgeon; merely because he belongs to a particular community, he ought not to be taken for that job. There are other classes of jobs where such enormous technical skill and capacity may not be necessary, in which case there must be distribution. A hard and fast rule cannot be laid down in the Constitution. Therefore, some provision has been made in favour of the backward classes. There are some communities which have taken to trade; take, for instance, the Marwari community. They are rich; they have taken to trade. Is it open to them under the existing circumstances to say that they have not received proper representation in the services? In reality public service has no attraction for them Two or three members of a family engage themselves in business and become millionaries. It is true not one of them is in the public service. To avoid giving representation to the richer classes, the term "backward classes" has been introduced instead of the word 'community.' Though the term "backward classes" has not been defined. I am sure a Commission appointed by the President will determine who are the backward classes. There are backward classes in every community. Therefore, greater attention has to be given to these backward classes. Whether or not a certain class of people are backward does not depend upon the caste, or community. There is one rich class; there is a poor class. Some classes have economic advantages; some classes have not. The term backward classes is sufficiently comprehensive. To find out who are the backward people, under article 301 a Commission will be appointed to go into this matter and I believe whosoever is found as such will come under this clause for whom special reservations are sought to be made. Under article 10 of the Fundamental Rights, it is said that no discrimination shall be made; but discrimination is allowed to afford special help in favour of the backward classes who will be hereafter found to be so or whose names will, after investigation by a Commission, be declared as such. I believe Dr. Deshmukh will be sufficiently satisfied; when the matter comes up before the Commission, it will be time enough to place the case of the various sub-communities and other classes before it so that justice may be done to all of them who are in need of special help.

There is another improvement made in this article on the existing state of things under Section 266 of the Government of India Act of 1935. If any addition to the subjects that have to be placed before the Public Service Commission for consultation is to be made, the Act of Parliament has first of all to get the sanction of the President or the Governor-General before introduction of the Bill. Under the new article, the sanction of the President is not necessary to introduce a Bill to clothe the Public Service Commission whether at the Centre or in the provinces with additional powers or subjects. It is open to an official or a non-official member to introduce a Bill wherever necessary, after some experience is gathered of the working of the Constitution, straightway, enlist the opinion of this House and carry it through. This is another

improvement. After having experience of the working of the Government of India Act of 1935, all the defects that were noticed in practice have been sought to be removed by making special provision for the backward classes, by seeing that the rules and regulations exempting certain things from the scope and jurisdiction of the Public Service Commission have to be placed before Parliament for scrutiny from time to time, and by deleting the provision which required the sanction of the President for the introduction of a Bill to invest the Public Service Commission with more powers. In these respects, I submit to the House that these articles are an improvement. I hope with God's grace these provisions would work satisfactorily. If perchance, after working this Constitution, we find some more defects, there is inherent provision in article 286 by which we can amend these provisions. After all, the success of an institution depends not so much on the rules and regulations that are made, though of course, rules and regulations are necessary, but on the integrity, efficiency, honesty of purpose of those persons that work. Let us wish that all these defects will be removed in practice, that honest straightforward public-minded men will be in charge of the administration of the Public Service Commissions and the reproach that has been there, either of nepotism or favouritism, will wholly disappear.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, I think that the articles before us represent a great improvement on the provisions contained either in the Goverment of India Act, 1935; or in the Draft Constitution, with regard to Public Service Commission. My honourable Friend Mr. Ananthasayanam Ayyangar has pointed out one or two matters in which the new draft is better than the provisions contained in the Government of India Act, 1935 or in the Draft Constitution. I should like to point out other and more important features of the articles that we are considering which should be welcomed by anybody that understands the purpose of appointing Public Service Commissions.

Its object, as has been stated by several speakers is to secure for the State efficient public servants who will serve all people equally and will always watch over the interests of all communities and the State as a whole. But, the provisions that are at present in force, leave a number of loop-holes for Executive interference. The Government of India Act, 1935, empowers the Governor-General to specify by regulation any matter in respect of which the Federal Public Service Commission need not be consulted. The regulations may be unnecessarily wide, or they may be changed in such a way from time to time as to enable the executive to exercise a considerable amount of undesirable patronage Article 286 as now drafted provides a check, and a very good check, on the vagaries of the executive. The President or Governor will have the power to specify the matters in regard to which it will not be necessary to take the advice of the Public Service Commission; but, at the same time, it will be his duty to see that the regulations made by him are laid before the legislature and the legislature will have the power not merely to criticise these regulations, but to amend them in any manner that it likes. We can therefore feel sure that no regulations will be made by the President or Governor that are not likely to secure public approval. If he is tempted to deviate from the right path, he will hesitate to give in to the temptation for he will know that his regulations will have to be laid before the legislature.

Another very welcome feature of the articles that have been laid before us is that the Public Services Commission have been required to submit annually reports of their work to the Executive, drawing its attention to those cases in which their advice has not been accepted by the Executive. The Executive is further required to place the reports of the Public Service Commissions before

[Pandit Hriday Nath Kunzru]

the appropriate Legislatures. This is very valuable provision. Its importance cannot be exaggerated. We come to know from time to time of cases in which we feel that the Governments concerned have been guilty of irregularities but there is no method provided in the Constitution by which we may know definitely the cases where irregularities occur and the extent to which they occur. In the absence of facilities for obtaining accurate information on this point, members of the Legislature ask questions with regard to recruitment that sometimes do grave injustice either to the Ministers or to the Public Service Commissions. Article 288(a) will remove this danger and should the Executive be tempted unduly to disregard the advice of the Public Service Commissions, the representatives of the people will have an opportunity of criticising the action of the Executive and preventing it in future from disregarding the considered advice of the Commissions.

Sir, the point of view that I have placed before the House is not founded merely on theoretical considerations. The checks provided in the articles laid before us have been found to be necessary in practice at least in one case. The Calcutta High Court some time ago considered an application questioning the validity of an appointment made by the Local Government without consulting the Public Service Commission. The High Court expressed the opinion that the provisions contained in article 266 of the Government of India Act, 1935, with regard to matters in respect of which the Public Service Commission shall be consulted were not mandatory because it was not stated what would be the consequence of the disregard of those provisions. They were therefore held to be only directory. In other words, from the point of view of the public the obligation laid on the executive was not a fundamental right but only a directive principle. If such a case occurs in future, the Public Service Commission concerned will be able to mention this in the report which will have to be laid before the Legislature. There is a reasonable certainty therefore that the Executive will be disposed to act with caution and not exercise its powers in an arbitrary fashion and act as if the Public Service Commissions did not exist.

Sir, one other provision that I would like to draw the attention of the House to is article 287. In the draft as it stood before, the Commissions had to be consulted only in regard to the Union or State Services generally speaking, but now even appointments connected with corporations or other public institution created by law shall be dealt with by the Commissions. This again is an important safeguard. It is not unlikely at all that in the near future a number of corporations dealing with important matters may be created. The number of posts with which they will deal may be quite large and many of these posts may carry high salaries. As the draft stood it would not have been within the purview of the Public Service Commissions to make recruitment to these posts. But the amended draft that has been laid before us requires that posts under a Corporation or Public Institution created by law should be dealt with in the same manner as posts under the Union or a State.

Taking all these things together, it is clear that the articles that have been placed before us deserve to be warmly welcomed. If the members of the Public Service Commissions are properly chosen and they act without fear or favour, than there is no dobut that recruitment to the public services will not merely be above reproach but also above suspicion. If, however, the personnel of the Commissions is not good or if the members do not discharge their duty properly, then we have no remedy. The Constitution cannot either create competent men or compel the Executive to choose the officers required to discharge important functions with care and impartiality.

Sir, the articles that we are considering have been subjected to a certain amount of criticism. My honourable Friend Dr. Deshmukh finds that the articles do not protect the rights of all classes of the population. He is not satisfied with the provision in article 286 regarding the reservation of posts for any backward class of citizens without consultation with the Public Service Commissions. He wants that this principle should be extended and that it should apply to all classes. Indeed, he goes further than this and wants that the State should, without consulting the Public Service Commission, lay down that the various classes shall be represented in the Public Services according to their numbers in the Union or the State. This amendment has been dealt with so fully by a number of speakers that I do not think that I need dwell at length on it But I should like to add my voice to that of those speakers who have opposed this amendment We are all desirous that the public services should be recruited in such a manner as to give satisfaction to the public as a whole, but it would be.....

Dr. P. S. Deshmukh : That is all I want.

Pandit Hirday Nath Kunzru : I am glad to know that this is all that my Friend Dr. Deshmukh wants. But his amendment has been drafted in such a way as to create a very serious danger. I mean, that if it is acted upon, the public interests will suffer seriously. Steps can be taken to see that the interests of no community are ignored; but it will be most undesirable to require the executive to lay down that every class shall be represented in the public services according to its numerical strength. We all know that education is not widely spread in this country. There is, therefore, a large majority of people who are uneducated. Can we, seriously speaking, ask in this state of things, that all the classes should be represented in accordance with their population ? If it were a question of representation in the legislature, this argument would have force But where important business of the State requiring knowledge and judgment has to be carried on from day to day, we should appoint people only on the ground of merit. We cannot appoint them merely on the ground that their appointment will give satisfaction to certain classes; for if that were done, the very classes that want an adequate share in the public services would be the first to suffer, for they have to gain more by the efficiency of the administration and the impartiality of the officers than the members of the more advanced classes I am, therefore, compelled to oppose Dr. Deshmukh's amendment. I have hardly any doubt that the House will not accept it.

Shri T. T. Krishnamachari (Madras : General) : Sir, I move that the question be now put.

Mr. President : The question is :

"That the question be now put"

The motion was adopted.

Mr. President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, after the speeches that have been made by my Friend Mr. Ananthasayanam Ayyangar and my Friend Mr. Kunzru, there is very little that is left for me to say in reply to the various points that have been made. Mr. Jaspat Roy Kapoor said that clause (2) was unnecessary. I do not agree with him because clause (2) deals with a matter which is quite different from the one dealt with in the original article 284. I think it is necessary, therefore, to retain both the clauses.

[The Honourable Dr. B. R. Ambedkar]

The only point that remains for me to say anything about is the question that is raised about the Scheduled Castes and the Backward Classes. I think I might say that enough provision has been made, both in article 296 which we have to consider at a later stage and in article 10, for safeguarding the interests of what are called the Scheduled Castes, the Scheduled Tribes and the Backward Classes. I do not think that any purpose will be served by making a provision whereby it would be obligatory upon the President to appoint a member of what might be called either a Scheduled Caste, or Scheduled Tribe or a member belonging to the backward classes

Shri A. V. Thakkar (Saurashtra) : Other backward classes

The Honourable Dr. B. R. Ambedkar : The function of a member of the Public Service Commission is a general one. He cannot be there to protect the interests of any particular class. He shall have to apply his mind to the general question of finding out who is the best and the most efficient candidate for an appointment. The real protection, the real method of protection is one that has been adopted, namely, to permit the Legislature to fix a certain quota to be filled by these classes. I am also asked to define what are backward classes. Well, I think the words "backward classes" so far as this country is concerned is almost elementary. I do not think that I can use a simpler word than the word "Backward Classes". Everybody in the province knows who are the backward classes, and I think it is, therefore, better to leave the matter as has been done in this Constitution, to the Commission which is to be appointed which will investigate into the conditions of the state of society, and to ascertain which are to be regarded as backward classes in this country.

Shri A. V. Thakkar : May I ask whether it will not take several years before that is done ?

The Honourable Dr. B. R. Ambedkar : Yes, but in the meantime, there is no prohibition on any provincial government to make provisions for what are called the backward classes. They are left quite free, by article 10. Therefore, my submission is that there is no fear that the interests of the backward classes or the Scheduled Castes will be overlooked in the recruitment to the services. As my Friend Pandit Kunzru has said, the articles I have presented to the House are certainly a very great improvement upon what the articles were before in the Draft Constitution. We have, if I may say so for myself, studied a great deal the provisions in the Canadian law and the provisions in the Australian law, and we have succeeded, if I may say so, in finding out a *via media* which I hope the House will not find any difficulty in accepting.

Mr. President : I will now put the various amendments to vote. The first amendment to article 286 was No. 13 moved by Shri Jaspat Roy Kapoor. The question is :

"That in amendment No. 12 above, clause (2) of the proposed article 286 be deleted and the subsequent clauses be re-numbered accordingly.",

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments the proviso to clause (3) of the proposed article 286 be deleted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, for clause (3) of the proposed article 286, the following be substituted :—

(3) The Union Public Service Commission as respects the All India Service and also as respects other services and posts in connection with the affairs of the Union, and the State Public Service Commission as respects the State services also as respects other services and posts in connection with the affairs of the State, shall be responsible for all appointments, carrying a maximum of Rs 250/- (Two hundred and fifty rupees)'."

The amendment was negatived.

Dr. P. S. Deshmukh: I beg leave to withdraw amendment No. 82 moved by me.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The next amendment is No. 84 moved by Mr Nazimuddin Ahmad. The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, after the proviso to clause (3) of the proposed article 286, the following new proviso be added :—

'Provided further that the Public Service Commission of the Union shall always be consulted where the service carries a maximum pay of Rs. 500/- per month and the State Public Service Commission shall always be consulted where the service carries a maximum pay of Rs. 250/'."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, clause (4) of the proposed article 286 be deleted"

The amendment was negatived.

Dr. P. S. Deshmukh: Sir, I beg leave to withdraw amendment No. 86 moved by me.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then amendment No. 87. The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, after clause (4) of the proposed article 286, the following Explanation be added :—

'Explanation.—Backward class of citizens would mean and include class or classes of citizens backward economically and educationally.'"

The amendment was negatived.

Dr. P. S. Deshmukh: I beg leave to withdraw amendment No. 88 moved by me.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 89 by Shri R. K. Sidhva. The question is

"That in amendment No. 14 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed article 286, the following new clause be added :—

(6) The commission shall submit to the legislature every year a report setting out all cases, the Government's reasons in each case, and the Commission's views thereon where there is difference of opinion'."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 14 of List R (Fifth Week) of Amendments to Amendments, for the proposed clause (3) of article 286, the following be substituted:-

'(3) The Union Public Service Commission with regard to All India Services and also in regard to other Services and posts in connection with the affairs of the Union, and the State Public Service Commission in regard to the State Services and also in regard to the services and posts in connection with affairs of the State shall be consulted in respect of all appointments, transfers and disciplinary matters relating to these Services'."

The amendment was negatived.

Mr. President: I will now put article 286 as proposed by Dr. Ambedkar to vote.

The question is:

"That proposed article 286 stand part of the Constitution."

The motion was adopted.

Article 286 was added to the Constitution.

Mr. President: I will now take up article 287, as proposed by Dr. Ambedkar There is one amendment to it by Mr. Naziruddin Ahmad. The question is:

"That in amendment No. 16 of List I (Fifth Week) of Amendments to Amendments, in the proposed article 287, for the words 'or other body corporate' the words 'or other body corporate not being a company within the meaning of the Indian Companies Act, 1913 or banking companies within the meaning of the Banking Companies Act, 1949' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That proposed article 287 stand part of the Constitution."

The motion was adopted.

Article 287 was added to the Constitution.

Mr. President: There is no amendment to article 288 so I will put it to vote. The question is:

"That proposed article 288 stand part of the Constitution."

The motion was adopted.

Article 288 was added to the Constitution.

Mr. President: The question is:

"That the new article 288A stand part of the Constitution."

The motion was adopted.

Article 288A was added to the Constitution.

Article 292

Mr. President: We shall now take up article 292.

Pandit Thakur Das Bhargava (East Punjab: General): But there is a new article 291A proposed by me which may be taken up.

Mr. President: I think it is covered by another article.

Pandit Thakur Das Bhargava: But mine is more comprehensive.

Mr. President : You can move it as an amendment to 295A. Is it not covered by 295A ?

Pandit Thakur Das Bhargava : Yes, Sir, but 295A does not deal with articles 293 and 295, which are covered by my amendment.

Shri T. T. Krishnamachari : The honourable Members' amendment is closely related to the proposed article 295A. Article is restricted in its scope. The amendment of the honourable Member of article 291A extends the scope of these articles. It would therefore be proper for the honourable Member to move his amendment as an amendment to article 295A. I think the suggestion made by the President is appropriate. The honourable Member may move it as an amendment to 295A.

Mr. President : That is what I was suggesting.

Pandit Thakur Das Bhargava : Just as you please, Sir.

The Honourable Dr. B. R. Ambedkar : I move that for article 292, the following be substituted :

"292 (1) Seats shall be reserved in the House of the People for—

Reservation of seats for Scheduled Castes and Scheduled tribes in the House of the People

(a) the Scheduled Castes;

(b) the scheduled tribes except the scheduled tribes in the tribal areas of Assam;

(c) the scheduled tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State for the Scheduled Castes or the scheduled tribes under clause (1) of this article shall, save in the case of the Scheduled Castes in to the total number of seats allotted to that State in the House of the People as the population of the Scheduled Castes in that State or of the scheduled tribes in that State or part of that State as the case may be, in respect of which seats are so reserved bears to the total population of that State."

This article 292 is an exact reproduction of the decisions of the Advisory Committee in this matter and I do not think any explanation is necessary.

Mr. President : This represents the decision which was taken at another session of this House when we considered the Advisory Committee's report. This puts in form the decision then taken. We have several amendments to this here. I will take them now.

Prof. Nibaran Chandra Laskar (Assam : General): Mr. President, Sir, I shall move No. 24. I am not moving No. 23. I move :

"That in amendment No. 22 above in clause (2) of the proposed article 292, after the words, brackets and figure 'under clause (1) of this article shall' the words 'save in the case of the Scheduled Castes in Assam' be inserted."

If my amendment is accepted, then clause (2) of the article 292 will read thus :

"The number of seats reserved in any State for the Scheduled Castes or the scheduled tribes under clause (1) of this article shall, save in the case of the Scheduled Castes in Assam, bear, as nearly as may be, the "same proportion to the total number" of seats allotted to that State in the House of the People as the population of the Scheduled Castes in that State or of the scheduled tribes in that State or part of that State, as the case may be, in respect of which seats are so reserved bears to the total population of that State."

I wholeheartedly support the proposed amendment of Dr. Ambedkar with a very slight modification as mentioned in my amendment. During the last session of the Constituent Assembly, the historic decision was made to abolish the reservation of seats for minorities except in the case of Scheduled Castes and

[Prof. Nibaran Chandra Laskar]

scheduled tribes. I offer my heartfelt thanks to the Members of the Constituent Assembly who were good enough to support the report of the Minorities Sub-Committee and granted these privileges to the Scheduled Castes and scheduled tribes. I shall be failing in my duty if I do not say that the Scheduled Castes and scheduled tribes in the country will ever remain grateful to the Honourable Prime Minister and the Honourable Deputy Prime Minister, the Chairman of the Minorities Sub-Committee, who really felt the demands and grievances of the Scheduled Castes and scheduled tribes and who had to face strong opposition for their cause. It is through their grace the Scheduled Castes and tribes are getting these political rights.

I believe that any reservation will go against the principle of democracy, but the circumstances such as political unconsciousness, backwardness in education and the very poor economic condition of the Scheduled Castes compel them to demand for these privileges. If Dr. Ambedkar's amendment is accepted, then the Scheduled Castes or scheduled tribes will get reservation of seats. But it has been stated as a fundamental concept of the Constitution that the representation for the House of the People would be on the basis of one seat to at least 5 lakhs of people, and it will be considered according to the preceding census just before the election. Therefore, I have great doubts in my mind whether the Scheduled Castes in Assam will get the benefit of this privilege. Unfortunately, the district of Sylhet which was a part of Assam has been annexed to Pakistan by referendum, and thereby about three lakhs of Scheduled Castes people went over to Pakistan and the population of the Scheduled Castes which was 6,76,566 before partition, has come down after partition to 3,77,025 according to 1941 census, although I question the authenticity of the census figures of 1941. Now, I shall try to prove it. On the figure as given in 1941 census, the Scheduled Castes cannot claim as of right any seat in the House of the People. Therefore, by my amendment I want to have an exception to be made to give scope to the Scheduled Castes to approach before the Election Commission or whatever that authority may be to place their legitimate demands. First of all, I shall show to the House that the figures of the 1941 census are incorrect, inaccurate and fallacious. In the whole of Assam the total population is only about one crore. I shall take only the major communities. In Vol. IX of the Census Report of 1941 the following figures are given about the variation of communities from 1931-41 :—Among Hindus there is a decrease of 12 per cent. and among Muslims there is an increase of 24 per cent. The Tribes have increased by 184 per cent. In the Brahmaputra valley there has been an increase in the Tribals of 477 per cent. and in the Surma valley 2266 per cent. From these figures the House can see the inaccuracy of the census figures of 1941 : While there is a general increase of 18 per cent. in the province of Assam, among the Tribals there is an increase of 184 per cent. and among the Hindus there is a decrease of 12 per cent.

In the Minorities Sub-Committee Report, some 9 lakhs of garden labourers, considered as Tribals in the 1941 Census, have been shown as general population. If the Census figure is correct, then there is no justification for taking out 9 lakhs of garden labourers from the fold of the Tribals and showing them as general. By this the strength of the Scheduled Castes has been reduced. I shall prove that their number is more than 10 lakhs now. Leaving aside the gradual decrease of the number of the Scheduled Castes from 1911 to 1931, if we take the garden labourers numbering 9 lakhs who are included in general population, then we can easily get the number of Scheduled Castes. Then what Communities do the garden labourers belong to? I can prove from records that 80 per cent. of them are Hindus and 80 per cent. of these Hindus belong to Scheduled Castes.

Shri A. V. Thakkar : We are unable to follow the speaker.

Prof. Nibaran Chandra Laskar : There has been a tendency from 1911 onwards amongst the Scheduled Castes to change their communities, because they were very much afraid that the caste-name generally prohibited them from getting into any Government services. Therefore the community began to decrease gradually. In 1911 the strength of the Scheduled Castes was 13 lakhs, in 1921 it was 14 lakhs and in 1931 it came to about 6 lakhs and in 1941 it came to 4 lakhs. As for instance, the strength of the Scheduled Patni community in 1911 it was 1,11,000, but in 1921 the strength came down to 45,000. With regard to this Community the Census Superintendent in his report of 1921 Vol. III Part I page 154 says. "It was suggested by one of the Leaders (himself a Brahmin) that a caste which was looked down upon could not hope to improve its status without a better name." This shows that Scheduled Castes were made to decrease by the leaders not belonging to their own communities.

Mr. President : Are you likely to take a long time ?

Prof. Nibaran Chandra Laskar : I will take sometime more.

Mr. President : Then we shall go on with this tomorrow. The House stands adjourned till nine of the clock on Wednesday.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 24th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 24th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION (*Contd.*)

Article 292—(*Contd.*)

Mr. President: Prof. Laskar will continue his speech.

Prof. N. C. Lasakr (Assam: General): Mr. President, Sir, yesterday I was speaking about the gradual decrease of the Scheduled Castes since 1921. I would like to draw the attention of the House today to the Census Report of 1921, Vol. III, Part I; and in page 154, of that report a table was given with the variation in caste, tribe, etc., since 1881 and from this table I shall give certain instances of gradual decrease of the depressed classes.

Patni population in 1911 was 1,11,000.

Patni population in 1921 was 45,000.

Nandiyal population in 1911 was 68,000.

Nandiyal population in 1921 was 18,000.

Rajbansi population (they are considered as Scheduled Caste in Bengal) in 1911 was, 133,000.

Rajbansi population (they are considered as Scheduled Caste in Bengal) in 1921 was, 92,000.

Now I would like to draw the attention of the House to the Census Report of 1931, Vol. III, Part I, page 219, wherein it is stated :—

> "The total for the exterior castes, *i e*, Scheduled Caste of Sylhet is therefore 392,000 at a minimum, and for Cachar 80,000 and the total for the whole of the Surma Valley is 472,000 at a minimum. For the Assam and Surma Valley together the total is 655,000 and for the whole province is 657,000."

The Census Superintendent made certain remarks also with regard to the Patni community in that page of that Report. He said "the Census figures give. 9,000 only in the District of Cachar and the correct figures are at least 40,000. In Sylhet the figure for the Patni community is given as 43,000 only and there are at least 70,000. The total population for the depressed classes for the whole Province is 6,57,000."

In 1921, the strength of the Scheduled Castes was 12 lakhs. Then, there is a big gap in 1931. Because the garden labourers were considered as depressed classes in 1921 but in 1931 they were separated from the depressed classes and considered as a single caste, that is the garden cooly caste. That is why, in the census of 1931, their strength came down from twelve lakhs to six and a half lakhs In article 155 of that Report dealing with the difficulties of return of caste, the Census Superintendent said: "When it comes to castes like the Kayasths, Mahisyas, and Patnis, I confess that the figures appear to me to be worthless and not worth the trouble of collecting." In the same page, he again said: "When we came to castes like the Patnis in the Surma Valley, we find that at each successive census their numbers have been melting

[Prof. N. C. Laskar]

away in a most mysterious fashion." That shows that the 1931 census could not give the accurate or correct figures of the Scheduled Castes people, and also indicated a gradual decrease in the number of the Scheduled Castes.

Now, Sir, what were the causes of this decrease? There were two causes. The first is that, between 1911 and 1931, the Scheduled Castes could not get scent of the divide and rule policy of the British Government, the award of the Simon Commission and the provisions of the Government of India Act, 1935. Therefore, there was a tendency to raise the social status by removing the caste designation. The second reason is, that there was a tendency to raise their social status by changing their caste names and the Scheduled Castes took the help of certain leaders who did not belong to their own Communities or of the Puranas or the Shastras. These leaders made them Caste Hindus only in name; but they could not make them free from untouchability. This accounts for the gradual decrease in the Scheduled Castes people.

Then, I would like to draw the attention of the House to the position of the garden labourers. The 1911 census figures show that the strength of the garden labourers was 5,07,058. They mostly belonged to the depressed classes. I refer to article 73, page 57 of the Census report of 1921, Vol. III, part I, in which it is stated the total garden labour population is 9,22,000. Over 7,82,000 or 85 per cent are Hindus. (*Vide* 1931 census, Report, Vol. III, Part I, Page 222) : "these garden labourers were considered as garden cooly castes and their total population given in the report was 14 lakhs in which the number of Hindus was 13,16,000." According to the 1941 census, these garden cooly castes changed their status and they were considered as garden tribes. They were included in the Scheduled Tribes and thus increased the population of Scheduled Tribes from 16 lakhs to 28 lakhs. Thus, the status of the garden labourers has been changed gradually. Up to 1921 they belonged to the depressed classes; then they were promoted to garden cooly caste in 1931, then they were considered as garden Tribes in 1941.

Now, fortunately nine lakhs of them are going to be recognised as general, *i.e.*, Caste Hindus. If we consider that out of 11,34,000 (*vide* 1941 census report) of the garden labourers 80 per cent (of this population) are belonging to the Hindu Community, then, the strength of the garden labourers comes to a total of about 10 lakhs Hindus. I strongly feel that 80 per cent of these Hindus garden coolies belong to the Scheduled Castes; thus we get about 8 lakhs of Scheduled Castes from the garden labourers. If we add these with the total population of Scheduled Caste of 1941 census then, I can claim rightfully that the Scheduled Castes population is sure to be about 11 lakhs even according to 1941 census. Therefore, if a real census is taken before the election, I can assure the House that we shall get about 11 to 12 lakhs of Scheduled Castes in the province of Assam.

Before the partition, one seat was allotted in the Constituent Assembly to the Scheduled Castes from Assam. After the partition also, this community treated with exceptional generosity by the members of the Assam Legislassembly and one seat was allotted to them in the Constituent Assembly.

it: Is it your argument that because they happen to be eleven ld not be any reservation of seats?

There should be, but I have some doubts in my mind; ifications.

you driving at? Is it because they happen to be eleven or twelve lakhs in the province they should not have reservation of seats?

Prof. N. C. Laskar: I would like to say that according to the 1941 census their numbers are about four lakhs. I have great doubts in my mind whether this population can claim any seat in the House of the People. Therefore, by my amendment I want some exception to be made for the Scheduled Castes of Assam so that they get representation in the House of the People.

Mr. President: Whatever their population may be, reservation of seats will be in proportion to their number.

Prof. N. C. Laskar: I have already proved before the House that the census figure of 1941 is not correct. I demand a regular census before election and if not, some exceptions to be made for this community before elections. I would like to say that for granting one seat in the Constituent Assembly even after the partition, I am very much grateful to the Honourable Premier of Assam and the Congress Parliamentary Party of the Assam Legislative Assembly. I feel that they realised the real strength of the Scheduled Castes in Assam and therefore granted one seat in the Constituent Assembly.

Then, Sir, in the amendment of Dr. Ambedkar, it is stated that :

"The Scheduled Castes or the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State.....as the population of the Scheduled Castes in that State or of the Scheduled Tribes in that State.. "

The insertion of the words "as nearly as may be" cannot remove my doubts, the meaning of the words "as nearly as may be" seems to be vague. The Election Commission may make out a common formula such as, "no seat should be allotted to a community having a population of less than 4,50,000." Thereby we cannot claim any seat in the House of the People. Therefore I want some exception in the provision of this article.

The language that has been used in my amendment is not my language. It is the language of the Drafting Committee. Mine is not a "solitary example". Exceptions have already been given to other communities also. By the provision of article 293 some exceptions are being made for the Anglo-Indian community, and again by article 149 some exceptions are being made for the people of the tribal areas and Shillong constituencies of Assam. In Clause (3) of article 149 it is stated :

"The representation of each territorial constituency in the Legislative Assembly of a State shall be, on the basis of the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published and shall, save in the case of the autonomous districts of Assam and the constituency comprising the cantonment and municipality of Shillong, be on a scale of not more than one representative for every seventy-five thousand of the population."

The Shillong constituency contains a population of about 12,000. Exception is also being made for that Shillong constituency under the provisions of this Constitution, and therefore I think my demand in my amendment is legitimate.

I cannot check temptation in giving some facts about the present situation of the Cachar districts in Assam which contain about one-third of the Scheduled Caste population of Assam, which narrowly escaped from the grip of Pakistan by Radcliffe award and which district I belong to. After the partition, the total population of this district is 10,24,581. Of these, Scheduled Castes are 1,17,205, Hindus are, 2,82,646, and Muslims 4,34,205. There are also refugees who have come from Eastern Pakistan to Assam. Their total population will be about 55,000. The Muslim influx in this district is not less than that.

I shall now deal with the present position of the major communities of Cachar district. First of all, I shall take up the case of Hindus. About fifty per cent of these caste Hindus are untouchables. They are mainly belonging to Manipuries, Naths communities. There are some communist elements in my district. In the last Assembly election the Communist candidate from

[Prof. N. C. Laskar]

this district polled the largest number of votes amongst the Communist candidates in the whole of India, and therefore I cannot say that the Communist movement has been checked in my district. Some reactionaries of the Muslim community created also some troubles in my district. On the twelfth day after the assassination of Mahatmaji, small children started a silent procession and it was intercepted with lathi charge by some Muslims and the offenders were convicted in the court. Again in my district, I can quote another instance after partition. A cow was slaughtered on the land of the Hindus just in front of a Kali temple. The offenders were caught hold and the case tried in the Law Court and the offenders were convicted. Therefore you can imagine, Sir, that there are some Muslim disrruptive elements also in my district. As regards the Scheduled Castes there are some followers of Mr. J. N. Mandal also. After Partition, the President of the Assam Scheduled Caste Federation appeared before the Boundary Commission with a memorandum to get Cachar included in Pakistan. Then just before the referendum, Mr. J. N. Mandal of Sylhet District, the Honourable Minister of Pakistan Government, was invited by the Scheduled Caste Federation and Mr. Mandal in a meeting requested the Scheduled Castes to vote for Pakistan.

But in the last election all the Scheduled Caste seats were captured by the Congress in Assam. Each seat was contested by the Scheduled Castes Federation but was badly defeated by the Congress. I do not know, if the Honourable Dr. Ambedkar has in his mind any prejudice against the Scheduled Castes of Assam. I hope he will kindly wash it off from his mind. Because I believe that he loves Scheduled Castes more than I do. He did much for the Scheduled Caste and I hope he will do much more. Therefore I request him to accept my amendment. If any privileges are not given to Scheduled Castes people of Assam, then these poor innocent people of Assam may be handled by some other reactionary groups. Therefore in consideration of the geographical position and political and strategic condition of Assam, I appeal to the House to accept my amendment. With these words, Sir, I move.

Shri Jaspat Roy Kapoor (United Provinces: General): Mr. President, Sir, I beg to move :

"That in amendment No. 22 above, at the end of the proposed article 292, the following proviso be added :—

'Provided that the constituencies for the seats reserved for the Scheduled Castes or Scheduled Tribes shall comprise, so far as possible such contiguous areas where they are comparatively more numerous than in other areas.'"

If this is not acceptable to the House, I move alternatively that the following proviso be added :—

"Provided that reserved seats shall be allotted to such constituencies as contain comparatively larger number of Scheduled Castes or Scheduled Tribes members than in other constituencies.

Sir, I am sure that everyone of us here today is very happy at the amendment which has been moved by the Honourable Dr. Ambedkar. By his amendment he is replacing the old draft of article 292. This is one of those few amendments which is going to have a far reaching consequence for the great good of the country. It is based on the agreement which has been arrived at in the Minorities Committee, between the major and the different minority communities of this country. By that agreement our Muslim friends and our Christian friends as also our Sikh brethren have agreed to give up reservation of seats in the different legislatures. I would like to take this opportunity to congratulate them all for this wise and bold decision that they have taken in the larger interest of the country. I would particularly like to congratulate

my Muslim brethren because for so many years past they have had separate electorates and separate representation and they had begun to think that therein only lay their salvation and that without separate electorate and separate representation it would not be possible for them to safeguard their interests. We know they were grossly mistaken but then all the same because of the clever tactics of the British Government, this thing had been instilled in their minds and they always felt convinced about the propriety of this separate representation. It is a very fortunate day for us and for this country that they have now come to realise that such a system is certainly not in their interest. I congratulate them once again for this wise and bold decision. They have now thrown the responsibility of safeguarding their interests on the major community and it is now for the major community to show by their conduct, by their actions, by their dealings towards the Muslim brethren to convince them that they were in the wrong in the past and that they are right now, that their interests are safe when they forget to think themselves as a separate community and that their interest is the same as the interest of the major community or rather that the interest of every community and every citizen of the country lies in the interest of the country as a whole.

The major community has already begun to realise what a tremendous responsibility has been thrown on its shoulders. I know of several places where members of the majority community have realised their responsibility. I would hereafter very much prefer not to refer to any community as major or minor community and I am sure after the adoption of this article and the coming into being of this Constitution we should forget the sting of communities as major and minor communities. Because the more we talk in this way the more we remind the people that we are not one Nation and that they are different communities with different interests. I have often felt that when we address meetings and say Hindu and Muslim *"Bhaiyon"*, and when we appeal to them that the Hindus, Muslims and Christians should come together—I have always felt that we remind them by that appeal that they are so many different communities who need being brought together. It is much better that we do not refer them as Hindus, Muslims and Christians in our meetings and publications. The members of the majority community have already begun to realise that a heavy responsibility has been cast on them by their Muslim brethren. They have now thrown themselves at our mercy—if I could put it like that and therefore, we now owe it to our Muslim brethren and we owe it more to ourselves to prove by our conduct and actions that the trust that they have reposed in us will not be betrayed, that this step has not been a wrong one and that they have everything to gain thereby. The majority community is out to make specific efforts to see that in the elections—municipal and otherwise, that are to take place shortly in some places the Muslims may be elected not only in proportion to their number but even more, if possible.

Of course the task is not an easy one. It would have been easier before partition. It has been made more difficult by partition, because partition has been brought about because of the existence of separate electorates and separate representation. That canker in our political system leading to the partition of the country and the consequent tragedy threafter has left behind bitter memories, and it will take sometime before these bitter memories are wiped out but all responsible members of the major community are keenly alive to the responsibility that has now been cast on their shoulders, and they have already begun to take active steps to see that in the elections that will take place hereafter their Muslim brethren's interests are amply safeguarded.

I would also like to congratulate our Christian friends who have also given up their contention of separate representation and reservation of seats. In the past the Christians had hardly ever demanded separate representation.

[Shri Jaspat Roy Kapoor]

They have all along been nationalists to their core, but somehow when this Draft Constitution was under preparation some of them thought that since Muslims, Scheduled Castes and even Sikhs and probably even Parsees were thinking of having separate seats reserved they might as well take advantage of this and claim a few seats in the legislatures. Happily they gave it up, which of course I know was hardly ever put with any seriousness. The credit in a great measure for this must go to my honourable and reverend Friend Dr. H. C. Mookherjee who adorned this Chair in your absence, Sir. I have developed very great regard and affection for Dr. H.C. Mookherjee. I have known how hard he worked to persuade his own community and how still harder he worked to persuade the other communities to give up claiming reservation of seats, and if he has not succeeded in persuading the Scheduled Castes Members to give up this claim, the fault is not surely his.

As I am thinking of Dr. Mookherjee I cannot forget to mention my Friend Mr. Sidhva over there. He was perhaps thinking why I am forgetting him but I had not forgotten him. I was thinking that at the end I would congratulate him and not only him but the great Parsee Community to which he belongs, not only for giving up the claim of reservation but for something more and that is for never having thought of it at all. Their is an example worth emulating. The Parsee community is neither a majority community nor a minority community. It is, if I may say so, a baby community, and though a baby may well always claim special treatment and special nursing, this baby community has never thought of any special protection. What is the result? We find Parsees being represented not only represented but even overwhelmingly represented, looking to their small number, in this country, not only in the legislature but in every walk of life, be it social, industrial, commercial banking or any others. They have always been patriots whose example is worth emulating. On this occasion I cannot forget mentioning the sacred names of Dadhabhoy Naoroji of reverend memory, the late Sir Pherozeshah Mehta, the late Shri Dinshaw Wacha whose names go down in history as the makers of modern India, as the harbingers of freedom in this country and to their sacred memory I bow my head in reverence. I congratulate and express my great appreciation for the patriotic attitude which this baby community has always adopted in this country.

Last of all, Sir, I would like to refer to my Sikh brethren. They also deserve our congratulations for having fallen in line with the other minority communities. As a matter of fact our Sikh brethren should never have thought of being a minority community. They have always been part and parcel of the Hindu community. Only for a few loaves and fishes of office or seats in the legislatures they allowed themselves to be tempted to claim separate representation. I say they are always a part and parcel of the Hindu community, in spite of what any Sikh friend of mine might say to the contrary. There has always been inter-dining; there has always been inter-marriages between the Hindus and Sikhs, though these inter-marriages have become less common now ever since our Sikh brothers have begun to say that they are entirely separate from the Hindus. I hope there will be a change in their attitude also and we shall have occasion hereafter to welcome this changed attitude on their part. Our Sikh brethren have always been not only part and parcel of the Hindu community, but they have always been the sword-arm of the Hindus and of the country as a whole. Herefater we are going to forget thinking in terms of Hindus. Muslims and Sikhs as such and they shall continue to be the sword-arm of India. To them we shall look up for the defence of the country and for keeping our enemies out of our boundaries.

But, Sir, I wish I could similarly congratulate my Scheduled Caste friends, but then, unfortunately today there is no such occasion. They still think that they cannot safely fall in with other minority communities in this country. As I said about the Sikhs, so also the Scheduled Castes people are not a minority community which have a separate entity from the Hindus; they are blood of our blood and flesh of our flesh. Why should they think that they are in any way separate from the rest of the Hindus community? We do not wish to impose on them our judgment and our views. We will leave it to them to realize in course of time that they are not in the right when they demand reservation of seats; and the other communities of this country in as short a time as possible by their conduct must convince the members of the Scheduled Castes that their interest are as safe in the hands of the rest of India as in their own hands. The rest of India must, therefore, make specific efforts to remove this apprehension in the minds of the Scheduled Castes, so that even before the period of ten years they may themselves come forward with the suggestion that they do not want any reservation of seats. My amendment is in that direction. Now that they have demanded reservation of seats, let us give it to them. Let us not only give it to them but let us make such provisions which may ensure a representation of theirs to their satisfaction. My amendment suggests that constituencies which are reserved for the Scheduled Caste members should be such as contain a larger number of Scheduled Caste voters than in other constituencies so that it may be easier for the Scheduled Castes to send to the legislatures such persons as are of their confidence. The larger the number of the members of the Scheduled Castes in a constituency the easier will it be for them to elect member of their choice. Their choice if it not be actually the determining and deciding factor, at least it should have a great voice, a very influential voice in the selection or the election of candidates. This is my object in moving this amendment.

Again I say, it is for the Scheduled Castes themselves to see whether this amendment of mine is to their advantage or not. My intention is to suggest to them that they might accept it, for I consider it to be in their interest, and in whatever lies their interest, lies the interest of the rest of the communities of this country. Should they feel that they have nothing to gain by accepting this amendment, or that they have something to lose thereby, I shall readily withdraw this amendment, because I do not want to press any amendment which, though moved with a view to safeguard their interests, and to give them some thing more than what they have for themselves, does not meet with their approval. With these words, Sir, I place this amendment of mine for the consideration of the House or I should rather say particularly for the consideration of my Scheduled Caste friends, but if they do not want it, it should not be there.

Mr. President: I may point out to honourable Members that the articles which we are now considering represent decisions which we have taken after two days' debate and it is not necessary to repeat that debate again. So Members might confine themselves to the amendments, or if they have any different views they might express them, but we need not go over the same ground that we covered during the debate which lasted two days.

The Honourable Dr. B. R. Ambedkar (Bombay: General): I was going to suggest, with regard to the amendment which stands in the name of Rev. Nichols-Roy, that this is more relevant to the interpretation clause where the Scheduled Castes and the Tribal people will be defined. If my friend is keen on moving this amendment, I think it should properly stand over until we come to that part of the Constitution—article 303.

Mr. President: Have you followed Dr. Ambedkar?

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Yes, I have. My amendment was based on the amendment which was going to be moved by Mr. Thakkar, No. 3108, and I now find that the amendment (No. 28) which he is now going to move is in a different form. However, if Mr. Thakkar is not going to move this amendment, I also will not move my amendment now. But I reserve the right that I shall move my amendment at the time when this matter will be discussed under article 303.

The Honourable Dr. B. R. Ambedkar: I also suggest that the amendments which stand in the name of Mr. Thakkar should stand over and be taken at the same time when we are dealing with article 303.

The Honourable Rev. J. J. M. Nichols-Roy: If Mr. Thakkar agrees. I will agree.

Shri A. V. Thakkar (Saurashtra): I completely agree.

Mr. President: So both amendments stand over.

Sardar Hukam Singh (East Punjab: Sikh): Sir, I am not moving amendments Nos. 29 to 31. I beg to move:

"That in amendment No. 22 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed article 292, the following Explanation be added:

'*Explanation.*—The members of the Scheduled Castes and the scheduled tribes mentioned in sub-clauses (a), (b) and (c) of clause (1) above shall have the right to contest unreserved seats as well.'"

At the outset, I might submit that the Explanation proposed in this amendment is not a new idea. It was already there in the recommendations of the Minorities Advisory Committee and that recommendation was also placed, and I am sure, agreed to, by this sovereign body on the 27th and 28th August 1947. In my opinion it was a wholesome provision. I do not know why it has been dropped in this draft. Of course things were different when the original was put before this Constituent Assembly and all religious minorities had been given.....

Shri S. Nagappa (Madras: General): I rise to a point of order. The amendment which my honourable Friend is moving is superfluous. It has been provided in the Constitution itself that Scheduled Castes and Scheduled Tribes can contest not only seats reserved for the Scheduled Castes but general seats as well. So my honourable Friend's amendment is superfluous. So I would request my honourable Friend, that as it is already provided for in the Constitution.....

Mr. President: That is not a point of order. After he has moved it you can ask him to withdraw it.

Shri S. Nagappa: I would recommend to my Friend not to move his amendment as it would be superfluous.

Sardar Hukam Singh: I am thankful to my Friend for this counsel, and if I am convinced that certainly it is not required, I will have no hesitation to withdraw it subsequently. But I think it should be made clear here, as it was in the original draft that the Scheduled Castes and Scheduled Tribes shall have the additional right to contest the general seats as well.

I was submitting, Sir, that when the first draft was put before the House all religious minorities were given reservation of seats. They have now voluntarily agreed not to have them. My community is also one of those religious minorities. The Sikhs are not sorry for having come to that decision. They think that it is the right decision for the benefit of the minorities themselves.

But Mr. Kapoor has referred to one or two things, to which, I must beg permission to reply. He has said that the minorities,—and he has given very good counsel,—should cease to think in terms of minorities and majorities and that we should all consider ourselves as one whole community. I do agree with him there and I can assure my honourable Friend that the Sikhs do want to be and will try to be welded into one whole. I have also heard several times slogans here in this House and outside as well that there are no minorities now. I wish it were so. But my submission is that so far we have this question, the minorities are there. Mere wise counsels and slogans will not eliminate them. It is something else, something better, that is required to bring about the objective, the goal that we desire to reach. For that purpose, I cannot do better than read a passage from the introductory remarks of our learned Friend Dr. Ambedkar when he introduced this Draft Constitution. He gave very sound counsel to the majority and the minorities and I think those words have much significance and they stand even today as the only solution of this problem

He said then that the minorities have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realise its duties not to discriminate against minorities. Whether minorities will continue or will vanish must depend upon the habit of the majority. The moment the majority loses the habit of discriminating against the minority the minorities can have no ground to exist. They will vanish, but that depends entirely upon the attitude of the majority.

I cannot improve upon it. My only submission to Mr. Kapoor is that this is the only solution and if the majority behaves and conducts itself in a manner that the minorities feel secure, then certainly they will vanish in a certain period of time. So far as the Sikhs are concerned—I cannot speak for the others—they have certain natural apprehensions and these slogans and these wise counsels will only increase those apprehensions. They feel that it is the future alone that could tell them whether their fears are well-founded or not.

Now I come to the merits of this amendment of mine. I think the original object was that, because we were taking a jump over from the separate electorates to unadulterated joint electorates, the Minorities Committee recommended that lest the minorities might feel apprehensive of the sudden change they must be assured some seats by reservation and a minimum number of seats should be secured to them. It could not be the object of the Minorities Committee or this Assembly that the maximum should be limited. If this additional right is not given then the only effect is that the maximum number is being limited and not that the minimum be secured.

My second point is that this feeling of separation should go. We are accepting this reservation of seats as an unavoidable evil for the present, though it is only for the Scheduled Castes and the scheduled tribes. I am not directly concerned with it, but I do feel that if we want this feeling of separatism to go, then it is necessary that side by side with this reservation there should be a feeling in the minds of these classes as well that they are a part of the whole and that they have some part to play in other seats as well and that they can stand for those seats as anybody else. If after ten years suddenly we were to go to the other side, then this might not be accepted with equanimity and there might be certain bickerings.

The third point I want to submit is that this additional right would not materially affect the numerical strength of the majority. So far as I can make out it is only a psychological gesture; otherwise there is very little chance that the minority for whom these seats have been reserved shall secure additional

[Sardar Hukam Singh]

seats to any considerable extent. But why should there be a feeling in their minds that a close preserve is being maintained by the majority for itself and it is to their benefit that such seats are being reserved? In my humble submission there is no harm absolutely if that additional right which was contemplated in the beginning is given to them and they are allowed to contest the seats that are not reserved for them.

Shri V. I. Muniswamy Pillay (Madras: General): Mr. President, Sir, I rise to move the two amendments that I have given notice of. I move:

"That in amendment No. 22 of List I (Fifth Week) of Amendments to Amendments, in clause (2) of the proposed article 292, after the words 'as the population' the words 'actually exists or known by a fresh census' be inserted."

I do not wish to take much of the time of the House since the reports of the Advisory Committees have been dealt with thread-bare in this House. I would, however, like to bring to the notice of the Drafting Committee certain factors which will go a long way to assure the Scheduled Castes of the seats that ought to be allotted to them under the scheme of reservation. The reason for my suggesting that the population must be taken as it exists today, or determined by a fresh census is because in the 1931 census the total population of Scheduled Castes was computed to be 50 millions, but in the census of 1941 it is shown as nearly 44 millions. I do not know how it is possible for a community like the Scheduled Castes to dwindle in the course of ten years. In August 1947 when the report of the Minorities Committee was considered in this august Assembly my honourable Friend, Mr. Khandekar, who happens to be the President of the Depressed Classes League of India, urged that a census should be taken before the allocation of seats, or that our numerical strength should be fixed on the basis of the 1931 census. We are prepared to accept representation either on the basis of the 1931 census or on a new census which will be taken in 1951. But the figures of the census of 1941 are utterly wrong so far as the Scheduled Castes are concerned. Any representation on that basis would be grossly unjust to us.

Secondly, due to the division of the country there has been a great influx of Harijans from the East Bengal to West Bengal and also from the West Punjab to East Punjab. It is a well known fact that lakhs of people of my community have had to emigrate to India due to the partition and various other causes. This matter should be taken note of by the Drafting Committee.

The third point I wish to make is that the 1935 Act and the orders thereon give power to the various Provincial Governments to include such of the communities as are considered to be backward and take them in the list of Scheduled Castes. From 1941, many communities have been taken on to the list of the Scheduled Castes, and as a matter of fact my Friend Shri Thakkar Bapa has given notice of a few communities that should be taken on the list. Taking these into consideration I feel that the population of the Scheduled Castes will be more than what it was in 1941. It will therefore be necessary that a census should be taken as early as possible for the purpose of computing the number of seats so that the Scheduled Castes may feel satisfied that they have secured their political rights.

Another thing which I would like to submit to this august Assembly is in regard to determining the seats for the Scheduled Castes on the population basis. This House has granted adult franchise. Those that were minors in 1941 would have become adults during these ten years, and unless a correct census is taken it cannot be said that the population of the Scheduled Castes has been

correctly computed. This is one of the important reasons, because the article clearly says :

"The same proportion to the total number of seats allotted to that State in the House of the people as the population of the Scheduled Castes in that State or of the Scheduled Tribes in that State or part of that State, as the case may be, in respect of which seats are so reserved bears to the total population of that State."

All those who were minors in 1941 would have become adults at present and so it is imperative that they must be included in the population list. Hence a fresh census for this purpose is necessary.

The other day my honourable Friend Dr. Ambedkar said that there is no reservation in the Upper House. As I read the report I could not come to that conclusion at all. I feel strongly that a large number of Scheduled Castes must get into the Lower House, if there is no reservation in the Upper House, so that our position may be safer.

I would also like to state that by reservation which is envisaged in this article it should not be taken to perpetuate the seclusion of this community for all time. I know the real Gandhian spirit has been applied in this article, so that other communities may rise up to the occasion; and whether it be for ten more years the other communities must exhibit a very brotherly love towards this unfortunate community known as the Scheduled Castes, so that after this period they themselves may come forward and say that they require no reservation.

With regard to my second amendment, which I move "determining constituencies where the Scheduled Castes are in largest numbers in each district", my honourable Friend Mr. Jaspat Roy Kapoor has given us enough and more reasons why it is necessary that determining of seats or constituencies for the Scheduled Castes must be in contiguous areas, where the largest number of them inhabit. The reason is that in years past the seats were allotted in such places where the caste Hindus and other communities predominated and hence the Harijan was not given free scope to exercise his franchise as also to see that the best men of the community were returned. It is for this reason that I have given notice of this amendment as well. I hope that the Drafting Committee will either accept my amendment or that of Mr. Kapoor.

With these words I support the motion moved by Dr. Ambedkar.

(Amendment No. 96 was *not moved.*)

Mr. President: Mr. Sahay's amendment will also have to stand over, Pandit Thakur Das Bhargava has expressed a desire to move some of his amendments. I would like to know which of them he proposes to move.

Pandit Thakur Das Bhargava (East Punjab : General): Sir, I wish to move amendments No. 237, 236 and 234 in the Consolidated List up to the 10th July 1949.

I beg to move :

"That in amendment No. 225 above at the end of the proposed article 292 the following proviso be added :

'Provided that the members of the scheduled tribes in Assam will not have the right to contest general seats.'"

"That in amendment No. 225, above, after clause (2) of the proposed article 292, the following new clause be added :

'(3) The reservation of seats shall, as far as possible, be secured by single member territorial constituencies.'"

"That in amendment No. 225, above, in clause (2) of the proposed article 292, but before the Explanation, the following proviso be inserted :

'Provided that for the calculation the balance of the proportion is more than half of what it requires to obtain one seat, one seat shall be allotted and if it is less than half it shall be ignored."

[Pandit Thakur Das Bhargava]

I accept the interpretation which my Friend Mr. Nagappa just put on the general articles which we have passed already. According to the relevant article which the House has already passed every person has a right to stand for the general seats, which means that persons for whom seats are being reserved shall also have the right to contest general seats unless there is a provision to the contrary.

It is quite true that democracy means one person one vote. When the House agrees to reservation of seats for certain classes it really gives them a concession, an unavoidable concession under the circumstances in which we are placed. This is the right solution of the difficulty. I do not know whether any member of the Scheduled Castes wants that seats be reserved for them. All that he wants is that he should come up to the general standard of the other communities in this land and for this purpose there are other means in which this could be brought about. Since these classes think as also others that they will not be returned in the general constituencies it is best that we have agreed to reservation of seats for them. I have no doubt that if they are allowed to contest general seats we are certainly doing a wrong thing. We are departing from a principle but all the same I think that if this right is allowed to the Scheduled Castes no harm is being done. If psychologically they are happy over it, let them have that happiness. I do not think there will be a single seat in the whole of India from the general seats to which a member of the Scheduled Castes will be returned.

I will be happy if many of them are returned. I want that the members of the Scheduled Castes should enjoy the confidence of the other classes. I would be happy if many of them are returned defeating the other candidates. I do not grudge them this right. I am sure that after the lapse of ten years many of them will say : "We tried to see if other classes support us. We have not been supported. Therefore there is a case for the continuance of the reservation". Then this argument will not be open to them. As they have accepted the extreme limit of 10 years with open eyes.

In regard to the Scheduled Castes of Assam, the case is peculiar. In Assam, as I have been told, there are 20 per cent. Muslims, 32 per cent. Scheduled tribes and those who are not reserved form about 48 per cent of the population. If there is a big majority for those that are not reserved, I do not mind giving the persons who have seats reserved right to contest the general seats. But in relation to people whose numbers are less than half, this kind of right is certain to give valid ground for grouse.

Kazi Syed Karimuddin (C.P. & Berar : Muslim): Muslims and others for whom seats are not reserved will get more than 60 per cent.

Pandit Thakur Das Bhargava : My Friend's 60 per cent adds more weight to my argument. I submit that reservation of seats being not a desirable thing, reservation for classes is calculated to induce a feeling of separateness and exclusiveness and would stand against the amalgamation of classes. In this view also it will not be fair to give these classes who have been favoured with this undemocratic right the right to contest other seats thus reducing still further the strength of those who have not been given reserved seats. Sir, everyone has got a right to be represented by a person of his choice. By reserving seats to certain classes you are depriving people of their right to be represented by persons of their choice. I can understand the argument that you are taking away the rights of others also. Those persons belonging to the Scheduled Classes may also choose to be represented in the legislatures by persons of their choice. And it may happen that they may place more faith on particular candidates from the unreserved classes. So reservation as a matter of fact

deprives all people of their right to choose. It should be therefore our endeavour to see that the evils of this reservation do not harm the interests and the legitimate rights of the others. Therefore I say that in the case of Assam, where the unreserved people are less than 50 per cent., it is but fair that you do not allow the reserved classes to infringe upon the rights of the unreserved people.

Now I come to my second amendment 236 :

"That in amendment No. 225 above, after clause (2) of the proposed article 292, the following new clause be added :

(3) The reservation of seats shall, as far as possible, be secured by single-member territorial constituencies.' "

If there are plural constituencies my humble submission is that the representation secured is not fair. Those candidates who have to stand for plural-member constituencies will not fully represent those for whom they stand in the same effective manner in which those who represent single-member constituencies will represent those for whom they stand. In the case of the Scheduled Caste men those who will stand to represent them would be persons quite unknown except in their own neighbourhood. Therefore to ask them to stand for plural-member constituencies will mean that people who vote for them will be absolute strangers to them. This is also true of the other unreserved classes, because people are not generally known far beyond their immediate neighbourhood. As a matter of fact a person who is popular in his own district has no right to stand for another district. He may be unknown there. Therefore representation by means of plural-member constituencies is no right at all.

Moreover, when you consider the question of expenditure for canvassing an electorate of 7,50,000 people spread over a vast area you will understand the difficulty and the trouble of the candidate. Similarly I submit that if there are single-member constituencies people living in the constituency will be deprived of their right to choose their particular candidate in so far as only persons from a particular tribe will be allowed to stand. If these are plural-member constituencies the trouble will be greater. Considering all these, neither in the interests of the classes for whom seats are reserved nor in the interests of the others there should be plural-member constituencies. I would appeal to the House to accept this suggestion of mine and make it a part of the Constitution that, as far as possible, this representation of the Scheduled Castes also should not be from plural-member constituencies, but from single member constituencies.

Now I come to my third amendment, *viz.*,

"That in amendment No. 225 above, after clause (2) of the proposed article 292, but before the Explanation, the following proviso be inserted :

'Provided that for the calculation the balance of the proportion is more than half of what it requires to obtain one seat, one seat shall be allotted and if it is less than half it shall be ignored.' "

It is a rule of mathematics and an equitable rule too. I do not want to say anything further about it. This is a just proposition.

Mr. President : The amendments moved by Pandit Bhargava are, Nos. 234, 236 and 237 of the List of Amendments of 10th July 1949.

Shri Kuladhar Chaliha (Assam : General) : Mr. President, I shall confine my remarks firstly to the motion moved by my Friend Professor Laskar. I feel deeply sympathetic to his case, but then we are faced with a difficult situation. If you take the figures of population of Assam his case will not stand scrutiny. First, we find that we have there 34 lakhs of tribal population and 17 lakhs of Muslims, leaving the general population in a sort of minority. According to the 1941 census the total population of Assam (Divided) was about 74 lakhs. As such, it is very difficult to give representation in the House of

[Shri Kuladhar Chaliha]

the People on the basis of population which is only 3¼ lakhs of Scheduled Castes. There are other communities in Assam such as Ahoms. They are three lakhs odd. The Ahoms were the ruling community and therefore they will have as much right to claim a seat: Then we have Mataks and Morans who are also 3¼ lakhs, Chutias about 1¼ lakhs, seats for them also to be created and carved out of the general community which, as I have said, is a minority. I feel that Mr. Laskar's community deserves our sympathy and I hope Mr. Laskar will have a seat in the House. But our position is such that it is impossible for us to concede his point. We have grown a convention in our part of the country to see that as far as possible all communities are represented. The Congress Committee has observed this for a very long time and they will make sure that in spite of the fact that the number of his community is small, there is a chance in the next five years for him to come into the House of the People.

Mr. Laskar has also found fault with the census figures. The Congress was not in power in 1941. It is true that most of the figures for the tribals have been inflated. Some of the Scheduled Castes were said to have been converted to tribal religion because they were addicted to drink, and others were said to have been converted to Hinduism, and the increase is 184 per cent. But that is not the fault of the Congress. If there is an increase of the tribal population God alone is to be blamed and none else. I hope in the next census, such sort of things will not occur, and that things will be just and equitable.

As regards Pandit Thakur Das Bhargava's amendment, Sir, I agree with him. The general constituencies of Assam are in a minority. Those who claim reservation should not further transgress into the domain of the general population and should have no right to seek seats there. Fortunately in Assam we have been carrying on happily, making adjustments, and I am sure that the minorities will show us the tolerance which we expect of them and we will show them that tolerance which they expect of us as well.

With these words, Sir, I oppose Mr. Laskar's amendment and I give my qualified support for Pandit Thakur Das Bhargava's amendment. Also I am at one with Rev. Nichols Roy in his views, that the seats reserved for the tribal's should not be deprived on one ground or another and the tribals should not be divided as proposed in another amendment.

Mr. President: Mr. Jaipal Singh.

Shri M. Ananthasayanam Ayyangar (Madras: General): The question may now be put.

Mr. President: I have already called him.

Shri Jaipal Singh (Bihar: General): Mr. President, Sir, it is most unfortunate that this House has not had an opportunity to discuss the recommendations made by the two Tribal Sub-Committees. I know we had a debate of two days to consider the report of the Minorities Committee in regard to whether the Scheduled Castes and the Muslims were to get any reservation of seats or not At that time all the discussion was confined to the Muslim problem only. When I raised the question of our reports, you were pleased to say, Sir, that this House would have an opportunity in the future to discuss the reports. However, if it is the wish of the House that without any discussion the articles which deal with the scheduled tribes will be taken up in this House. I have no personal quarrel except that it is very unfortunate that the two Chairmen of these two Sub-Committee should not have an opportunity to explain to the Members why their recommendations have taken a particular pattern.

Take for example the recommendations of the Sub-Committee of which I myself was a member and over which the venerable social reformer the honourable Mr. Thakur presided. In due course we will have to discuss certain provisions that have been recommended by this Sub-Committee. Why these recommendations have been made will have to be explained by someone. I should

have thought that it would be very much better if a discussion had taken place which would have put the Members wise as to the investigations that have been carried out, as to why the Sub-Committee had come to certain conclusions, as to why, for example, I had to submit a minority minute of dissent, as to why my Friend, Mr. Devendra Nath Samanta, had to agree with me in regard to my minute of dissent, etc. All these things would have been thrashed out in *extenso* in the discussion so that the Members would have appreciated the difficulties of the Sub-Committee on the tribal problems before they participated in the discussion and before they exercised their vote for or against any of the recommendations.

Having said that, Sir, I would like to congratulate Dr. Ambedkar for his new amendment which he has presented to us today. As I have said before, if there is any group of people who have got a right to rule over India, they are the Adibasis. They are first-rate Indians and all the others are second-rate, third-rate, fourth-rate, *n*th-rate Indians. I think that situation has to be appreciated when we take up questions like the reservation of seats. Sir, we are not begging anything. I do not come here to beg. It is for the majority community to atone for their sins of the last six thousand odd years. It is for them to see whether the original inhabitants of this country have been given a fair deal by the late rulers. But the future can be brightened up. What has happened in the past, let it be a matter of the past. Let us look forward to a glorious future, to a future where there shall be justice and equality of opportunity.

One honourable Member said that he was glad that the Muslims and the Christians had given up something, given up the reservation of seats. Sir, the Adivasis are not giving up anything because they never had anything. It seems very surprising that people should talk of democracy when their whole conduct has been anti-democratic in the past. What have the general community done for these backward people in the past? Has there been anything in the statute to prevent them from putting up the Adivasis in more seats than were due to them according to their population? Take Bihar. There are 5.1 million Adivasis in Bihar, but only 7 Adivasi M.L.As. Did the Congressmen put up a single Adivasi for a general seat? No. Take the Central Provinces and Berar. There were before the merger of the States 2.9 million Adivasis; but there was only one seat for the Adivasis. After the merger, there would be an addition of something like 2.8 million more, a large majority of whom would be Adivasis. I can say the same thing about every province. Even in a province like Bombay, where without the merged States, there was an Adivasi population of 1.6 million, which would be added to on account of the merger by a figure that may double itself from out of the 4.4 million that have been put within the province, there is only one seat reserved. And also in a province where the Premier has been a very ardent worker amongst the Adivasis for many years. He was the President of the Adivasi Seva Mandal there and it was a privilege for me to see something of the work he did before he became the Premier. After he became the Premier, he could not devote so much time for that work.

Even in a province where you have such a sympathetic leader of the dominant party, you find no generosity whatever. People talk of democracy. Let them search their hearts. Is there anything that prevented them from bringing out these people from their jungle fastnesses into the legislature? How do they explain their niggardliness, in fact their apathy, hostility to bring these people to the legislature and other forums of public life? It is essential that these people should be compelled to come out of their jungle fastnesses. It is for that reason reservation is very very necessary. If you want unity in this country, we must all get together.

Sir, in this connection, I would like to quote something that you said about nine years ago when you were the Chairman of the Reception Committee of the

[Shri Jaipal Singh]

53rd session of the Indian National Congress at Ramgarh. I am not quoting anything out of its proper context. I think what you said is very relevant to prove what I have been endeavouring to say. You said :

"That portion of Bihar where this great assemblage is meeting today has its own peculiarities. In beauty, it is matchless. Its history, too, is wonderful. These parts are inhabited very largely by those who are regarded as the original inhabitants of India Their civilisation differs in many respects from the civilisation of other people The discovery of old articles shows that this civilisation is very old The Adibasis belong to a different stock (Austrick) from the Aryas and people of the same stock are spread toward the south-east of India in the many islands to a great distance. Their ancient culture is preserved in these parts to a considerable extent, perhaps more than elsewhere It is not, however, as if the Aryas and the Adibasis never mingled with one another. As a matter of fact, there have been considerable intermixture and exchange Aryas have taken many things from them and they have taken many things from the Aryas With all this, however, they have kept themselves apart It is the opinion of experts that the colour and facial expression of the Biharis, the formation of their skulls and even their language exhibit clear unmistakable marks of their influence Having, however, once cast their influence on the Biharis, the Adibasis have made much of our culture and our speech their own."

There has been this peculiarity. In certain parts of India, what is called inter-mixture and inter-mingling has been fairly considerable with the result that the process of absorption into the Hindu fold has been very great. On the other hand, in particular areas this has not been the case. There has however developed somehow a hostility between the ancient people and the new-comers. When the Aryan hordes came into this country, naturally they were unwelcome because they were intruders But, they began to pour in streams one after another and pushed the people that were there, the aboriginals, the Adivasis, further and further away. The Arya-speaking people settled in the rich Gangetic valley and ousted the Adivasis who had to retreat to the jungle fastnesses because the Aryas found them inhospitable That is roughly the history as to why the Adivasis are today found only in the mountainous tracts, because these tracts were inhospitable, were inclement to the Arya people.

Now, that, of course, is no longer the case Nothing is isolated. We can get everywhere and therefore, intercourse on a fresh scale, on a much more intensive scale, will take place in the future. Another reason for the hostility and bitter feeling against the *dikus*, as we call the new-comers—*diku* means new-comer—has been the fact that the new-comer has always exploited the simple, ignorant Adivasi; he has looted him of his land; he has expropriated him of his many rights; he has taken away that jungle freedom from him. This the Adivasi rightly resents. All this hostility that has gone on for thousands and thousands of years must be done away with. I am very glad indeed that in the new Constitution there is not going to be anything like separate electorates. I welcome the fact that the Adivasis will be elected from the joint general electorates. I also welcome the fact that the House, as a whole, is unanimous that the Adivasis must be compelled to come into the Government of the provinces as well as at the Centre. The result of this article 292 will be, whereas in the past we had seven M.L.As. from Bihar, now we shall have something like 51. There must be 51 because there will be 51 seats reserved for them. There may be more if the political parties would be generous enough to give more seats than is due to the Adivasis according to their population figures. Like that, in the Central Provinces, where as there is only one Adivasi M.L.A., there may be as many as thirty. In Assam, according to the population, there are 2.4 million Adivasis; at present there are only nine seats, reserved for them. Well, I am not one who was ever an admirer of the census figures. Ever since the Hindu

Mahsabha became a millitant political organisation, the census figures have never been reliable or accurate. We have yet to get to a stage where we want to get scientific facts in an honest way. Take for instance, the Central Provinces. You compare the figures of Adibasis there, say in 1941; take the censuses of 1921, 1931 and 1941. You find in between 1911 and 1941 the figure gets reduced by 18 lakhs. I know particularly that the Adivasis are not a dying race and yet somehow or other one minute the Gonds are enumerated as Hindus and the next minute they come back as Adivasis; and that type of cooking of figures and misenumeration has gone on at every census and the sooner this country becomes honest about it and tries to find out statistics in an honest way, without any religious bias, the better it will be. At the last Session of the Indian Science Congress, the scientists said—there are people who want to know and who are not moved by religious or political bias—that there were in this country not less than 30 million Adibasis. In 1941 census the figure is of course only 24.8 million You may multiply that by 5 or not, but, the fact is that any section of our society that is economically and politically backward must have safeguards and provisions which will enable it to come up to the general level.

That is the only reason, Mr President, why I do support the reservation of seats for Scheduled Castes and the scheduled tribes and for no other reason. I am not at all optimistic that in the short space of ten years, which means two general elections, Adibasis will have come to the level of the rest of India and therefore at the end of ten years reservation of seats should be done away with I am not one who will be so bold as to believe in such a miracle Things are not going to move as fast as we would like them to move. I would have preferred that this matter should have been reviewed at the end of ten years to find out whether Adibasis and Scheduled Castes in the two general elections that will take place during the ten years had made good, whether they had been able to assert themselves in the Councils and take their share in the national life of the country. When that had been made, then I think the Parliament could decide whether or not these reservations should be done away with or continued for a further period of say ten or fifteen or twenty-five years I would have preferred it that way but if there is any suspicion in the minds of non-Scheduled Caste people or non-Adibasis, I would not insist on it The generous thing would have been to give them ample scope to come into all the Councils in the provinces and at the Centre and not to limit them only to two general elections

Some people harp on separatism being implied in reservation of seats. Some people have a kink and they like to explain everything away by attributing separatism to any difference of opinion. It has become the fashion in this country to call every rebel a Communist Similarly, those of us who desire that the backward groups in our society should be compelled to come by the front door and not by backdoor and the front door is open reservation, are dubbed as separatists It does not lie in the mouth of people to talk of separatism when 30 million Adibasis have been treated as political untouchables over centuries. It does not lie in the mouth of those people to tell Adibasis what democracy is Adibasi society is the most democratic element in this country Can the rest of India say the same thing? Can people who have for centuries been living under the Caste system honestly and genuinely say that they can have a democratic outlook? It takes time In Adibasi society all are equal, rich or poor. Everyone has equal opportunities and I do not wish that people should get away with the idea that by writing this Constitution and operating it we are trying to put a new idea into the Adibasi society. What we are actually doing is you are learning and taking something as you, Mr President, said. Non-Adibasi society has learnt much and has still to learn a good deal Adibasis are the most democratic people and they will not let

[Shri Jaipal Singh]

India get smaller or weaker. It is not they who are responsible for the partition. Adibasis claim the whole of India. So I would like that Members should look at it from that generous angle and not be so condescending. You are clearing your own conscience, having expropriated them from their lands, having made laws whereby you have driven them out of their rights. What is the position today? Why are there about ten lakhs of people in Assam crimped away from Chhattisgarh, Orissa and Bihar and they are running from place to place with no sense of security? It is because non-Adibasis have taken away their lands, cheated them and they continue to cheat.

Now it is very necessary in the interest of this country, for its great future, that every element of India, be it backward or forward, should get together and pull in the same direction and for that we must see to it that the backward sections come up. Reservation is very necessary for the backward people whether they are Adibasis or whether they are Scheduled Castes, or Jains or Muslims. Once you acknowledge that something has got to be done, some fulcrum has to be pushed in to tilt them up to a higher level, then the question of separatism does not arise at all. Therefore I, as an Adibasi representative, am not ashamed to accept this principle of reservation. I regret it is there only for ten years, because I am convinced that India is not going to become heaven, that everybody is not going to become a graduate in ten years or that everybody will get politically educated. What is necessary is that the backward groups in our country should be enabled to stand on their own legs so that they can assert themselves. It is not the intention of this Constitution, nor do I desire it, that the advanced community should be carrying my people in their arms for the rest of enternity. All that we plead is that the wherewithal should be provided as has been provided in article 292, so that we will be able to stand on our own legs and regain the lost nerves and be useful citizens of India.

There is much more to be said, but I understand that some of the amendments have been deferred to another occasion and, therefore, I would not say much at this stage. But I am sure and I may assure non-Adibasis that Adibasis will play a much bigger part than you imagine, if only you will be honest about your intentions and let them play a part they have a right to play.

Shri R. V. Dhulekar (United Provinces : General) : What does he exactly want?

Shri Jaipal Singh : I want Mr. Dhulekar to behave just as he used to when he was a student in St. Columba's College, Hazaribagh, when he mixed freely with the Adibasis and spoke of them as being the finest citizens in India. But at the present moment, the Adibasis have been put into a watertight compartment. I know there are people who will say that the British put them into zoos. We have now an Indian National Government. Is the zoo not still there? Popular ministries have been heard of in this country for the last twelve years; what have they done in any way to remove this stigma? Have they done anything? During the Sub-Committee's tour—wherever we went—Provincial Governments came out with elaborate reports of the heavenly things they were doing for the Adibasis to fight their poverty and the evil disease in their midst, and how all that was going to be removed. One Provincial Prime Minister told me that he had set aside Rs. 20 lakhs for ameliorative measures for the Adibasis in a particular district. I asked him how much he had spent in the last eight months. He said : "We still have our plans but we hope it will be ready on paper!" What happens is just paper and paper; all window-dressing. We want concrete work among these people. Some people think that by opening a few schools and giving some scholarships they will be making a tremendous change among the Adibasis. It is economic betterment that the backward people need. Once they are economically better, they will be able to educate themselves.

I would like to, if I may, tell the provincial Prime Ministers who are here and in whose provinces there are large numbers of Adibasis, that no good will come out of the lakhs and lakhs that they profess to earmark for welfare and other work among the Adibasis and other backward people in their provinces, unless there is the missionary spirit behind it. I know in my own province of Bihar that all welfare work has a political background. In Bihar, unfortunately, there have been three conflicting militant groups, one pulling eastwards towards Bengal, one pulling southwards towards Jharkand, and one pulling northwards towards the Himalayas. Now, in order to kill the eastwards and southwards groups, lakhs and lakhs of rupees are being spent, all in the name of welfare among the backward people. Evidence is there, Mr. President, of leading Congressmen in Manbhum, in Palamau, in Ranchi, in Hazaribagh and other districts.....

Shri Biswanath Das (Orissa : General) : Are all these matters relevant to the subject matter of the discussion ?

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Every truthful statement in this connection is certainly relevant.

Shri Jaipal Singh : Lakhs of rupees are being spent, not for the direct benefit of the people, but for the employment of armies of welfare workers and the money gets swallowed up in the payment of wages and salaries, and motor cars and propaganda vans. The actual result to the Adibasi is nil. It is very much like the Grow More Food campaign. If for the amount of money that we spend in this campaign, one more grain was grown, it would have been a success. But it seems to be the other way round

The idea of the generosity of the Members as a whole in recognising the necessity of giving reservation of seats to the Scheduled Castes and the scheduled tribes was that these people, who as you have said at Ramgarh have somehow or other kept apart, will now be compelled to come into the inner circle and do their best and contribute their share for the betterment of this country. I know there is fear in certain quarters. There is fear in Assam : there was fear in West Bengal. When Mr. Khaitan moved his amendment, or rather gave notice of his amendment—he is no longer in our midst—I discussed with him why he wanted no reservation of seats for the Scheduled Castes in West Bengal. He was quite honest about it. He said, if the Scheduled Castes combined with any minority group, then the upper class people were nowhere. Some such apprehension has been indicated from a Member from Assam. I know perfectly well that it is not a question that you have reserved so many seats for Adibasis therefore you should not give them any of the general seats. That is not the general issue. Let us be honest. What the upper classes in Assam fear is that if the Scheduled Castes and the Adibasis were to combine, and if these two groups were given the right to contest also the general seats, then the upper classes might not remain in power.

That is the truth of the matter as I see it and I deeply beg of everyone not to think in terms of fear. Let us not be afraid of our fellowman because, if we do not trust him, we have no right that he should trust us. We have been living under different circumstances in the past. Now the destiny of our country is in our hands. Whatever has happened in the past has happened. It may have been due to our own fault or due to the mischief of alien rulers. Now everything is in our own hands. We are masters of the situation and if now and hereafter we go on thinking in terms of fear, if we refuse to relegate ourselves to the background and let others also have the chance, then we are thinking along the wrong lines.

I have great pleasure in supporting the amendment of Dr. Ambedkar to article 292.

Mr. President : There has been a closure motion.

(At this stage several Honourable Members rose to speak.)

Mr. President : I do not think it is necessary to enter into a discussion on all that Mr. Jaipal Singh has said.

The Honourable Shri Krishna Ballabh Sahay (Bihar : General) : He has made several observations which I would like to contradict.

Mr. President : You will have an opportunity somewhere else on another occasion.

Shri Brajeshwar Prasad (Bihar : General) : I would like to point out that editorial comments have been made in the *Statesman* that some vital articles are being rushed through and closure motions are being made. This is a very important article and only two or three speakers have taken part in the general discussion. More speakers should be allowed to speak. You have the power either to admit the closure motion or not.

Mr. President : I do not think there is any justification for the remark that we are rushing any article through. So far as I am concerned, I have given the fullest opportunity and the fullest latitude to all Members, and if anything, I have been more generous in this respect than perhaps I should have been.

Mr. Naziruddin Ahmad : There is no suggestion like that from any section. But there is a desire to speak more.

Mr. President : So far as this particular article is concerned, we have already had two days discussion on this very question and any general remarks will only mean a repetition of what was stated them. It is therefore not necessary further to discuss this particular article.

So far as certain remarks which have been made by certain speakers are concerned, if any Members have to say anything with regard to them, or to contradict those remarks, probably they will get another opportunity in connection with some other article and they might take advantage of it then.

The Honourable Rev. J. J. M. Nichols-Roy : Certain wrong information has been given to this House regarding the tribal people and this must be corrected now.

Mr. President : If it is only a question of correcting some information which has been wrongly given, I might allow him to make the correction, but no more than that.

Shri Jagat Narain Lal (Bihar : General) : Even if the closure motion is accepted, the President can certainly allow a speech or so and I think it is not right that what has been said with reference to this article should be sought to be contradicted or controverted in the course of a debate on another article. So, I would request you, Sir, to allow one speech with reference to what has been said by the previous speaker.

Mr. President : I do not think any useful purpose would be served by simply contradicting statements which have been made.

The Honourable Rev. J. J. M. Nichols-Roy : Sir, in Assam there are three classes of scheduled tribes, and all these together are calculated to be about 23 to 24 lakhs. Eight lakhs of them are in the plains area; eight lakhs of them are in hills area and the remaining eight lakhs are in the tea gardens. The tribals in the tea gardens are included in the general population, with the result that the only people who will have reserved seats will be the eight lakhs

in the plains area and the eight lakhs in the hills area. As regards the eight lakhs of tribals living in the plains area the Working Committee of the Assam Provincial Congress Committee have agreed to allow them to stand as candidates from the general constituencies and my honourable Friend the Premier of Assam himself has said that he does not want that there should be any limitation on any tribals of the plains to stand for the general seats.

Therefore, Sir, I oppose Pandit Bhargava's amendment regarding preventing the tribals of Assam from standing as candidates from the general constituencies.

Sardar Bhopinder Singh Man (East Punjab: Sikh): As a number of amendments have been moved, it seems to me that some time be given to oppose those amendments.

Mr. President: As I said we have discussed this very proposition for two full days in this House, and every section of the House had full opportunity of expressing itself on the general principles. Now it is those very principles which are sought to be embodied in the resolution which has been placed before the House by Dr. Ambedkar. I do not think any further discussion will help the Members. I therefore call upon Dr. Ambedkar to speak.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, a great many of the points which were raised in the course of the debate on this article and the various amendments are, in my judgment, quite irrelevant to the subject matter of this article. They might well be raised when we will come to the discussion of the electoral laws and the framing of the constituencies. I, therefore, do not propose to deal with them at this stage.

There are just three points which, I think, for a reply. One point is the one which is raised by Mr. Laskar by his amendment. His amendment is to introduce the words "save in the case of the Scheduled Castes in Assam". I have completely failed to understand what he intends to do by the introduction of these words. If these words were introduced it would mean that the Scheduled Castes in Assam will not be entitled to get the representation which the article proposes to give them in the Lower House of the Central Parliament, because if the words stand as they are, "save in the case of the Scheduled Castes in Assam" unaccompanied by any other provision, I cannot see what other effect it would have except to deprive the Scheduled Castes of Assam of the right to representation which has been give to them. If I understand him correctly, I think the matter, which he has raised, legitimately refers to article 67B of the Constitution which has already been passed. In that article it has been provided that the ratio of representation in the Legislature should have a definite relation to certain population figures. It has been laid down that the representation in the Lower House at the Centre shall be not less than one representative for every 7,50,000 people, or not more than one representative for a population of 5,00,000. According to what he was saying—and I must confess that it was utterly impossible for me to hear anything that he was saying—but if I gathered the purport of it, he seems to be under the impression that on account of the division of Sylhet district the population of the Scheduled Castes in Assam has been considerably reduced and that there may not be any such figure as we have laid down, namely, 7,50,000 or 5,00,000, with the result that he feels that the Scheduled Castes of Assam will not get any representation. But I should like to tell him that the provision in article 67 (5) (b) does not apply to the Scheduled Castes. It applies to the constituency. What it means is that if a constituency consists of 7,50,000 people, that constituency will have one seat. It may be that within that constituency the population of the Scheduled Castes is much smaller, but that would not prevent either the Delimitation

[The Honourable Dr. B. R. Ambedkar]

Committee or Parliament from allotting a seat for the Scheduled Castes in that particular area. His fear, therefore, in my judgment, is utterly groundless.

Then I come to the amendment moved by Sardar Hukam Singh in which he suggests that provision ought to be made whereby the Scheduled Castes and the Scheduled tribes would be entitled to contest seats which are generally not reserved for the Scheduled Castes or the Scheduled tribes. He said that the Drafting Committee has made a deliberate omission I do not think that is correct. It is accepted that the Scheduled Castes and the scheduled tribes shall be entitled to contest seats which are not reserved seats, which are unreserved seats. That is contained in the report of the Advisory Committee which has already been accepted by the House. The reason why that particular provision has not been introduced in article 292 is because it is not germane at this place. This proposition will find its place in the law relating to election with which this Assembly or the Assembly in its legislative capacity will have to deal with. He therefore need have no fear on that ground

With regard to the point raised by my friend Mr Pillai that the population according to which seats are to be reserved should be estimated by a fresh census, that matter has been agitated in this House on very many occasions I then said that it was quite impossible for the Government to commit itself to taking a fresh census but the Government has kept its mind open If it is feasible the Government may take a fresh census in order to estimate the population of the Scheduled Castes or the scheduled tribes in order to calculate the total representation that they would be entitled to in accordance with the provisions of Article 292. The Government is also suggesting that if in any case it is not possible to have a fresh census, they will estimate the population of these communities on the basis of the voters' strength which may be calculated from them, in which case we might be able to arrive at what might be called a rough and ready estimate of the population. I do not think it is possible for me to go beyond that.

All the other amendments I oppose.

Prof. N. C. Laskar : Sir, I beg to withdraw my amendment No. 24.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in amendment No. 22 at the end of the proposed article 292 the following proviso be added :

'Provided that the constituencies for the seats reserved for the Scheduled Castes or Scheduled Tribes shall comprise so far as possible, such contiguous areas where they are comparatively more numerous than in other areas'."

The amendment was negatived.

Sardar Hukam Singh : Sir, if what I have suggested in my amendment (No. 77) is provided for elsewhere I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

Shri V. I. Muniswamy Pillay : Sir, in view of this lucid explanation of Honourable Dr. Ambedkar, I beg to withdraw my amendment No. 94.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Amendment No. 95 is to the same effect as the one that the House has already rejected. The question is :

"That in Amendment No. 225 after clause (2) but before the Explanation, the following proviso be inserted :—

'Provided that for the calculation the balance of the proportion is more than half of what it requires to obtain one seat, one seat shall be allotted and if it is less than half it shall be ignored'."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No 225 after clause (2) the following new clause be added .

'(3) The reservation of seats shall, as far as possible, be secured by single member territorial constituencies' "

The amendment was negatived.

Mr. President: The question is :

"That in amendment No 225 at the end the following proviso be added

'Provided that the members of the scheduled tribes in Assam will not have the right to contest general seats' "

The amendment was negatived.

Mr. President: The question is :

"That proposed article 292 stand part of the Constitution"

The motion was adopted

Article 292, as amended, was added to the Constitution

Article 293.

(Amendments Nos. 3118 to 3121 were not moved)

Mr. Mohd. Tahir (Bihar : Muslim) : Sir, I beg to move :.....

Shri T. T. Krishnamachari (Madras : General) : Sir, on a point of order; this amendment is not really germane to the article before the House; it has nothing to do with the subject matter of article 293

Mr. Mohd. Tahir : Article 292 refers to the matter of the reservation of seats Article 293 says :

"Notwithstanding anything contained in article 67 of this Constitution, the President may, if he is of opinion that the Anglo Indan Community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People"

These are articles where representation is to be fixed and reservation is allowed to different communities. This is the only place where I want that minority communities which are given reservation of seats should also have a chance of getting themselves elected from the general constituencies. The amendment is quite relevant and this is the place where this subject can be introduced so that minorities might have the right to seek election in the general constituencies also.

Mr. President: I do not think this question arises under article 293 which relates especially to the representation of the Anglo-Indian community I do not think you can bring in the right of members of the other communities for whom seats have been reserved to seek elections from the general constituencies in this article The amendment is not in order

Mr. Mohd. Tahir: I submit to your ruling, Sir

Sardar Hukam Singh : Sir, I beg to move :

"That with reference to amendment No. 3119 of the List of Amendments, for article 293, the following be substituted :—

'293. Notwithstanding anything contained in article 67 of this Constitution the President may, if he is of opinion that any minority community is not adequately represented in the House of the People, nominate an adequate number of members of that community to the House of the People.'"

Shri R. K. Sidhva (C. P. & Berar : General) : I rise to a point of order. This amendment seeks that any minority community which is not adequately represented may be given nomination by the President. Sir, the question of election of minorities has been decided by this House. We have decided that there should be no representation for minority communities except the Scheduled Castes, Scheduled Tribes and the Anglo-Indians. Article 67 has decided that. You cannot now go back on what has been decided in article 67. If you allow that article to be again opened, it would lead to complications. If the President feels that some community has not been adequately represented, he should make the choice. You cannot mention that a particular minority shall be nominated by the President. That will go against the decision of this House and it will be a dangerous precedent if you allow this amendment after we have adopted article 67. After we have passed it you cannot allow something to be done by the backdoor. My second reason is that after the House has decided the question of the minorities it should not be re-opened.

Mr. President : Do you wish to say anything about this point of order, Sardar Hukam Singh ?

Sardar Hukam Singh : I do not think there is any force in the point of order raised by my honourable Friend. We are, under article 293, arming the President with powers that when the Anglo-Indian community is not represented adequately, to nominate two of them. My amendment is that it should not be confined to the Anglo-Indian community alone. If that community is adequately represented in the elections and there is another minority that is not adequately represented, it should be open to the President, in the same way as he would look to the interests of the Anglo-Indian community, to see that the other community also gets representation. I do not want to upset the provisions that have been passed. But in this article itself we are providing that the President shall have this power of nomination. I do feel that all these constituencies have been demarcated. We cannot increase their number that has been fixed. But there is this provision in article 293 itself which gives the President power to have two seats in his own hands. Whenever he finds that the Anglo-Indian community is not represented adequately he can nominate two of them. My object is that, instead of saying that only the Anglo-Indian community should be safeguarded in that way, if it is found that any other community which finds itself in that position might be given these nominations to the extent of two, three or four. If it is found that the Anglo-Indian community is properly represented and any other community is not properly represented, should not, in justice, that community be allowed representation by the President ?

Mr. President : I am inclined to agree with Sardar Hukam Singh that this amendment seeks only to extend to other communities the privilege given under this article 293 to get nominations for their interests if they are not adequately represented. I think the amendment is in order.

Sardar Hukam Singh : Sir, I may in the beginning say that I do not grudge this concession being given to the Anglo-Indian community. I do realise that they are in very small numbers. I am also conscious of the fact that they are diffused over different parts of the country. I do feel that there is little likeli-

hood of their being returned and I agree that they should have the first choice and the first concession. I do not even oppose instructions being given to the President that their case might be considered first of all. But what I want to submit is that when their interests are safeguarded, we cannot exclude the possibility that they might be returned according to their population—when we are aiming at a secular State where everybody could stand and could vote, there will be some possibilities where even this small community might get representation in certain cases—if some other community is not represented properly. I feel justified in saying that the President should have power to give it some representation at least. We are depending upon the vargaries of the voters. Any responsible man can see that the voters do not care whether some community gets justice or not. In these special circumstances, I want to submit that the power should be given to the President to use in whatever way he likes, though the consideration might be uppermost in his mind that this (Anglo-Indian) community should be given preference. I do not grudge them this concession. But this power should be general that any community which is not properly represented it should be open to the President to give some representation to.

Mr. President: There is then notice of an amendment by Mr. Sahu (No 104) that this article be deleted. That is not an amendment which can be moved. The honourable Member may vote against the article. Then there are two amendments in the Printed List of 10th July 1949. I understand that they are not being moved. Any Member who wishes to speak may do so now.

Shri R. K. Sidhva: Mr. President, Sir, this article deals exclusively with the Anglo-Indian community. It says that notwithstanding anything contained in article 67 the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People. The article relates to one community and also the number is specified. The President cannot nominate more than two. As regards the other communities, my friend says that if any community is not properly represented, then the President shall have the right to make nominations from that community. Sir, that will be going against the very spirit of the decision that we have taken in this House. We have taken the decision that minorities voluntarily gave up their rights to special representation, and now to ask the President to nominate members from those minority communities, that too in the Constitution itself, is to negative the very spirit of the decision of this House. I feel strongly that if we allow this article to be inserted in the Constitution and if we accept this amendment, it will mean that, although the right to special representation has been voluntarily given up by the various communities, the House desires that the President may nominate persons from those communities, which is not the desire of the House. The House has rejected nominations and reservations of seats. They have allowed nomination to the Anglo-Indian community as a special case. Having decided that, if we accept this amendment now, it will go against the spirit of the decision we have already taken and I do hope that the House will reject it summarily.

There are other amendments coming. My Friend, Mr. Nagappa, is also trying to open up the question of minority communities if they are not represented properly. The Minorities Committee considered this question and came to the unanimous conclusion, the House came to the unanimous conclusion that there should be no nomination and no reservation of seats for the minority communities, and we should not go against the spirit of that decision. I submiit that this amendment should be summarily rejected.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, if we accept the amendment of Sardar Hukam Singh, the whole House of the People will

[Shri M. Ananthasayanam Ayyangar]

be dominated by members who are nominated. This article provides for an exception. The nomination of members of the Anglo-Indian community to the House of the People is an exception. I do not think it is intended to perpetuate this exception or enlarge the scope of this exception to other communities. The article says—

"Notwithstanding anything contained in article 67 of this Constitution, the President may, if he is of opinion that the Anglo Indian community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People."

In regard to the others, if there is any constituency where there are five lakhs of people, that constituency is entitled to elect one member to the House of the People. The other communities, the Muslim community, the Indian Christian community or the Sikh Community of this country are not so small as would go unrepresented on this basis. It would not be so in the case of the Anglo-Indian community. Their whole population would not be even five lakhs for the whole of India. You cannot point out to any constituency where they will be in a majority. Therefore this exception has had to be made, because they may not come in through the process of election. Article 292 originally stated that there would be reservations for the Muslim community, for Indian Christians and others. But they have voluntarily given that up and reservation is now only to be made for the Scheduled Castes, and scheduled tribes. The latter may not be able to come in normally in elections. Therefore some reservation is made for them. I would submit that the Anglo-Indian community stands on a special footing. The Anglo-Indians are highly advanced, but they are not numerous. They were once part-rulers of this country and therefore they should be shown some partiality for some time to come. Nomination has been provided for in the Upper House for certain interests but the Upper House has been made inocuous, and so far as the Lower House is concerned, there ought to be no nominations. The case of the Anglo-Indian community is an exception and there is no reason why it should be extended in favour of the other communities and why those communities should try to get by nomination what they have voluntarily given up. Not more than two is an insignificant figure in the Lower House. I oppose the amendment.

Mr. President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not think it is necessary to say anything.

Mr. President : The question is :

"That with reference to amendment No. 3119 of the List of Amendments, for article 293, the following be substituted :—

'293. Notwithstanding anything contained in article 67 of this Constitution the President may, if he is of opinion that any minority community is not adequately represented in the House of the People, nominate an adequate number of members of that community to the House of the People.'"

The amendment was negatived.

Mr. President : The question is :

"That article 293 stand part of the Constitution."

The motion was adopted.

Article 293 was added to the Constitution.

Article 294

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for article 294, the following be substituted :—

Reservation of seats for minorities in the Legislative Assemblies of the states.

'294 (1) Seats shall be reserved for the Scheduled Castes and the scheduled tribes, except the scheduled tribes in the tribal areas of Assam in the Legislative Assembly of every State for the time being specified in Part I or Part III of the First Schedule.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the scheduled tribes in the Legislative Assembly of any State under clause (1) of this article shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the scheduled tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and the municipality of Shillong.

(6) No person who is not a member of a scheduled tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.' "

This article is exactly the same as the original article as it stood in the Draft Constitution. The only amendment is that the provision for the reservation of seats for the Muslims and the Christians has been omitted from clause (1) of article 294. That is in accordance with the decision taken by this Assembly on that matter.

(Amendments Nos. 34, 35, 36 and 39 were not moved.)

Shri Brajeshwar Prasad: Mr. President, Sir, I rise to give my qualified support to the article, Sir, I am convinced in my own mind that the Scheduled Castes do not form a minority in this country. They are not distinct or separate in any way whatsoever from the rest of the people of this country. Numerically they form a considerable section of the population. Moreover, I am convinced that the problems confronting the Scheduled Castes are in no way of a political character. The problems are primarily educational and of an economic character. They are of a cultural character. We want to raise the cultural level of these down-trodden and oppressed people. I do not see how their representation in the legislatures will in any way alter the material and the moral level of these people. Representations here and there will provide opportunities for a handful of leaders but it will not in any way materially alter their economic or their educational level. Better lay down in the Constitution that a fixed percentage in the budget, both Central and Provincial, shall be exclusively devoted for their welfare. I am a lover of those people who have been suffering and my whole attempt is to somehow liquidate their backwardness. I do not want by any back-door method to suppress or to deprive them of their just rights. If you want to give them representation, by all means give them. I am not opposed to their representation as such but I feel that this will be inadequate it will not solve their problems. I want that for the tribals and for the Scheduled Castes provision must be made in the Constitution, not in the directive principles. It should be laid down clearly in express terms that educational and free education shall be imparted to them. There is only one country in the world where free education is imparted up to the university stage and that is Ceylon. I hope in the future with the growth and development of our economic

[Shri Brajeshwar Prasad]

resources it will be possible for us to provide the same facilities to our citizens. I want that for the tribals and for the Harijans provision must be made in the Constitution that free agricultural lands should be given to them. If we cannot give any one of these, I am quite clear in my own mind that by giving them a few seats here and there, their economic condition and their educational level will in no way be improved.

A friend of mine, an honourable Member of this House, has said that there are people who are opposed to the reservation of seats on the ground that it promotes fissiparous tendencies. I have very great regard and very great respect for that honourable gentleman. I know that he is a representative of the tribal people. I think he will realize that it promotes fissiparous tendencies and weakens the foundation of the State. I am a great friend of these people. I want to help them. I am prepared to incur the displeasure of those who are closely associated with me on this question. May I ask how 50 persons in a legislature where there will be 200 or 300 non-tribals, achieve anything substantial for the tribals? They will raise a terrible hue and cry but nothing substantial will be achieved. All those things that we consider to be necessary and desirable for the economic advancement and the moral uplift of the tribals should be decided here and now and laid down in the Constitution.

I would like at this stage to raise the point which I had raised a few days back. We have not decided the constitution of the tribal people. Now to say here that seats shall be reserved for the tribal people in the legislature is rather premature. It is quite possible that when we discuss the Schedules relating to the tribal areas, we evolve a Constitution entirely different from what has been proposed.

Lastly, I would say that I am opposed to the introduction of the principle of elections in the tribal areas. This will disrupt the life of the tribal people. It is a fissiparous tendency and they have got a system of society which is entirely different from ours. It is more or less a corporate society which emphasises group consciousness. The principle of elections emphasises individualism and the principle of competition. The tribal people being ignorant, being backward, being down-trodden, will be exploited by powerful groups during the times of election. I hold that the principle of election is not at all suitable to these people. With these words, I support the article.

Mr. Naziruddin Ahmad: Mr. President, Sir, I had no desire to intervene in this debate; but a few of the remarks made by my honourable Friend who has just preceded me calls for a reply.

Mr. President: You need not worry about his remarks.

Mr. Naziruddin Ahmad: Sir, I bow down to your wisdom.

Mr. President: You can confine yourself to the article.

Mr. Naziruddin Ahmad: In fact, if the honourable Member's speech was relevant a reply would also be relevant; but if you think that they are absolutely irrelevant, then I have nothing to say at all. They only point I wanted to submit was that a few of the sentiments given expression to in this House should be objected to. I must make my position perfectly clear. I was a member of a minority community. I have now shaken off that minority feeling and I speak as a perfectly independent man having no axe to grand. I feel that the Scheduled Castes and the scheduled tribes some times require protection. My honourable Friend Mr. Brajeshwar Prasad remarked that a few members selected in the legislative assemblies will not improve their lot. I seriously contest this proposition. Theirs is a life of

misery and exploitation. They are exploited on account of their ignorance and backwardness. If a few members are selected by them, they will ventilate their grievances, will focus public attention on their grievances and difficulties and that would lead to their redress. If a few seats given to the Scheduled castes will not improve their lot, I ask how can a large number of members coming from the non-Scheduled classes be of any service to them? That argument should be of no avail. I believe this representation means representation of the weak. It is for their protection. My honourable Friend's contention that the benefits of democracy cannot be given the Scheduled Castes, I should think, must also be contested. Democracy is a blessing. Democracy alone can lift these unfortunate Scheduled Castes and scheduled tribes from their miserable lot.

I do not desire to say anything more. I fully support the article. But, my honourable Friend who preceded me while trying to support the article actually advanced arguments which went against it.

Shri Kishorimohan Tripathi (C. P. & Berar States) : Mr. President, Sir, I have just come to seek clarification from Dr. Ambedkar.

The proposed article 294 says in clause (1):

'Seats shall be reserved for the Scheduled Castes and the scheduled tribes, except the scheduled tribes in the tribal areas of Assam, in the Legislative Assembly of every State for the time being specified in Part I or Part III of the First Schedule"

When I look at Part III of the First Schedule. in division B, it is stated, "All other Indian State which were within the Dominion of India immediately before the commencement of this Constitution." Most of these States have now either formed into Unions or have merged into the provinces. Among the latter category come some of the States which I represent here. These States taken together and known as the Chattisgarh States. have a tribal population of roughly 50 per cent., that is, about 14 lakhs out of the total population of nearly 30 lakhs. I want to know from Dr. Ambedkar as to how reservation of seats will apply to these States which have now merged in the province of C.P. I will quote, for example, the State of Bastar; it has a tribal population of 4,78,970 out of a total population of 6,33,888. The State of Udaipur which forms part of the newly formed district of Raigarh contains 72 per cent. of triabls out of its total population. The State of Jashpur contains 73 per cent. of tribals out of its total population. These States have got tribal population in contiguous areas. Each State by itself can claim reservation for itself. I would therefore like to know from Dr. Ambedkar as to how these States are to be treated in respect of reservation of seats as also other advantages accruing to tribals under this Constitution.

The Honourable Rev. J. J. M. Nichols-Roy : Mr. President, I rise to support this article as moved by Dr. Ambedkar. I had given notice of an amendment; but that amendment has been included in this amendment which has been moved by Dr. Ambedkar I am very glad that that has been incorporated here.

I just want to make a statement in regard to the statement made by Mr. Brajeshwar Prasad regarding tribal people. There are different kinds of tribal people. In Assam, we have got tribals who are very democratic. These democratic institutions which we have here in this Constitution will suit them very well. They are used to this kind of democratic institutions. There may be some other tribals who may not be used to such democratic institutions; I do not know where they are. Wherever I have known, the tribal people are very very democratic-minded. There may be Scheduled Castes and scheduled tribes in some other parts of India where the people are very down-trodden and not looked after, and democratic institutions may not suit them. As far as

[The Honourable Rev. J. J. Nichols-Roy]

the tribals are concerned, as Mr. Jaipal Singh has already stated, they are very democratic, and in Assam they are so. For that reason I believe that this right and privilege given to them of sharing in the democratic institutions in the whole of India is a very good thing indeed.

Shri H. J. Khandekar (C. P. & Berar : General) : *[Mr. President, I stand to support article 294 moved by Dr. Ambedkar. This article provides for reservation of seats for the Scheduled Castes and scheduled tribes. As a member of Scheduled Castes, I would like to submit that the reservation which is being provided for us is no favour to us. The members of the Scheduled Castes have, for thousands of years, suffered cruelties and oppression in various forms at the hands of their brethren belonging to castes other than their own. Now reservation is being provided for us as a compensation for the atrocities we have suffered, and therefore I do not deem this provision as any great favour to us. The article that was originally drafted to provide for reservation, contained provisions for the reservation of seats to Muslims also, on the basis of their population. But for some reasons this provision has now been dropped. I think reservation ought to have been provided for Muslims as well. Though, I do not belong to the Muslim Community, I would like to say that from the political point of view.....]

Mr. President : *[I think, you should not take up this question because it has already been discussed.]

Shri H. J. Khandekar : *[I would like to say only one sentence in this connection.]

Mr. President : *[Even one sentence will re-open the matter.]

Shri H. J. Khandekar : *[I hold that politically it was a mistake. However, I shall not touch that question as I do not belong to the community concerned. To resume my point, reservation is being provided to Harijans only for ten years. But from the experience that I have of the Scheduled Castes and other communities of the country, I feel certain that the condition of the Harijan cannot improve within the next ten years. Continuously from 1927 to the time of his death Mahatma Gandhi made every effort physically, mentally and financially, for the uplift of the Harijans, but even within a period of twenty or thirty years no appreciable improvement as was expected, could be brought about in their conditions. I am unable, therefore, to accept that within a period of ten years for which reservation is being provided for them, a complete reform or change can be brought about in their condition.

I therefore, think that if, along with reservation in respect of Legislatures, a similar reservation is provided in respect of Local bodies—Municipalities, and District Boards too, it will help much to improve their lot. But no mention of such a provision has been made here. If you look at the conditions obtaining in each and every province of the country, you will find that politically their condition, even today, is very deplorable. If any Harijan stands for election to any local body and tries to secure the votes of the Caste Hindus, I have myself been witness to it, he is never able to get their votes and is unable therefore to get elected. As for the future, I am sure no candidate belonging to Scheduled Castes or scheduled tribes would ever be returned to these bodies in elections. This is the state of affairs obtaining in our country today, and it is in view of this state of affairs that you have accepted our demand for the reservation of seats. I think if you provide reservation in respect of local bodies also, Harijans will be able to benefit considerably.

*[ ] Translation of Hindustani speeches.

Secondly, if any one thinks that the provision of reservation would cause an all-round improvement among the Harijans. I would say, he is sadly mistaken. There are many avenues in which Harijans will have to make improvement. They have to make much progress and require much help to be able to come on a par with other communities of the country. Reservation of seats alone will not do much. We were exploited in the past; and we are being exploited today and even in future, after the Constitution is passed, we should be exploited by members of the other castes. Divisions will be created amongst us. In a constituency where caste Hindu voters have a majority over Harijans if one section of the Scheduled Castes, say for example *chamars* have a majority over the other Scheduled Castes, our caste Hindu friends will not enter into an alliance with the *chamars* but they will support the minorities of the Scheduled Castes in the constituency and thus suppress the majority section of the Scheduled Castes. This will be the ultimate outcome of this provision of reservation. This is bound to happen because the Harijan voters are not in majority in any constituency.

What I mean to say is this, that this provision of reservation will be helpful to Harijans only when they are given reserved seats in constituencies where they are in a majority. Otherwise in the name of Harijans, showboys only would be returned to Legislatures as is the case today in the Central and Provincial Legislatures. So by this provision, I am afraid you are not going to do any good to Harijans; rather you would be doing them harm.

I want to tell you one thing more, and it is, that you should provide for the same type of reservation in the Cabinet as you have provided in the Provincial legislatures so as to enable the Harijans to promote their advancement. However, I have seen it and you might have also seen it, and it is a matter of regret that whenever the interest of a caste Hindu and that of a Scheduled Caste man clashes, it is the scheduled caste man who suffers. This is the situation in the country and no sensible man can deny it. To give an instance, if you look at the cabinet of a province where twenty-four to twenty-five per cent. of the people are Harijans you will find that there is only one Harijan in the cabinet. But it is a matter of regret that in a province where the caste Hindus, that is to say the Brahmins, are in a minority and in such a small minority as two per cent. of the population, ten ministers out of twelve are Brahmins. Would you not consider this an injustice ?]

Pandit Balkrishna Sharma (United Provinces : General) : Down with the Brahmins !

Shri H. J. Khandekar : That you can say that non-Brahmins can say. Very well, they can be downed.

*[I mean to say that if you had provided for reservation for Harijans in the cabinet it would have prevented the injustice that is being perpetrated on the Harijans and scheduled tribes. It is a matter of regret that that article is no longer under discussion. Some people have remarked that barring the seats reserved for Harijans, they should not be allowed to contest the election for other general seats. But I want to tell you that if you do not allow the Harijans to contest the elections for general seats, you will never be able to bridge the gulf that has been created between the Harijans and the caste Hindus.]

Mr. President : *[As you were not present in the House you could not listen to the previous debate. Had you listened to it, you would not have said such things.]

*[ ] Translation of Hindustani speech

Shri H. J. Khandekar : *[I was not present and I did not listen to it. But I want to say that if we have to level the breach between us and the caste Hindus, the same treatment should be meted out to us as is asked for by us. However, the treatment that is meted out to us is one that suits people blinded with self-interest. If I cite examples where self-interest was cought to be promoted, it will take the whole of the day and even tomorrow. I do not want to threaten anybody but I want to tell the caste Hindus in this House and outside that they should remember one thing. It is that if you want to atone for the atrocities perpetrated by you on the Harijans, you should bring them up to your level by granting them whatever they ask for. If you do not do this, the Harijans will intensify the movements they have launched for their progress, which you do not desire they should make, and through these movements they shall effect an improvement in their lot though I cannot predict what may happen in the country as a result thereof. I am not holding out any threat. Members of parties seeking to exploit the situation for their own benefit move about amongst the Harijans of India and propagate such views as might go against the interests of this country. I warn you of this situation and urge you to grant to Harijans whatever facilities they ask for to come to your level.

I shall place before you one more example. Hundreds of Harijans applied recently for Indian Administrative Service and Indian Police Service and they were interviewed. But it is to be regretted that none of them was selected for the posts. The reason stated is that none of them was fit for the posts. You are responsible for our being unfit today. We were suppressed for thousands of years. You engaged us in your service to serve your own ends and suppressed us to such an extent that neither our minds nor our bodies and nor even our hearts work, nor are we able to march forward. This is the position. You have reduced us to such a position and then you say that we are not fit and that we have not secured the requisite marks. How can we secure them ?

You just look at the position in which we are placed. The condition of our village boys is very bad today. They do not get the facilities enjoyed by the sons of well-placed men. How can you then expect our boys to compete with those who enjoy all sorts of facilities. You do not know under what conditions our students receive education in schools. The Government does not show any consideration to them. I know of a Harijan boy of C.P. who lives in Delhi He studies in the Pusa Institute. He is a poor boy and his parents are dead. He is in such circumstances that for the last one month he has had no money to pay his fees. His monthly expenses amount to Rs. 105/-, including the sum of Rs. 75/- which he has to pay towards fees etc. every month. A week back he received a notice that he should deposite his fees for being permitted to prosecute his studies. The only recourse for this poor boy, who has no money to meet the expenses of food, clothes and fees, is either to big or to steal. He has no other remedy. The other alternative before him is to leave the school but then he would be ruined completely. Yet it did not strike the mind of any government official that either he should be exempted from paying fee or some other kind of help might be given to him. This boy submitted many applications to the government, but as yet nobody has replied to him. Under such troubles and hardships how can that boy compete with the other boys who have all facilities available to them ?

You have given us privileges for ten years. After that period you will tell us that you helped us in all respects. I would then ask you, in what respect you helped us. Will you prepare some scheme for the uplift of Harijans in

*[ ] Translation of Hindustani speech.

these ten years? Have you prepared any scheme for education of Harijans up to this day? Have provincial governments earmarked some money for the uplift of the Harijans?]

Mr. President: *[A period of ten years has been provided in this article. Other things are covered by other articles. You can say these things then. At present, I shall not allow you to take up this issue.]

Shri H. J. Khandekar: *[I mean that out students do not get those facilities which other students get and hence they cannot stand in competition with others. The government has never thought of our uplift. Very often we have requested that to safeguard our interests there should be at least one Harijan minister appointed in every province and one at the Centre also who should work for the uplift of the Harijans. Had such ministers been appointed in every province and Centre, who could have thought over the difficulties of the Harijans, there would have been a lot of improvement by this time. In every province such resolutions were passed and were sent to the government by the Harijans from all the places requesting that these resolutions should be given effect to, but it is very painful to note that those persons have not as yet received a written acknowledgment of the receipt of their resolutions. This is the value and importance attached to the uplift of the Harijans. Such an attitude reveals that you want to please them with sweet words. In India there are many who talk sweetly and the Harijans are very easily taken in. They serve their selfish purpose. Except Mahatma Gandhi and ten or twenty other persons there is none to think of the uplift of the Harijans in the true sense.]

Mr. President: *[You are talking of the provinces.]

Shri H. J. Khandekar: *[I am talking of many provinces, and whatever I say is based on my personal experience. I have got an experience of about twenty or twenty-five years. I have been witnessing even up to this day that nothing good has been done for the Harijans. You have appointed Harijan ministers in the provinces but they are all your men. Then article about reservation provided by you is not going to safeguard our interests. In this way all the problems of Harijans would not be solved.]

Mr. President: *[It appears that you have been continuously absent.]

Shri H. J. Khandekar: *[I was not absent from this Assembly for a day, I was present all along even if someone marks me absent. I was here in my seat all the while.]

Mr. President: *[But I would like to tell you that you can speak on the question which is under consideration. You cannot be permitted to discuss the question of all the Harijans. Nothing would be gained by that. If you are a member of any provincial assembly you can raise this question there. Others also, who get an opportunity of speaking here, should restrict themselves to this article only. It is useless to talk of other things here.]

Shri H. J. Khandekar: *[I am speaking on this article. I want to submit that I do not believe that the reservation that has been provided will do any good to the Harijans. I say that this reservation can bring no good to the Harijans. But the painful aspect of the problem is that those, who believe in the uplift of the Harijans and also know that they suffer in many ways, are in favour of this article. But I feel that this article of reservation provides no scope for the uplift of the Harijans.

*[ ] Translation of Hindustani speech.

[Shri H. J. Khandekar]

There are differences amongst our sub castes. This article provides scope for creating all kinds of differences amongst the sub-castes of the Harijans. It has got a scope for ousting the Harijans who are in majority in a province. Every community will have some percentage. You know that there is one community in majority in Bombay. None has paid any attention to it. There are ten or twelve persons who can enter the legislature of Bombay Province through reservation. Those members of the minority community who come from that fold will be ousted. Up to this present day there are only two or three men of the minority community in the Bombay Legislature. Even now there are members of such minority Communities who are not even two per cent of the Harijans. I submit that when this article is implemented the Harijans would move still more backward rather than forward. I submit to you, Sir, that it would neither be beneficial to the country nor the Congress government nor even to the Harijans.

That is what I mean and after explaining it I support the article and resume my seat.

Shri Mahavir Tyagi (United Provinces : General) : *[Mr. President, I rise to lend my support to this article. I would like to submit, that the question of reservation for the Scheduled Castes was raised in this land during the British regime in pursuit of a policy which was then followed by them. By raising the same question in respect of Muslims the Britishers created a division between the Hindus and Muslims of the country—a policy which ultimately culminated in the creation of Pakistan. 'Divide and rule' was the policy of the alien rulers in India in those days. It was in pursuit of this policy that in the Round Table Conference the English politicians made attempts for the first time to establish the system of separate representation for the Scheduled Castes by creating a division between them and the caste Hindus. At this Mahatma Gandhi declarded his resolve to fast unto death if attempts were made to create another party of Scheduled Castes in India. As a result of this, they could not be separated from the Hindus and the system of separate electorates could not be adopted for them as was done for the Muslims. But seats were reserved for them on the basis of their population. Mahatma Gandhi settled this question with Dr. Ambedkar and gave an award which offered the Scheduled Castes more seats than what were given to them by the Round Table Conference. It was then felt that justice must be done to the Scheduled Castes.

The statement made by my Friend Mr. Khandekar that prior to this award no representative of the Scheduled Castes was ever elected, is a fact. According to the agreement reached between Mahatmaji and Dr. Ambedkar in regard to this question, representatives of the Scheduled Castes were to be elected by a common electorate but a certain number of seats were reserved for them and the number of seats so reserved was greater than what was given to them in the Round Table Conference. This agreement, has since then been in operation.

Now when after fourteen years we are again going to decide that seats will be reserved for them, we must not lose sight of the experience gained in the past in this respect. I would like to draw the attention of the House to the past experience with regard to this question. The reservation of seats has benefited us in many ways. Firstly, it has created an awakening among the Scheduled Castes; it has brought among them a spirit of self-progress· it has made others to realise that the members of the Scheduled Castes are citizens,

*[ ] Translation of Hindustani Speech.

equal to them and that they too should be entitled to all the rights that a citizen should have. It has also developed amongst us a habit to sit together and decide the future of the country and to discuss the important and grave problems of the country mutually. This helps a lot in our affairs.

But we have to see what will in fact be the advantage of such a reservation. My Friend Mr. Khandekar has just now complained that the majority community does not allow minority community to send its representatives. This is a fact. In this respect I too belong to a minority community. The strength of my community in my district consists of myself, my daughters and a policeman. They are all five in number. Still, whenever there is an election in my district, I am returned. But this is not the general rule. Those who are not elected on the basis of service to the country, are returned on the strength of their relations. Whoever has a large number of relations, is returned. In the district of Meerut, where the Jats are in a majority, only a Jat candidate can come out successful. A Brahmin cannot be elected there. Therefore this is not a question of Scheduled Castes only but is so in the case of other Castes also. This, of course, is very unfortunate for this country. Even if we confine our attention to the Scheduled Castes alone we find that they also suffer from the same malady. Twenty seats have been reserved for the Scheduled Castes in our province and there are perhaps eight seats for them in the Punjab. If we undertake a study of the caste composition of the members filling the seats and if Shriyut Khandekar does the same in regard to the seats reserved for the Scheduled Castes all over India it will be found that excepting two or three Mahars, including my Friends Mr. Khandekar and Dr. Ambedkar, the majority of seats have gone to *Chamars* because among the Scheduled Castes they have a majority. If you look at the Ministers also, you will see that excepting Dr. Ambedkar there is no Scheduled Caste Minister who is a *non-Chamar*.]

Some Honourable Members : *[In Bihar, there are.]

Shri Mahavir Tyagi : *[Yes, excepting Bihar, in all other places these people alone are ministers. May I ask whether the four hundred communities are taking advantage of the Scheduled Castes seats? Out of these four hundred communities only two or three communities are taking advantage of the seats reserved for Scheduled Castes. In Bombay the Mahars are in a majority but owing to joint elections some other members of the community have been returned and this has given cause to Mr. Khandekar to complain. I am opposed to this type of mentality. The scheduled castes have been formed by combining together four to five hundred communities but if a majority section and a minority section are found among them, it would mean that the seats reserved for Scheduled Castes would go to the majority section. Even if we reserve a number of seats in India for the *Chamars* the result would be the same as we have achieved by reserving seats for Scheduled Castes, because in our province the *Chamars* are in a majority and they alone get the majority of votes. Every party too puts forward a candidate on the consideration whether he has a large number of relations, so that matters may be facilitated. Therefore all the Scheduled Caste people do not benefit by reservation. There are five hundred to six hundred Scheduled Castes and we are not familiar even with their names. Indeed, it will never be possible for them to get representation in the Assembly.

This means that we provide seats for Scheduled Castes to benefit those who have a large number of relations. The advantage of joint elections, to which my Friend Mr. Khandekar objects, would be that caste Hindus would be able

*[ ] Translation of Hindustani Speech.

[Shri Mahavir Tyagi]

to extend justice to those Scheduled Castes people who are in a minority. They would realise that the *Chamars* have a majority in the district and that those people who are in a minority have no chance of winning an election, although their candidates are well qualified for being returned to the Legislative Assembly. They would help these candidates and make up the deficiency of votes in their favour. What I mean to say is this, that the advantage of other caste people participating in the elections for Scheduled Caste seats would be that besides those who are in a majority among the Scheduled Castes, even those who are in a minority among them would be able to fight elections and win them. This is my reply to the objection that has been raised. We should keep in view the interests of all the Scheduled Castes specified in the schedule and not only of those which are in a majority.

I would like to draw the attention of the House to another aspect of this problem. The reservation that has been provided for the Scheduled Castes uptill now, is producing, the effect, among others, of the formation of a separate kind of group of the Scheduled Castes. And if this practice is continued for some time more the leaders of the Scheduled Castes will act in the same way as the Muslim leaguers did. They can become ministers and members of the Assembly as long as the reservation of their seats is continued. Under such circumstances the separatist tendency cannot be brought to an end in this country. I, therefore, feel that there should be no kind of reservation.

In my province of U.P., the Panchayat Election has just been held. It may be a surprise to the House that the election of Sarpanch of these Panchayats was a joint one. In our eastern districts more than half of the Panchayats are such wherein the members of the Scheduled Castes have been elected as Sarpanch. This is the result of the Gram Panchayat election held through the government and the members of the Scheduled Castes were elected as Sarpanch. It is wrong to think that the minorities are not enjoying the privileges in the political spheres. Had I been a leader of a minority community I could have very easily demonstrated to you that in a House consisting of one hundred members I could form a ministry with the backing of my twenty followers in the legislature. I hold this belief because I am confident that the remaining eighty members of the House would be divided into a number of parties and I could, therefore lend my support to one of these parties and thereby enable it to be dominant in the Legislature. By this bargain I could easily obtain the premiership for myself. The fact is that all the world over the ministers enter into such bargains and are thereby able to secure their ends. There are different groups in the majority, and the minority always secures advantages for itself by favouring one group or the other. It is therefore wrong to say that the minority group does not secure advantage for itself. In the same way the minority pushes its candidate in general elections too and it is a clear misunderstanding that the minorities cannot take part in elections.

My own idea was that there should be no reservation. On the other hand, the provision of reservation makes me feel that there has been a little of injustice to the Sikhs. They have been living separate for many years and this right of reservation has been denied to them. Similarly Christians have also been denied this right. All the other minorities generously accepted to give up this right. I therefore fail to see why this reservation should be kept. I believe that even without reservation the members of the Scheduled Castes can gain seats in proportion to their population. You will see after ten years that they will gain seats in a greater proportion. I would like to repeat it

again that in election importance should be attached to the capabilities of the candidate and not to the caste of the candidate. It should be considered as to who has served the country in a better way and who can represent the country in a better way. Unfortunately people having good knowledge of English gain success. It is a misfortune that nobody thinks for those Brahmans who are even poorer than the members of the Scheduled Castes. Similarly there are Kashtriyas, Rajputs and some persons and families among all the other castes, who do not get any opportunity to gain education and wealth. There is no provision for them in this Constitution. They are poor and illiterate and can neither become representatives nor ministers. Unfortunately the conditions are such that those, who have English education and have adopted English methods, are the representatives of India. Only such persons can gain representation. It pains me greatly that there is no scope in this country for the illiterates. I say that until the rein of administration is held by non-English-knowing illiterate persons and until a majority of illiterate persons comes in Government Service, India would not be able to feel the glow of freedom. The educated persons are demoralised. And in the present regime the administration of India is in the hands of those who are devoted to English culture and language and are demoralised. Just as with other castes, in Scheduled Castes also there is no opportunity for their real representatives even after the removal of the British regime. Persons like Dr. Ambedkar, who are capable in all respects, will come forward from the Scheduled Castes. To what Scheduled Castes does Dr. Ambedkar belong to, who is the Pandit of the Pandits? He only takes advantage of the Scheduled Castes. At the same time Dr. Ambedkar can come into the Legislature from any part of the country by virtue of his own merits.

I therefore, see no advantage, as I have already stated, in reservation. The true representatives do not enter the Legislatures even through reservation. This may be attained only when we change our mentality and elect persons according to our old Indian custom based on honesty, ability, conscientiousness, service to humanity and intelligence. We have been so much entangled in the English language that one who has attained even an alphabetical knowledge of this language attains the right of being the representative of the country. Even after saying so much I feel that this provision is good. They will get opportunities for ten years, more and after that period it will automatically come to an end and there would be joint elections.

Mr. President: This is one of those articles which represent the decisions arrived at at a previous session and I do not think much discussion is necessary. However, I have not stood in the way of members speaking.

The question is :

"That for article 294, the following be substituted:—

Reservation of seats for minorities in the Legislative Assemblies of the States

'294(1) Seats shall be reserved for the Scheduled Castes and the scheduled tribes, except the scheduled tribes in the tribal areas of Assam, in the Legislative Assembly of every State for the time being specified in Part I or Part III of the First Schedule.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the scheduled tribes in the Legislative Assembly of any State under clause (1) of this article shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the scheduled tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the district bears to the total population of the State.

[Mr. President]

(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and the municipality of Shillong.

(6) No person who is not a member of a scheduled tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong'."

The motion was adopted.

Article 294, as amended, was added to the Constitution

Article 295

Mr. President: This is a non-controversial article.

The question is :

"That article 295 stand part of the Constitution"

The motion was adopted.

Article 295 was added to the Constitution.

New Article 295-A

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That after article 295, the following new article be inserted

'295-A. Notwithstanding anything contained in the foregoing provisions of this Part, the provisions of this Constitution relating to the reservation of seats for the Scheduled Castes and the scheduled tribes either in House of the People or in the Legislative Assembly of a State shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution.' "

Reservation of seats for Scheduled Castes and Scheduled tribes to cease to be in force after the expiration of ten years from the commencement of this constitution

This is also in accordance with the decision of the House. I do not think any explanation is necessary.

Mr. President: There are certain amendments to this. Amendment No. 39 has been given notice of by three Members.

Shri Yudhisthir Mishra (Orissa States) : Sir, I move :

"That in amendment No 38 above, in the proposed new article 295-A, the words 'and the scheduled tribes' be deleted."

The effect of my amendment will be that the provision of this Constitution regarding reservation of seats for the Scheduled tribes both in the Centre and in the Provinces shall not cease to have effect even after the lapse of ten years from the commencement of this Constitution. The purpose of this new article 295-A is not to allow reservation of seats to Scheduled Castes and tribes after a period of ten years from the date of the commencement of this Constitution. My amendment seeks to provide that the reservation of seats for the tribes should not be limited to ten years only.

We decided in the last session of the Constituent Assembly, in a motion tabled by the Honourable Sardar Patel, that the system of reservation of seats for minorities other than the Scheduled Castes in the legislatures be abolished and that the reservation of seats for the Scheduled Castes shall be limited to ten years only. The communities referred to in this resolution are Muslims, Sikhs, Scheduled Castes and Indian Christians. It was held that in the context of a free and independent India, and according to the present conditions, there should not be any reservation of seats for religious communities. Therefore, it did not affect the reservation of seats for the scheduled tribes.

Sir, in the report of the Advisory Committee dated 11th May 1949 submitted by Sardar Patel to this House on the subject of political safe-guards for minorities, it has been specifically stated that nothing contained in the resolution passed by the Minorities Advisory Committee shall effect the recommendations made by the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee and the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee with regard to the tribals in the legislatures. It was also laid down that the resolution would not affect the special provision made for the representation of Anglo-Indians in the legislatures.

Now, Sir, in their report, the Advisory Committee for Tribal and Excluded Areas have suggested some protection for the tribes, and no limitation, as far as I remember, was fixed as regards the period for which such protection should be provided. It is of course surprising to me how the Drafting Committee in its recent amendment or in its new article 295-A has put in a time-limit. We have passed new article 215-B which provides for the administration and control of the tribal areas in any State, according to the provision of the Schedule V and Schedule VI of the Draft Constitution. This provision in 215-B is a permanent feature of the Constitution which will not cease to be operative even after a lapse of ten years

Then again, in the Vth and VIth Schedules in the Draft Constitution, a Tribal Advisory Committee has been provided to advise the Government of the States in all matters pertaining to the administration of the scheduled tribes and the welfare of the tribal people in all States. Now, three-fourths of the Tribal Advisory Committee will consist of the elected representatives of the scheduled tribes in the legislature of the States. If there is no reservation for the tribes, how are you going to give effect to the provisions of this Constitution as far as the provisions laid down in the Schedule V of the Draft Constitution are concerned? So far as the tribal people are concerned, due to their social, educational and political backwardness, I am sure very few of them will be returned to the Assembly if reservation is abolished. I feel that even after the lapse of ten years we shall not be able to remove the backwardness of the tribes. I hold that the standards of education and material well-being of the Scheduled tribes are lower in most cases than even those of most of the Scheduled Castes. That is clear from the representation of the scheduled tribes in this House in comparison with the representation that the Scheduled Castes have been able to secure. Even the representative character of this House, as far as the interests of the scheduled tribes are concerned has been challenged by some people. I recently received some letters and telegrams from the tribal people of the Orissa States that the representatives in this House are not entitled to make any Constitution for them and that even if a Constitution is made, they are not bound by it. This is due to the apprehension in their minds that they will receive proper justice unless we go and try to understand their feelings as far as reservation of seats are concerned. Therefore we should think twice before abolishing reservation of seats for the tribal people after the lapse of ten years. I feel that the scheduled tribes will not be able to attain the same social standard as the other people within ten years. So I submit that the time-limit should be removed. I hope this amendment will receive due consideration at the hands of the Drafting Committee.

Mr. President: We shall take up the other amendments tomorrow.

Before we part, there is one matter which I would like to mention to the House, although it is not usual to do so. I have just received a resignation letter from Dr. S. Radhakrishnan who is going as our Ambassador to Moscow. I am sure this House appreciates the work which he has done here. We shall

[Mr. President]

be missing him very much in the future. But what is a loss here is going to be a gain to the country. He is going with a great reputation as a philosopher and writer of International fame and I hope and trust that his appointment to a country with which we wish to be on the best of terms will bear good fruit and will prove to be very helpful and useful to the country.

On my behalf and on behalf of this House I offer my best wishes to Dr. Radhakrishnan in his mission.

Prof. S. Radhakrishnan (United Provinces : General) : Mr. President and fellow Members, I thank you very much, Sir, for the very kind sentiments which you just expressed. I regret that it has not been possible for me to attend the meetings of this Assembly and take any useful part in its discussions. It is due entirely to circumstances beyond my control. I hope the House will appreciate that fact

We have laid down our objectives and if we implement them with speed and steadfastness, our political and economic future may be taken as assured. It all depends on the way in which we carry out those objectives. Politics are more a result than a cause. Political upheavals occur the world over because there are unsatisfactory economic conditions. Wherever standards of life are all right, political stability is assured. Where you have economic unstability, upheavals occur. I hope that our trusted leaders who are now running this Government will carry out all those obligations put down in our Draft Constitution and will not allow it to be said that we have delayed social justice and so denied social justice. We have just listened to an impassioned statement on Harijans, their rights, etc. Our aim is social democracy which transcends these distinctions of caste and outcaste, of rich and poor. We will be judged in the world by the way in which we carry out these proclamations which we have inserted in our Constitution.

Sir, you have referred to my appointment in Moscow. We are working under the great leadership of Mahatma Gandhi. If there are political conflicts, there are two ways of overcoming them. One way is to give a knock-out blow to defeat, to destroy and establish your own supremacy. That is what is called power solution. There is another way. That is understanding why our opponent believes what he does, trying to appreciate his view and trying to bring about a reconciliation. That is what is called the knowledge solution. We in this country are wedded to the adoption of the knowledge solution, and in Soviet Russia it will be my purpose to interpret and understand their policies and also interpret and make them understand our policies. That will be my work towards reconciliation, and I am very much fortified by the fact that in my new assignment I carry the good wishes of you, Mr. President, and the other Members of the House.

Mr. President : The House stands adjourns till nine o'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday, the 25th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 25th August, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

New Article 295-A—(Contd.)

Mr. President: We shall take up the amendments to article 295-A.

Shri S. Nagappa (Madras : General) : Mr. Presilent, Sir, I beg to move :

"That in amendment No 38 above, at the end of the proposed new article 295-A, the following proviso be added :—

'Provided the people for whom seats in the Legislatures have been reserved are brought to the level of other advanced classes of people educationally, socially and economically.' "

My intention in moving this amendment is not to extend the period of reservation, but to see that Government takes effective care that, within this ten years' period, the people for whom seats have been reserved are brought to the level of other advanced classes. As it is, in the various provinces there are ministries which are in charge of Harijan uplift, but in the Centre, I do not find such a ministry and I would request the Government to create a Ministry of that sort and see that a Harijan is kept in charge of this Ministry and a plan is chalked out for ten years so that these people are brought to the level of other advanced classes, educationally, economically and socially. In order to achieve this object, I would request the Central Government to set apart 5 per cent, of its revenues in order to give grants to the Provincial Governments as they have been doing in the case of rural water-supply or in the case of medical relief to the rural areas. So also, in order that these people are brought to the level of the other people we must have such definite plans and schemes Unless and until such schemes are chalked out and are worked out, I do not think it will be possible for us to bring these down-trodden people to the level of other advanced communities within the short period of ten years.

The Harijan movement was started in the year 1932 with the blessings and active co-operation of our revered leader Mahatmaji. All these days we did it and we have been doing it with the public co-operation and by constant propaganda in order to see that the Harijans are also treated equally along with others. No doubt, Sir, it has brought about some psychological change in the minds of people who are modern; who are civilized, who are educated, who can understand things, who can move with the times, but as regards people who are not educated, who are still orthodox type of people, who believe in the old theory, to those people especially in the rural areas, it has not brought any change. Indeed I am thankful to the Central Government as well as to the various Provincial Governments for having been good enough to include an article in this Constitution and having brought suitable legislation in various provinces in order to see that untouchability is made an offence and that too

[Shri S. Nagappa]

a cognizable offence, but still, to my knowledge, it is not worked out in the same spirit with which it has been enacted. Well, Sir, the proof of the pudding is in the eating. We must see that what we have enacted, every word of it, every letter of it, with all the spirit behind it must be transmitted into action, not in the cities, not in the towns, but in the villages. In order to achieve this object at least five per cent. or the Central revenues should be set apart; there should be a Ministry in charge of these people in the Centre to consolidate the work that is being done in the various provinces and States.

Another thing that would go a long way in bringing these people to the level of the other advanced classes is education. As it is, in our country illiteracy happens to be the highest. After all, the literate population may be 12 to 15 per cent. If you take the Harijans alone, I think it will be 1 per cent or 2 per cent. Every year we must watch what percentage is converted to literacy and we must give a great fillip to this movement for the spread of education. Education is the key of all-round development. Unless and until they are educated, you may not be in a position to bring them to the level of the other advanced people. I would request you to make elementary education compulsory to these people. I know that large tracts of waste land are available in this country. But, unfortunately, these people are not allowed to cultivate the land. I would request the Government to have a definite plan, especially the Ministry of Agriculture and Food. They must go on alloting these lands to these people in order to produce more food and in order to elevate the economic condition of these people.

In order to raise these people economically, multi-purpose co-operative societies must be organised all over the country and you should see that each society has a definite plan in order to see that a particular thing is done in a particular time. We see the strike mentality is spreading among the workers. There is a mentality of profit-making among the capitalists. As a result of the strike mentality of the labourers and as a result of the profit-making mentality among the capitalists, the country is suffering as production is going down. I would suggest a solution for this: that is, make the worker the owner of the factory. You may ask, how to make him the owner? It is a very simple thing. For instance, we may take it that a worker earns about Rs. 2 a day. Suppose, in a mill the investment is Rs. 40 lakhs and 4,000 people are working in that mill. If you go on deducting at the rate of two annas in the Rupee that every labourer earns, for every labourer you will be saving four annas a day, and for 4,000 people it means Rs. 1,000. In course of time, you will be able to make up the capital invested in the factory. You may give that money to the capitalist and then you may say to the workers, "well, this is your own from today; go along and produce whatever you like". The capitalist will get back his money and he may invest it in some other industry. The country will be developed industrially. I would particularly request the Honourable the Minister for Labour to hear this carefully and see that this is done at an early date. If the Honourable the Minister for Labour takes it into his head, he can do it and the production could be increased to many more times its present output. He can make the country above want if he has a mind to do so. There is no use of this profit-sharing or any other sharing. You must make the worker feel that it is his own factory. If you bring about that consciousness, he will put his heart and soul into the task. By simply saying that you will get 50 per cent. of the profit and this and that, you cannot increase production.

Mr. President: I am sure you are making a good suggestion which will receive due consideration. But, these suggestions are out of place so far as this article is concerned.

Shri S. Nagappa: Certainly I think this is the best way in which we can bring the condition of these people to the level of the other people economically.

My amendment is that this reservation should last for ten years, provided the Government takes this actually into its head and sees that these people are brought to the level of the advanced classes. I am not simply agitating, I want to give constructive suggestions and in order to give suggestions I have to express these things elaborately. You must have a definite scheme. You must at least take up 100 young men from this community and send them to foreign countries to make them experts technically, as was done under the Bevin Boys' Scheme or any other scheme. You must send them to foreign countries, and make them technical experts. There must be a definite quota or a definite scheme for each year. There is no use of saying that everything will be done and leaving it in the air that we will do this and that. You must start with a definite scheme. I come to understand that there is a Scholarship Board; but to my surprise, the amount that is set apart at its disposal is very limited, when the applications that have come for scholarship are taken into consideration. About 60 or 70 per cent. of the applications have had to be rejected because there are not enough funds at their disposal. I would request the Government to see that every application that is sent to this Scholarship Board is granted and every student that seeks Government help is given help and that too in time, and he should be allowed to make the best use of the good-will of the Government to his best ability.

When these people are equipped with all the qualifications necessary, it is again a problem for them to get themselves absorbed in responsible positions, because there are so many hurdles for them to cross. The Services Commission is one of the bottlenecks for these people. In order to see that the interests of these people are safeguarded, in every Provincial Service Commission there should be at least one member belonging to these people. In the Central Commission also, there should be one. Only then, will these people advance further.

Another most important thing is that these people are well-fitted for any military job. They have enough stamina; they can withstand any amount of physical strain. These people must be recruited in large numbers to the Military not merely as sepoys alone, but to responsible posts also. At the end of five years, you should appoint a commission to go round the country and take into consideration what advance these people have made during the last five years, and whether the advance is commensurate with the scheme that we have on hand and if the advance has not been sufficient, what suggestions could be made to go further.

Another most important thing is this. In the Constitution we have provided that equal opportunity should be given to all irrespective of caste, creed and colour, religion or race. Well, it sounds well, so far as we read it. But, we must see that it is translated into action. While making appointments to responsible jobs like Governors, Ambassadors, High Commissioners, Trade Commissioners and other like cases, you must take into consideration the claims of these people. We are an independent country for the last two years; I am surprised to find not a single Governor, not a single ambassador from these people.

Sardar Hukam Singh (East Punjab: Sikh): On a point of Order, Sir. Why should colour be emphasised now? Because all Indians are of one colour.

Shri S. Nagappa: So far as my honourable Friends from the North are concerned, they may have a uniform colour, but for us, South Indians, who are nearer the Equator we have a different colour Whether we are black or

[Shri S Nagappa]

brown, we have an Indian colour We are Indians irrespective of our colour You have been good enough to enact that we should give equal opportunity for one and all. It must be acted up to in the same spirit Can you give one example of a Scheduled Caste man being a Governor in this country ? You are adding insult to injury. What opportunity you have provided for these people ? Can you say, out of those whom you have selected either as Cabinet Ministers or other officers, have they failed ? They have been doing work more than others. Why do you brand them as inefficient ? Somehow or other you want to by-pass our claim Do not utter it hereafter The most important means by which you can bring in the rural population to an economic level at the earliest opportunity is by providing them facilities in order to encourage themselves commercially, provide them lands and give them licenses for controlled commodities and send them to countries which have advanced commercially

Another thing is you are abolishing the zamindari system all over the country It is a good sign of advancement but what is going to happen ? If the Zamindars are sent out, the chota Zamindars are created *i.e.*, those who are supposed to be the agriculturists. They do not till the land and it is the mazdoor who tills the land You make them owners of the lands, give lands to these people or let it be given to co-operative societies and give them Government loans and modern machinery to cultivate the lands . .

Shri L. Krishnaswami Bharathi (Madras : General) : It is relevant ?

Shri S. Nagappa : It is relevant for the elevation of Harijans. So I would request the Government to bear in mind that we have agreed to the reservation ... .

An honourable Member : There is no Government.

Shri S. Nagappa : I am suggesting to the future Government as to how it should conduct its affairs. We are enacting a Constitution for our future Government. These are the implications that are implied in it So I would request that the honourable Members would be good enough to accept my amendment. You must realise that greater responsibility is now lying on your shoulders. You have to bring us to that level by which we will be able to say that we do not want reservations. We cannot go on begging for a favour. As it is, we are making the Government to commit itself for the future advancement of this country and of this community. I would request the honourable Members to support this amendment. I would particularly request Dr. Ambedkar who belongs to the same community to accept this. Sir, I thank you very much.

(Amendment No. 98 was not moved.)

Shri V. I. Muniswamy Pillay (Madras : General): Mr. President, I beg to move :

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments in the proposed new article 295-A, after the words 'ten years' the words 'or longer period if the Parliamnt so decides at a later date' be inserted."

My Friend, Mr. Nagappa moving his amendment has explained to the House the difficulties under which the Scheduled Castes are labouring today. Now, my view or rather my request to this House is that the period of ten years that has been accepted on the report of the Advisory Committee is a

premature one. It is clearly seen in article 299 that the Drafting Committee has brought an article whereby it clearly says that

"It shall be the duty of the Special Officer for the Union to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the Union and to report to the President upon the working of the safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before Parliament"

Under this clause I feel that this House will do well to prolong the period of ten years until the Special Officers have investigated into the matters connected with the minorities and a report is made to the President. The President according to this article has to place this matter before Parliament It is this that I wish, that after a period of ten years the Special Officers' report can go before the President who in turn can place it before Parliament. The Parliament can review the whole thing and see whether the Scheduled Castes have advanced so well that the reservation ought to be taken away. I think by this House accepting ten years will be putting the cart before the horse We do not know what will be the position of the Scheduled Castes after this period of ten years If there is real advancement among them, if they have progressed in all ways, then we need not have anything further, this reservation can go at the end of that period. But if their position is the same as it is now, or if it is worse, if they have made less progress than we expect, then it is highly necessary that this period should be prolonged

Sir, I have got several other reasons also why it is necessary that this period should be extended. We may remember that in the year 1947, when the report of the Advisory Committee came up for discussion in this House and for its decisions, several recommendations were made. But I do not think either the Government of India at the Centre, or the Provincial Governments have taken the clue from the discussions that took place here on these recommendations and they have not done much by way of amelioration of the condition of the Scheduled Castes Even in the Constituent Assembly (Legislative) a resolution was adopted and all Members who were sympathetic towards the Scheduled Castes took part in the discussion of that resolution and then an assurance was given that everything will be done for the welfare of the Scheduled Castes May I know what steps have been taken? I know, as a matter of fact, that only in the U P. and in Madras in a less degree, they have taken steps to do something for the amelioration of the Scheduled Castes In Madras they have set up a committee and after two years' labour, and after debating the subject in the Legislature, very lately, the Government has come to the rescue and they have started a department called the Harijan Uplift Department and only this year this Department started functioning, with a small amount—to start with

What I would request is that if the Government or this House is definitely to have only this period of ten years for reservation, then they must have a dynamic plan for the uplift of the Harijans, and in this connection, I hope it will not be too much, if I suggest to the Government of India that they must have a separate Minister and a separate portfolio for Harijan Uplift, as has been done in the Province of Madras. Unless this is done, and unless the Government takes a keen interest and shows to the Harijans that their position will definitely be improved during the course of the next ten years, it is no use accepting this period of ten years now In this House it has been possible to review the whole position and also to change things that have been adopted previously Therefore, it will not be wrong if this House, after hearing us, decides that this period of ten years may be prolonged, as required in my amendment With these few remarks I support the motion of the Honourable Dr Ambedkar.

Mr. President : Dr. Monomohon Das.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : There is one amendment, No. 105.

Mr. President : Yes, but we are still on No. 100. We shall come to 105 after that.

Dr. Monomohon Das (West Bengal : General) : Mr. President, Sir, I move :

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed new article 295 A the following be added : -

'unless Parliament by law otherwise provides'."

If my amendment is accepted, then the new article proposed will read as follows :—

"Notwithstanding anything contained in the foregoing provisions of this Part, the provisions of this Constitution relating to the reservation of seats for the Scheduled Castes and the scheduled tribes either in the House of the People or in the Legislative Assembly of a State shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution, unless Parliament by law otherwise provides."

The proposed new article of Dr. Ambedkar declares that the safeguards which have been granted to the Scheduled Castes and the scheduled tribes will come to an end at the expiration of ten years. But my amendment proposes that these safeguards will come to an end at the end of ten years, but if the Parliament, after consideration of the situation then of the Scheduled Castes and the scheduled tribes, thinks that these provisions for reservation of seats should be continued, for some further period, then these reservations of seats, these political concessions granted to the Scheduled Castes and the scheduled tribes will continue and not come to an end.

It is not very pleasant for a man to stand before his colleagues and friends and beg for concessions for himself or his community, especially when one knows that the majority in the House is not favourably disposed towards the grant of such concessions, especially when he knows that his pleadings and entreaties for concessions for a down-trodden community are sure to meet with unkind, unfriendly and unsympathetic criticisms. But in spite of all this, when I take into consideration the great magnitude and importance of this article, when I take into consideration the great bearing that this article will have upon the future political life of millions of the Scheduled Caste people and the scheduled tribes, I am inclined to think that I shall be greatly failing in my duty to these people whom I claim to represent here, if I do not place before you their grievances.

Sir, the problem of the Scheduled Castes and the scheduled tribes is not a new one. The British rulers, in the latter part of their regime, recognised this problem and made some provisions for it. It is true that they made those provisions not out of genuine love for the Scheduled Castes and the scheduled tribes, not for the welfare of those classes, but they did it for the benefits that they themselves hoped to acquire from them. The Indian National Congress became conscious of this problem at the instance of Mahatma Gandhi. Mahatmaji found that millions of people in this country were groaning under inhuman oppression for thousands of years. The distinction between man and man, the distinction between one class and another did not escape the notice of Mahatma Gandhi. This diabolical contrivance to enslave humanity did not escape the discerning eye of Mahatmaji, and he declared to the people of India that emancipation of the country from a foreign yoke will be nothing but a mockery to the millions of down-trodden Scheduled Castes and scheduled tribes of this land, if we fail to tear away, if we fail to break down this diabolical contrivance for enslaving humanity.

Sir, so long as Mahatmaji was living, we the people of this land, we the oppressed and down-trodden people of this land found in him a court of appeal; not only we, but everyone who has aggrieved or oppressed or down-trodden, found in him a court of appeal. Whenever we thought that some injustice had been done to us, we knew that if we could approach him, we would get not only justice but more than justice. We knew that if we could convince him of the righteousness of our case, then we would get not only our due, but more than our due. Sir, that court of appeal is no longer amongst us, and to our great misfortune, today we find that after his departure, the attitude in this country towards the Scheduled Castes and the scheduled tribes is gradually becoming definitely stiffened. So long as he was here amidst us, we the Scheduled Castes and the scheduled tribes were treated with some sympathy, and with a touch of feeling, but now after his demise, we find that we are treated as rivals, political opponents, as co-sharers, as co-partners.

The Advisory Committee on Minorities in their report dated the 8th August, 1947, clearly stated that there will be reservation of seats for the Scheduled Castes and the scheduled tribes for a period of ten years. At the end of ten years this position was to be reconsidered. This formula was accepted by the Constituent Assembly during its session of August 1947. But in their subsequent meeting on 11th May 1949 the Advisory Committee on Minorities abolished the reservation of all other minorities except the Scheduled Castes and the scheduled tribes. The reservation of seats for Scheduled Castes and scheduled tribes was retained for ten years as originally decided, but nothing was said about the reconsideration of the problem at the end of ten years. I beg to lay emphasis upon these words that nothing was said about the reconsideration of the question at the end of ten years. This silence on the part of the Advisory Committee on Minorities about the question of reconsideration of this problem has been construed to mean that the Advisory Committee is against reconsideration at the end of ten years. In their report the Minorities Committee say that they have given this political concession to the Scheduled Castes and the scheduled tribes because "the standards of education and material well-being of the Scheduled Castes, even on Indian standards, are extremely low and moreover they (the Scheduled Castes) suffer from grievous social disabilities". Therefore it is evident from the Report of the Minorities Committee that it is on account of the extremely low educational and economic conditions of the Scheduled Castes and the grievous social disabilities from which they suffer that the political safeguard of reservation of seats had been granted to them.

Now, I ask the honourable Members of this House, do they believe that in the next ten years the economic and educational conditions of the Scheduled Castes and the scheduled tribes are going to be improved to such an extent that there will be no necessity of these political safeguards for those communities? I ask my honourable Friends do they really believe that the grievous social disabilities under which these classes of people have been suffering for thousands of years will be removed in the coming ten years? I ask the honourable Members of this House are they prepared to give us a guarantee to that effect.

A very pertinent question has been raised by our esteemed Friend Mr. Brajeshwar Prasad in yesterday's meeting. My Friend Mr. Brajeshwar Prasad shed much tears I should say over the pitiable conditions of the Scheduled Castes and the scheduled tribes. But he failed to see what part this reservation of seats would play towards the amelioration of the conditions of these classes. He thought that it will lead to the exploitation of these classes and it will give rise to fissiparous tendencies among them. If by "exploitation" he means economic exploitation, then I cannot understand how a few seats in the Central

[Dr. Monomohon Das]

Legislature or in the Provincial Legislature will lead to the exploitation of the Scheduled Castes and the scheduled tribes. If he mean by "exploitation" political exploitation, then I must remind him that a leader who has more capacity to appeal to our sentiments and reasoning is more able to exploit us. It is a matter of common knowledge with the Members of this House as to how many times we have been compelled to revise our decisions by the convincing and eloquent reasonings of Dr. Ambedkar or our Prime Minister. So, if by "exploitation" he means that the political leaders will bring these Scheduled Castes and scheduled tribes under their own influence, I will say to him that this is the case everywhere.

About the fissiparous tendencies, everyone of us knows that a hundred illiterate people come to a common conclusion more easily than a hundred educated, cultured men. It is common knowledge that in the present times, in a family consisting of father, mother and two sons we see the father is a Congressman, the mother is a Hindu Mahasabhite, the older son is a Socialist and the younger son is a Communist. So, fissiparous tendencies are found more among the educated and cultured classes than among these classes.

I next come to the question, what part does reservation of seats play towards the amelioration of our grievances? In the golden days of yore when civilization was not so advanced as it is now, physical strength was the only potent weapon for protection of life and property and protection from tyranny and oppression. With the advancement of civilisation and with the advancement of modern scientific instruments and weapons we find that physical prowess is of no avail towards these ends. It is political strength, it is political power, it is the part in the administration of the country, it is the influence you wield, it is the voice you have got in the administration of your State—it is these things that will give you protection of your life and property and protection from tyranny and oppression. Therefore, I think the view expressed by my Friend Mr. Brajeshwar Prasad is diametrically opposed to truth.

I appeal to the honourable Members of this House, why do you grudge a few seats in the Central or in the Provincial Legislature to the Scheduled Castes and scheduled tribes? In this House containing more than three hundred members there may be at the maximum thirty to forty members belonging to the Scheduled Castes and the scheduled tribes. What have they done to you—what disadvantage have they created for you? They simply come here and watch the proceedings of the House, practically taking no part in its proceedings except when their own interests are going to be trampled down by the decisions of this House. I appeal to you to take these Members into your confidence. Then you will see that they will strengthen your hands and not weaken them. I appeal to you to treat them as your younger brothers and you will find that they are with you and not against you.

My amendment proposes to reconsider the situation at the expiration of ten years. If at the end of ten years it is found that the conditions of the Scheduled Castes and the scheduled tribes have changed to such an extent that no safeguard is necessary, then the Parliament will do away with it. I fail to understand why there is this hurry, why there is this indecent haste to close all doors of reconsideration of the problem at the end of ten years. Let the future take its own course. After all, what is there to be afraid of for the majority community? If you are in thumping majority today in the Indian Parliament you will be so tomorrow, the day after tomorrow and for all times to come. Whatever may be the form of Government, whatever political parties may come to power, the majority will always remain a majority and it will have the minority under its feet, at its mercy. So, what is there to be afraid of the Scheduled Castes?

In the Report of the Advisory Committee it has been said that "the Committee was always anxious that the representatives of the minorities should have adequate time to reflect fully so that a change, if effected, would be sought voluntarily by the minorities themselves and not be imposed upon by the majority community". If that be the case, if that be the attitude of the Advisory Committee on Minorities, why then should this provision of consideration be deleted without the consent of the representatives of the Scheduled Castes and the scheduled tribes? I am sanguine that there is not a single Member from the Scheduled Castes or the scheduled tribes in this House who can give the consent to such a proposal of deleting this stipulation that there will be consideration of their question at the end of ten years.

I feel, Sir, that justice has not been done in this case and the will of the majority is going to be imposed by force upon us—the minority—against our will. Therefore, I appeal to the honourable Members of this House that my amendment which proposes to reopen the whole question at the expiration of ten years, and which is in no way against the decision of the Advisory Committee, may be accepted by this House.

Mr. President: No. 105, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

"That in amendment No. 38 of List I (Fifth Week) of Amendment to Amendments, at the end of the proposed new article 295-A, the following be added:—

'and a general election shall be held thereafter.'"

It seems to me that there is an ambiguity in the article. The article says that the reservations of seats for the Scheduled Castes and scheduled tribes in the House of the People at the Centre and in the Lower Houses in the States shall cease to have effect at the expiration of a period of ten years from the commencement of this Constitution. I think there is some amount of lurking ambiguity in the expression though the idea is quite clear. I submit a question which should be considered. At the next election I believe.....

Shri T. T. Krishnamachari (Madras: General): Mr. President, if it will help to shorten my friend's remarks, may I mention that the Drafting Committee has an amendment to fit into the contingency that he envisages?

Mr. Naziruddin Ahmad: Where is that amendment?

Mr. President: I was just going to point out amendment No. 114 which covers the point which the honourable Member has raised.

Mr. Naziruddin Ahmad: The idea must have been misappropriated or stolen from my amendment. I am very grateful for it—it is a great compliment paid to me.

The point is that the expiration of ten years from the commencement of the Constitution and the expiration of the House of the People or of the States Assemblies may not coincide. It may be that for various reasons the second election is held in the ninth year of the passing of the Constitution. Then there would remain only one year for the completion of ten years but there would be an unexpired period of four years for the Legislature to expire. What is ambiguous is that on the expiration of ten years the duration of the Assemblies might not have expired. The question would be whether on the expiration of ten years the elected Legislature would cease to function entirely and there would be a fresh election or whether there would be no more election but the body elected will continue for the unexpired period of its normal life. It is to clear up that ambiguity that I have tabled the amendment. I am glad however that the error has been noticed. The difficulty of the Drafting Committee is that

[Mr. Naziruddin Ahmed]

though in the usual number of cases they are prepared to accept good ideas, sometimes they do not like to admit their mistakes; it is on this account that many good amendments have not been accepted. But we shall look up to the Third Reading which, I hope, would be another elaborate Second Reading on account of the many errors we have passed over.

Pandit Thakur Das Bhargava (East Punjab : General) Sir, I beg to move :

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, in the proposed new article 295A, after the word 'Constitution' the brackets and letter '(a)' be inserted and after the word 'State', the following be inserted :

'(b) relating to the representation of the Anglo-Indian community either in the House of the People or in the Legislative Assemblies of the States through nomination.'"

In regard to this amendment, I would beg the House to consider that the present proposal contained in article 295A only refers to the reservation for Scheduled Castes and the scheduled tribes. It does not refer to articles 293 or 295. When 293 and 295 were adopted and a decision was reached among the various members of the Minorities Committee, this nomination was given to the Anglo-Indian Community in place of reservation. The first proposal was that the Anglo-Indian Community will be given reservation like the Scheduled Castes and the scheduled tribes but as that involved weightage, ultimately it took the shape of nomination. It was absolutely clear from the very beginning that the Anglo-Indian community will get this reservation through nomination only for ten years. It was never agreed that they will get it for all time; and when we did not move our amendments to articles 293 and 295 it was under the belief that as a matter of fact this community also will get this reservation through nomination for ten years. Therefore, if only the agreement is to be implemented, then even ten years should be the time fixed for this nomination. If there is no such agreement, then I would place other reasons before the House. I was also a member of the Minorities Committee and I remember that when the decision was arrived as it was made absolutely clear that this will be only for ten years. I have consulted some of the prominent Members who took part in arriving at this decision and I am reliably informed that this was the intention when the agreement took place. Because we did not want to disturb the agreement among our leaders we refrained from moving amendments, it is therefore only fair that this reservation be extended for ten years only. If we look at the reasons why this reservation is given to the Anglo-Indian community, even on other grounds except agreement, these provisions for nomination should not inure for a period longer than ten years.

The Anglo-Indian community is one of those most advanced communities in India which can hold its own against other communities. I know that their number is small, but there are many other communities who have got smaller numbers. I am glad that our leaders considered the claims of this community and dealt with them in a generous way as admitted by Mr. Anthony himself. But all the same, I believe that in regard to the House of the People this is the only community which gets a seat through nomination. There is no other provision for any community through nomination and we do not want that our Constitution should be disfigured by a provision of this nature. The Anglo-Indian community has been to a great extent protected by the provisions of articles 297 and 298. In regard to those provisions also, instead of ten years they are getting twelve and more. I do not grudge any sort of provision for any community on fair and reasonable grounds; but all the same when the other communities come forward. When the Scheduled Castes and scheduled tribes come forward for our consideration, their claims are based on an entirely different footing; if they want much more representation, I can understand

their position and we should not grudge to give them what they want. But so far as an advanced community is concerned, there is absolutely no reason why this community should be favoured so unduly that these provisions may inure for all time. You may say that this is only a discretionary provision, but when a discretion is given, in particular circumstances, it becomes an obligation and a duty.

I, therefore, submit that there is no reason why we should agree to accept these provisions for a longer period than ten years, and I have no doubt in the matter that if the Anglo-Indian community behaves well—and I know from my own experience they will do so—we know our Friend Mr. Anthony; he is a *persona grata* with most Members of the House—and there is no reason why he should not succeed in the General Elections if he stands after ten years. The whole complexion of India shall have changed by that time. Otherwise, I do not see why there is no great force in the amendments which have been moved by Members of the Scheduled Castes and scheduled tribes. After ten years we shall have a society in which the present distinctions shall cease or shall not have the same force as there is today. If we do not expect that, if we proceed on the basis that they will remain, then my humble submission is that there is no reason why we should not have to extend the period of ten years in the case of other communities also.

I am rather astonished at the amendments moved by some of my Friends belonging to the Scheduled Castes. On the day when the Minority Report was discussed in the House, I moved an amendment then that these reservations and nominations should be for ten years and the amendment was accepted. Along with that, there was an amendment by Mr. Nagappa himself and in those very terms. Now he comes forward and brings another proposition. I do not think he has the right to do so. He is estopped from doing so, as he himself and other Members agreed that this reservation will continue for ten years. As I submitted yesterday—I do not want to repeat the same arguments today—this reservation derogates from the enjoyment of the full electoral rights by the people in general. It is harmful to the general community and to the Scheduled Castes also.

Therefore, my humble submission is when we agree to deprive ourselves of the exercise of full electoral rights, it is just to placate our friends and at the same time to do them the justice which they fully deserve. We ourselves are guilty of having brought them to this level. It is upto us to see that they are not left in the lurch and they advance with the other communities. While this period of ten years is a challenge to the depressed classes to come up to the level of the other people, it casts an obligation upon the whole country and upon all the communities living in India, because now not only Hindus, but the Muslims and the Sikhs and all other communities are on the general list. Now it becomes our solemn duty that we should see that within these ten years, we behave in such a manner that these people of the Scheduled Castes and the scheduled tribes come up to our standard. What is the use of articles 301, 296, 299 and 10 if the community does not rise to the height to which it is expected to rise? It will be our duty in future to see that our Central Government and the governments of the provinces do their duty by our brethren—the Members of the Scheduled Castes and the scheduled tribes.

Mr. Nagappa indicated some of the ways in which it should be done. This is not the occasion and I shall not take up the time of the House in giving some of those ways in which we should behave, but all the same I must say that apart from the Governments, it is the duty of evervone of us who have given our pledges and who support and swear by this Constitution, to see that within the coming ten years, we bring all these classes up to our standard. If we do not do that, if we do not do our duty, I do not know with what face we can deny these very rights to them for another ten years; and that would be a most

[Pandit Thakur Das Bhargava]

serious thing, because it would deprive all of us including the Scheduled Castes of the elementary rights of the exercise of full electoral rights. Therefore, I would submit that from today we should resolve, after passing this that when we make it ten years we mean to make it ten years, but at the same time our duty becomes all the greater and therefore we should begin from today to discharge our duty in the right fashion. This duty will not be discharged by passing a resolution here or passing a resolution there. Unless the economic position is bettered, unless we are willing to make them feel like human beings, which they do not do today, our duty will not have been performed.

I would, in this connection, submit that all these Governments should pass a law in which they may be given full rights of ownership in their houses in the villages where they are not enjoying them today. Like all others fundamental rights are open to them, but I know in many villages the Scheduled Castes are not enjoying fundamental rights. Therefore we should see that they enjoy fundamental rights. Similarly, I would submit that in 301 the Commission should be forthwith appointed as soon as the Constitution comes into force and when the Commission makes its report, we should see that the Report is implemented. Therefore my humble submission to the House is that when we pass this clause it becomes our duty to see that this particular clause is backed up by the force of all our resolves and determination to do our duty by our Scheduled Castes and scheduled tribes brethren.

Shri T. T. Krishnamachari: Mr. President, Sir, I move:

"That in amendment No. 38 (List I) to the proposed article 285A the following proviso be added:—

'Provided that nothing in this article shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly as the case may be.'"

Sir, this amendment is self-explanatory and in moving it, I would like to say at once that the Drafting Committee does not claim any originality or copy-right for it. If the incentive for this amendment has been the amendment moved by Mr. Naziruddin Ahmad, we are prepared to give him full credit, but anyway it was felt by the Drafting Committee that there was a lacuna similar to the one pointed out by Mr. Naziruddin Ahmad, as, if it happens that a period of ten years falls at a time when the House has just begun its life or it is half-way through its life or in any stages of its life, the representation in that House—the membership of that House—should not be affected by the wording of article 295A moved by Dr. Ambedkar. The House will undoubtedly understand that this fits into the scheme in a better way than the amendment of Mr. Naziruddin Ahmad.

I would like to add one word in regard to the remarks made by Pandit Thakur Das Bhargava. He has attempted to be logical. I felt, as he was speaking, that he was trying to direct a heavy machinegun against a small mosquito. This provision of two nominated seats in the House of the People, if the President thinks it necessary to so nominate and a few seats in the Lower House of a State if the Governor so thinks fit, is merely a permissive provision. It is not an obligatory or mandatory provision. If the Anglo-Indian community is not given these seats by nomination they could not go to a court of law on the ground that the Constitution has provided for nominations, and that has been ignored by the Authorities. Full discretion to nominate or not is given to the President or to the Governor of the State concerned. Why therefore bring in all these arguments and all this logic against a purely permissive provision?

So far as the Anglo-Indians are concerned, it is doubtless true that they are not large in numbers. It is also true, as pointed out by Pandit Thakur Das Bhargava, that special provision has been made in articles 297 and 298 in regard to the services and in regard to the educational facilities of this community respectively. That being so, he asks why any provision should be made for the continuance of this political privilege. I would ask him not to exercise his mind on a small matter of this kind which is purely left to the discretion of the executive of the day both in the Centre and in the Provinces. I would also ask him to take note of one idea that, while the Scheduled Castes are members of the Hindu community and are part and parcel of ourselves, and only the economic level of their existence deters them from assuming a position of equality with the others—the Anglo-Indians happen to be a distinct community. Because of the fact that we are supposed, in the years to come, to go farther and farther from the European civilization to which we were subjected in the years of our slavery. The difference in the way of life of the Anglo-Indian community and in the way of life of the other communities of our country will be more and more glaring hereafter and the possibility of assimilation of the Anglo-Indian community in the body-politic will be difficult. It all depends on whether our standards of living approximate to the ideas obtaining in the West or whether we propose to go back on the level we have attained. All these are problems in regard to which we do not know which way they will ultimately take. It would be cruel to ask these people to completely merge themselves in the body-politic of our country, if the future standards of life are if even anything less than our present standards.

This concession, which has been generously made by the Minorities Committee on page 35 of the Appendix to their Report, says :

"In regard to the Anglo-Indians there should be no reservation of seats. But the President of the Union and the Governors of the Provinces shall have power to nominate representatives to the Centre and the Provinces respectively if they fail to secure adequate representation in the Legislature as a result of the general election"

Actually it will happen that if Mr Anthony gets returned to the Central Legislature no other person will have perhaps any chance The President has no chance for exercising his discretion so far as nomination is concerned and has to be guided by the views of the ministry. Similarly in the provinces, it is purely a permissive thing to fill a lacuna or a contingency in which the majority community might completely neglect the Anglo-Indian community. I think this concession need not be restricted for a period of ten years. It is not an obligatory provision, similar to the reservation provided for other communities.

I, therefore, suggest that my honourable Friend Pandit Thakur Das Bhargava will not press his amendment. This is a very small matter. There is nothing wrong in allowing the Anglo-Indian community of India this very doubtful privilege which is conferred *ex gratia* by the executive of the day for a period longer than ten years if it be necessary. I hope he will not press his amendment.

Shri Chandrika Ram (Bihar : General) : Mr. President, Sir, I am here to support the article as moved by Dr. Ambedkar as subsequently amended by Shri T. T. Krishnamachari. The only consideration for the Members of the Scheduled Castes in this House and outside is that this period of ten years is very small. This is a fact that within this short period the Scheduled Castes may not come up to the standard of other communities. This is based upon the fact that the provincial governments as well as the Central Government are not doing things as they should. We know from personal experience over the last twelve to fifteen years that when for the first time Congress Ministries came to power nothing practical or appreciable was done for the amelioration of the depressed classes which are backward economically, socially and educationally. This is a question of faith. We do not want even ten years. If

[Shri Chandrika Ram]

they like, the Central and provincial Governments can do a lot for these people within the next five years. But the question of good faith is not there That is the fear of the Scheduled Caste Members who have moved so many amendments for the extension of the period from ten to fifteen years and more.

We know so much about the work done by the Father of our Nation, Mahatma Gandhi and we are all followers of that great man But when we look to the actual working in the provinces and in the Centre we find nothing done It is all very good to say that there must be a separate portfolio for the backward classes and that there must be a Minister and Parliamentary Secretary from the backward classes. My feeling is that if you appoint some Ministers and create some posts and give some portfolios to Scheduled Castes and tribes you can improve the condition of those people I know the working of the last Ministries in the provinces. In the province of Bombay there were no Ministers or parliamentary secretaries from the Scheduled Castes, but the welfare work done there was far more and better than that done in any other provinces in the country. So that without having special Parliamentary Secretaries or Ministers or special officers a good deal can be done for the Scheduled Castes. We know that the Centre has two very important Ministers like Dr. Ambedkar and Mr Jagjivan Ram. But we know, too, that in the Scheduled Castes Board there are 3,000 applicants, but only 625 scholarships. What is the use of having Ministers and Parliamentary Secretaries if you do not have money? The whole question is that you must have money If the provincial Ministers and the Central Ministers who are all followers of Mahatma Gandhi have sufficient funds at their disposal, without creating any posts or portfolios, they can do the work for the Scheduled Castes very well and raise them to the general level of society

Therefore it is a question of faith, a question of confidence and a question of goodwill. I would like to say that if this work is not done during this period it may be that the scheduled classes will go against the Hindu society and against the general community. Therefore there may not be any general improvement which we envisage within ten years. I do not care much for the period; I care much for the work. I know that even in the last 25 or 30 years Mahatmaji and other people who have been working for this cause in this country, could not make much progress regarding removal of untouchability. You know in the rural areas, it is as bad today as it was before and I know among the educated classes in towns and the people with English education, there has been a change and it is this fact that has given us encouragement. And we know that the Provincial Governments are passing some enactments to remove this disability. It is a good thing for us, for the country and for this august Assembly that we have passed article 11 to remove untouchability for ever. But only passing a legislation for the purpose, or appointing ministers and allocating some portfolio will not do. If the whole amount of work has to be done, it is to be done by having funds at our disposed and my appeal to both Central and Provincial Governments is to allot enough funds, so that educationally they may be raised and economically their condition may be bettered. Regarding their social disability we know that in social matters, we should not hurry. In social matters it is all a matter of change of heart. I know that persons who are prepared to hang themselves for the cause of the country, they are not ready to remove this untouchability from their houses or from the members of their family, because it is a social custom, it is a social manner from time immemorial; it has come into the blood of these caste-Hindus and the Hindu society as a whole because these have been written in many books of Shastras, Vedas and all that.

Therefore regarding social matters we have to wait and both sides have to wait. There cannot be a social revolution at once because India is a vast country

and vast numbers of people are living here having different ideas and different faiths. We know there are those faiths where this untouchability is a crime, like Sikhism, Buddhism and among the Muslims as well. Therefore, in a social matter we have to wait; we have to work and we have to go on slowly. Regarding their economic condition we have to do a little more. As yet, they have not done anything. As a matter of fact there is no programme before us as to what should be done first. Even in doing things we must have priority. For the Harijans we have no plan and no programme and no actual policy to work. Therefore my suggestion was this that the Government of India should appoint a Commission or a Committee at once and that Commission or Committee should go into the entire matter of the social, educational and economic field of the Harijans and should suggest ways and means and make recommendations so that the Governments in the Provinces or at the Centre just after the election start work on definite lines as suggested by the Commission in their report. That was my suggestion The question of period is not very important to me.

As I said before, the question of funds at the disposal of the Government and the question of faith and good-will and good wishes are very important Otherwise we, the Members representing the Scheduled Caste community, we do want that even this concession for ten years should go if our conditions are improved very much within this period. We shall be glad to remove this caste and communities, Scheduled Castes, Harijans, Achuths and all that if our social conditions are bettered within this period. We have faith in our leaders, we have faith in the future and even if our condition is not bettered during this period, we have hope and faith that after ten years the members of our community, the members of the Assembly and Council, the members of the Government, the Provinces and Centre will look to this matter and examine these questions and if another period is required they will give. Therefore, we are not very anxious about having the period but we are anxious to have the funds at our disposal and we are anxious to have the good will of the people belonging to the majority community, belonging to the Caste Hindus society.

Shri Jagat Narain Lal (Bihar: General): Mr. President, the principle of reservation generally is one which has done much harm to our country. I do not wish to dilate on it, and if we have accepted this principle of reservation in the case of the Scheduled Castes and the aboriginals, it is because there is a very strong case for them. If there is any case, the case is for these two classes of people in our country. The proposal that the period should terminate after ten years and there should be no reservation after that is certainly a desirable one But at the same time, I wish to add my own humble voice to that of the previous speaker, and I wholeheartedly share the sentiments which he has expressed in this House. If we really want to raise the Scheduled Castes to that level in which the other communities in this country find themselves, we have to be very earnest about the matter. If the Provincial Governments or for the matter of that, the Central Government feel satisfied that they have set apart a certain sum, that they have appointed certain officers and that they have thereby discharged their duty and obligation, it would not be proper. We have seen speaker after speaker rising from among the Scheduled Castes,—Members here—speakers who share our national feeling, who are equally patriotic, but who feel for their brethren and for the troubles and sufferings to which they are being put in the interior particularly. I, therefore, suggest that the Central Government and the Provincial Governments, if they are really serious that this period of ten years should not be extended and that within ten years we should sincerely and honestly discharge our obligations to these two classes of our countrymen who have remained very much backward so long, we should be really very earnest about the matter and I would suggest that the Government should whip up the Provincial Governments and if possible at the end of every year or every two years watch how much progress has been made in the matter. If, Sir,

[Shri Jagat Narain Lal]

within these ten years by the combined efforts of the Governments, of the upper classes and of the Schedule Castes, we have not been able to raise them up to the level to which we would like all communities of this country, all classes of people of this country to be raised we cannot have any case for terminating that period of reservation. And therefore, while on the one hand, I support this proposal that during this period of ten years alone seats should be reserved and that no reservation should continue in this country after that, I very strongly support the plea made out by the previous speaker, Mr. Chandrika Ram and certain other speakers that every possible effort should be made both by Government, by the people, by various organization in this country to see that the Scheduled Castes and the aboriginal tribes also are raised to that level to, which we find all other communities in this country raised so far

So far as the Anglo-Indian community is concerned, I feel, as Pandit Thakur Das Bhargava feels, that it is a most enlightened community, a most advanced community in this country. If there is to be any reservation for them, it is because they are in a minority. On that ground, we can find so many other communities in this country which are in a very great minority. No community, however small in this country, should ever think of claiming representation or having representation in the legislatures or anywhere on the ground of being in a minority. Service and capacity alone should be the passport. I feel that if there are really members among the Anglo-Indian community advanced as they are, who are equally imbued with the spirit of service to this country, and to the people, they will continue to have representation and this country will not deny that representation to them. I would like them to depend upon their service and capacity and ability more than on any reservation being continued in the Constitution giving them representation in the legislature and here and there. These are the few words that I want to submit on this article.

Shri Upendranath Barman (West Bengal : General) : Mr. President, Sir, Three Scheduled Caste MCAs in this House have moved separate amendments. From those amendments, it is quite clear to the House that even at this stage, the Scheduled Castes are very much apprehensive of their future even after the 10th year of the coming into force of this Constitution. I do not like to comment either way on their proposals but I simply submit to this august House that this is a genuine apprehension in the mind of the Scheduled Castes, and therefore I appeal to the House to take stock of the whole position.

I myself have got different views in the matter. I know very well that if there is no real sympathy, if it be only lip sympathy, not only ten years but twenty years will be of no avail. So long as the advanced community in this country simply realise that they have done some wrong to their brethren, and that it is now their duty to give some help, I think we shall not get what we really want and what the country really needs. I should appeal to them to think entirely in a different light. Who are the Scheduled Castes and scheduled tribes? Do not constitute 85 or 90 per cent. of India's population? Many of my friends have times without number expressed concern for the rural people. To my mind, the term rural people is synonymous with the sum total of the Scheduled Castes and scheduled tribes and the backward classes. You are leaving behind 85 or 90 per cent. of the total population in a backward condition. Unless you level up this 85 per cent. of the population, is it possible for India to advance a step further, that is expected of free India now? I think not. This is not my personal view. I can cite one of the greatest men of India, our late revered poet, Rabindranath Tagore. In an exasperated mood, he cried aloud in his poem "My unfortunate country"; in fact the who theme of that poem

is this, that unless and until you level up this 90 per cent. of your population, you can never rise up, because what he says is, those you have left behind they are dragging you down. If you understand from that angle of vision that unless you level up the 80 or 90, or whatever that may be, per cent. of the population, you cannot rise up yourself; you cannot progress as you want to. I think it would be really action by which this unfortunate condition of this country could be improved.

That is one aspect of the matter which I would like to place before my honourable Friends who are advanced. My next appeal is to my Scheduled Caste brethren and it is this. We have seen that since 1932, these Scheduled Castes have been recognised as a separate community and certain advantages were being conceded to them by the then Government. After that, when the 1935 Act came, they were recognised as a different entity and several provisions have been made for our uplift in the Act, itself. But, from 1935 or 1937, up till now, it is now more than a decade that has passed. and I ask, how much have we really improved? Excepting a fraction of our community who had somehow got a chance of getting education, all the rest of our brethren remain in the same static condition. Under this process, even our present Government gave us some latitude, gave us some concessions in the way of scholarships and stipends, a Minister here or a Parliamentary Secretary there. But, I do not think that the whole lot of the Scheduled Castes has been greatly improved. I think there is a fund of sympathy in the mind of our advanced brethren because they understand more than we understand ourselves. And it is for us to drink deep unto that fountain and put our legitimate claims before the Government, before the public and also before our august Organisation. If, even after that, our legitimate claims and demands are not conceded, then it would be our duty to stand on our own legs and try our level best to get our just share.

After all, I want to consider our position in India as a family consisting of four brothers. The eldest brother somehow got the opportunity for education, public life and other kinds of experience and is far advanced. The other three brothers are left in the dark and they are lagging behind. Unless and until the other three brothers understand their equal rights along with the eldest, I do not think that the eldest brother will really feel that it is his duty to do justice to his other brothers, because man is essentially selfish and what is true of a man is mostly true of a class also. So long as there are class distinctions in this country there is no solution and once the class distinctions go, all this trouble will go. I do not know when they will go. Even after two years of independence, I do not find either from the Government or from the Congress organisation itself any active and vigorous step to drive away this curse, which we every day admit to be a curse. So that hope is to be left out now. We have to assert our rights. We are, after all, children of the same soil and if our eldest brother is doing some job we are also doing some other job and according to the law of the land we have equal rights to whatever assets our motherland has conferred upon us. So if we assert our right, then we shall see that right is conceded and if that is not conceded, then we can stand on our own legs. Revolt—I purposely use the word 'revolt' because when justice is not done, it is only by revolt that justice can be done and once we stand on our rights and are determined to get it, I know there will be no difficulty in getting that justice conceded, because after all, this Constitution of India as it is being framed by this Constituent Assembly has given us one fundamental right *viz.*, adult franchise. If we find that our interests are not being served by the intelligent section of this country, then what we have to do is to choose our own men and according to adult franchise, I have no doubt that we shall overwhelmingly preponderate in any assembly or council. We can therefore take the Government in our own hands and do justice to others and to ourselves.

[Shri Upendranath Barman]

So we should not be entirely crying for mercy and justice but we should not only ask for justice to ourselves but also strive to lever up our own condition. For that purpose if we find that certain communities are not co-operating, then our next duty would be to take the Government in our own hands. But that would be an unfortunate position. What I mean is this, that we should do our own duty and then accuse those who are at the helm of affairs for not doing full justice to us. In that context, I should submit that this ten years' limitation is perhaps right So long as we think that the advanced community will do everything for us I think there would be some diffidence in our minds and out of that diffidence we shall not strive to attain what is justly due to us But once it is fixed that ten years is the limit, then from tomorrow we shall have to think out how to do our part in the play. We have got adult franchise and the right to choose our men in Government. I think there will be no obstacle in our way. But if we fix a period indefinitely, much energy which is needed for the purpose will not be coming. Therefore I am for supporting the article that has been presented by Dr. Ambedkar as subsequently amended by him and would ask my Scheduled Caste brothers to co-operate with the advanced community and get justice from them in whatever direction we need, but failing which I would ask them to unite and snatch away the justice that is due to us

Shri Jadubans Sahay : (Bihar : General) : Mr. President, with your permission I shall devote myself to the anlysis of the amendment moved by Shri Yudhisthir Mishra so far as it relates to scheduled tribes. So far as the Scheduled Castes are concerned, enough has been said and I should not take the time of the House by adding more to what has already been said. So far as the amendment of Shri Yudhisthir Mishra is concerned the effect of that will be that after even 10 years the reservation of seats to the scheduled tribes will continue. I say most respectfully that this approach is rather wrong, from the point of view of the tribes. Our approach to this problem should not be from the point of view of the backwardness of the tribes. We know that the tribes are backward and we know for centuries past they have been exploited. We know also that economically and politically they are backward; but our approach should be not what the tribes would do for themselves, but what we should do for them. I have faith in myself and the organisation to which I belong and I have faith in the present democratic set up of Government and I can say that within the course of ten years, if you are not able to elevate and to ameliorate the conditions of the tribes, then woe be to us, not the tribes. It was said by Dr. Kunzru once that this Constitution and the letters embodied and printed in the book of this Constitution will not avail much if there are not men honest enough to execute them.

Shri Brajeshwar Prasad (Bihar : General) : Sir, may I say that Mr. Sahay should speak in the mike. He is not audible.

Shri Jadubans Sahay : I was sying that what is embodied in the Constitution will not bring relief by itself. The letters, the printed cold letters will not bring relief either to the tribal or to any part of the down-trodden citizens of this country. It requires a band of workers, a band of people imbibing in themselves the vigour, the spirit, the message as also the gospel of Mahatma Gandhi. We have, I confess, travelled a long way and have not been able to follow the gospel of Mahatma Gandhi. But we have still a spark left in us and I have no doubt that within the course of ten years we shall be able to do what we think we should achieve for the tribes. It is not a test for the tribes, really it is a test for us—this period of ten years and therefore I will appeal to my friends not to approach this problem from

It was said yesterday—I will not take up the time of the House by following or analysing the criticisms made yesterday—I will not go into that because the time at my disposal is short but I must say that the irresponsible statements and baseless allegations which were made yesterday could not advance the cause of the aboriginals. We know, I confess, that for eight decades down to this decade charges have been levelled against us. We plead guilty and we are ready to do what we can, but simply by abusing us you will not help any one. It will throw a cold douche in the hearts of those who are there to work for the tribes.

It was asked, what good the Bihar Government as well as other Governments have done to them? I will not try to convince those who refuse to be convinced; but given time. I will give you some figures. During the course of three years, you will be surprised to know, a grant of rupees one crore has been spent over the construction of irrigation bunds for the five districts of Chota Nagpur. Is that politics? Bunds were constructed so that the aboriginals could irrigate their fields and thus grow two blades where they could only grow one. But yesterday Mr. Singh said that this is politics. If it is politics, then in spite of what Mr. Singh says, we would stick to that politics, the politics of constructing more bunds. As our Premier said only a few days back, every village of the aboriginals should have a bund to irrigate their fields, because the problem of the aboriginals is their economic poverty. They cannot get industries and factories all at once. But if bunds are constructed for them, then they can get enough water to irrigate their lands. If we do this, then you will see that within ten years these people will be quite different from what they are. We do not claim to have done much for them, but for what we do in our province we claim that we are swiftly travelling towards the solution of this problem.

Not only have we constructed bunds, we have also taken steps for the removal of the money-lenders from among the aboriginals. We have also opened hostels—52 of them in three years, for the aboriginal boys. For irrigation bunds we have spent a crore of rupees though for the rest of Bihar we would have spent not more than fifty lakhs or less. Indeed this is a sort of complaint by the people there, though they do not mean it seriously, but they joke, that everything seems to be for the aboriginals, that the Finance Minister is loose with his money when the aboriginals are concerned, that our Revenue Minister is concerned much more with the uplift of the aboriginals than with other problems. We can only beseech you to give us some time, and we have laid down this period of ten years so that during this period we may go rapidly and not slacken our progress. Otherwise, we might think, that the aboriginals are going to get this reservation and so we need not go fast with our work of bringing them up to the level that we want them to reach. It was said yesterday that from the epic age, ever since the Aryans came to this land we have only neglected and done nothing for the aboriginals. I can only say that during the last fifty years, during the British rule, they did not achieve even as much as we have claimed to have progressed during the last three years. What was my friend doing, Sir, who was so vociferous yesterday in criticising us? What was he doing during the British rule? Recruiting soldiers, when we were fighting for the aboriginals. Even new if I .....

Mr. President: I will ask the honourable Member not to digress about this.

Shri Jadubans Sahay: I bow, Sir. Even now, without meaning any offence to anyone, I will simply say if the Government only proceeds rapidly, for a period of three years, we can work wonders with the aboriginals. Only the heart is required, and the money. Bihar is a poor province; but in spite of our poverty, in spite of the fact that Bihar is the poorest province in India,

[Shri Jadubans Sahay]

we can claim that we have done more than what was done under the British and even under our own rule under the 1935 regime. So I plead with my friends to give us these ten years. This period of ten years will be a period of test for us. It will not be a test for the tribals, for the oppressed people of Chota Nagpur or of the oppressed people of any other part of India, but it will be a test for the non-aboriginals. It is a challenge to us. It is a challenge to the social workers in India, and we accept that challenge. We only request you to give us this ten years' time.

Shri B. L. Sondhi (East Punjab : General) : The question may be put.

Mr. President : Closure has been moved.

The question is :

"That the question be now put"

The motion was adopted.

Mr. President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, there are just four amendments about which I would like to say a few words. I will first take the amendment of my friend Mr. Bhargava, and say that I am prepared to accept his amendment, because I find that although in the general body of the report that was made to this House, no mention as to time-limit was made to the proposal for allowing representation to Anglo-Indians by nomination, I find that in the subsequent debate which took place on that report, there is an amendment moved by my friend Pandit Bhargava which is very much in the same terms as the amendment which he has now moved, and I find that that amendment of his was accepted by the House. I, therefore, am bound to accept the amendment that he has moved now.

Next, with regard to the question raised by Mr. Naziruddin Ahmad, one part of it has been, I think, met by the amendment moved by my friend Mr. Krishnamachari which I also accept. I am not at all clear in my own mind at the present stage whether the words in the clause mean that the time-limit should begin to operate from the commencement of the Constitution or whether from the date of the first election to the new Parliament. But all I can say at this stage is that that is matter which the Drafting Committee will consider and if it is necessary, they will bring about some amendment to carry out the intention that the period should be from the date of first meeting of the first Parliament.

With regard to the other arguments which have been used by my friends Mr. Muniswami Pillai and M. Monomohon Das, I am sorry it is not possible to accept that amendment. Their proposal is that while they are prepared to leave the clause as it is, they propose to vest Parliament with the power to alter this clause by further extension of the period of ten years. Now first of all we have, as I said, introduced this matter in the Constitution itself, and I do not think that we should permit any change to be made in this, except by the amendment of the Constitution itself.

I would like to say one or two words on the remarks of Members of the Scheduled Castes who have spoken in somewhat passionate and vehement terms on the limitation imposed by this article. I have to say that they have really no cause for complaint, because the decision to limit the thing to ten years was really a decision which has been arrived at with their consent. I personally was prepared to press for a larger time, because I do feel that so far

as the Scheduled Castes are concerned, they are not treated on the same footing as the other minorities. For instance, so far as I know the special reservation for the Mussalmans started in the year 1892; so to say, the beginning was made then. Therefore, the Muslims had practically enjoyed these privileges for more or less sixty years. The Chritians got this privilege under the Constitution of 1920 and they have enjoyed it for 28 years. The Scheduled Castes got this only in the Constitution of 1935. The commencement of this benefit of special reservation practically began in the year 1937 when that Act came into operation. Unfortunately for them, they had the benefit of this only for two years, for from 1939 practically up to the present moment, or up to 1946, the Constitution was suspended and the Scheduled Castes were not in a position to enjoy the benefits of the privileges which were given to them in the 1935 Act, and it would have been quite proper I think, and generous on the part of this House to have given the Scheduled Castes a longer term with regard to these reservations. But, as I said, it was all accepted by the House. It was accepted by Mr. Nagappa and Mr. Muniswamy Pillai, and all these Members, if I may say so—I am not making any complaint—were acting on the other side, and I think it is not right now to go back on these provisions. If at the end of the ten years, the Scheduled Castes find that their position has not improved or that they want further extension of this period, it will not be beyond their capacity or their intelligence to invent new ways of getting the same protection which they are promised here.

Shri A. V. Thakkar (Saurashtra) : What about the scheduled tribes who are lower down in the scale ?

The Honourable Dr. B. R. Ambedkar: For the scheduled tribes I am prepared to give far longer time. But all those who have spoken about the reservations to the Scheduled Castes or to the scheduled tribes have been so meticulous that the thing should end by ten years. All I want to say to them, in the words of Edmund Burke, is "Large Empires and small minds go ill together".

Mr. President: I shall now take up the amendments one by one, Amendment No. 39 (List I—Fifth Week).

Shri Yudhisthir Mishra (Orissa States) : Sir, I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 40 (List I—Fifth Week).

Shri S. Nagappa: In view of the explanation given by Dr. Ambedkar I do not wish to press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 99 (List III—Fifth Week).

Shri V. I. Muniswamy Pillay: I was not present in the House on the 25th May when the second Report of the Minorities Committee was considered However, in view of what Dr. Ambedkar has said I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 100 (List III—Fifth Week).

Dr. Monomohon Das: My amendment is just and right. I do not want to withdraw it. Let the will of the majority be imposed upon minority.

Mr. President: The question is :

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed new article 295-A, the following be added :—

'unless Parliament by law otherwise provides.'"

The amendment was negatived.

Mr. President: Amendment No. 105 (List IV—Fifth Week).

Mr. Naziruddin Ahmad: The principle of my amendment has been substantially accepted by Mr. T. T. Krishnamachari's amendment. Therefore I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The next amendment is No. 113 by Pandit Thakur Das Bhargava. This has been accepted by Dr. Ambedkar.

The question is :

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, in the proposed new article 295-A, after the word 'Constitution' the brackets and letter '(a)' be inserted and after the word 'State', the following be inserted :—

'(b) relating to the representation of the Anglo-Indian community either in the House of the People or in the Legislative Assemblies of the States through nomination.'"

The amendment was adopted.

Mr. President: The next amendment is Drafting Committee's amendment No. 114.

The question is :

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, to the proposed article 295-A, the following proviso be added :—

'Provided that nothing in this article shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or the Assembly, as the case may be.'"

The amendment was adopted.

Mr. President: The question is :

"That article 295-A, as amended, stand part of the Constitution."

The motion was adopted.

Article 295-A, as amended, was added to the Constitution.

Mr. President: It has been suggested to me that the Drafting Committee should be given some time to deal with the other articles which are still outstanding and that it would be better if we shorten the sittings for a day or two. I therefore, suggest that we rise now and that the House should meet again tomorrow at 9 A.M.

Mr. Naziruddin Ahmad: I would like to submit that the Drafting Committee should be given enough and ample time so that they may give us a complete picture of the rest of the articles. Otherwise it is difficult for us to follow. If they give us a complete picture that would be convenient and will be much appreciated.

Mr. President: The difficulty is not only with the Drafting Committee. There are certain matters which require further consideration about which a decision has not been taken by all concerned. Therefore it is no use giving the Drafting Committee more time than it requires.

The Assembly then adjourned till Nine of the Clock on Friday, the 26th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 26th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 296

Mr. President: Article 296.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I rise on a point of Order. Amendment No. 106 which the honourable Chairman of the Drafting Committee is proposing to move is a new amendment. It is again, like many others, an amendment to the Constitution itself and not an amendment to any amendment. Notice of it was first given on the 23rd of August and was received on the 24th and would, ordinarily, have been considered on the same day, but for want of time it could not be.

An honoulable Member drew my attention to changes of a serious nature sought to be introduced by this amendment. By this amendment certain service rules are to be made applicable only to Scheduled Castes and scheduled tribes. In the original article of the Draft Constitution all minorities were sought to be covered. I would like to know what is the reason for this change and why this change should be made in this disguised form. It would have been straightforward for any Member to give notice that for "all minority communities" in the original article, the words "members of the Scheduled Castes and scheduled tribes" be substituted. Instead of that the whole clause was redrafted. It is only by chance that I noticed the change. My point of Order, therefore, is: first that it is an amendment to the Constitution itself; and second, it is not one of those subjects which, as I know, has ever been submitted for consideration by the House. Thirdly, it is not expressed to indicate the precise change to be effected on the original article. I wish to know how long this practice of facing the House at the eleventh hour with absolutely new articles containing vital changes which it is difficult to discover is going to be followed. One day recently I reminded Dr. Ambedkar that he had not complied with your request to explain the difference between the original article and the newly drafted article and the only thing he could say was that I must have read the original article and also the new article except the "commas and semi-colons." He could not rise above indulging in a coarse joke of this kind. Are we to go on every day adding new articles and breaking our own rules? How can we expect the people to follow the Constitution if we systematically break our own rules? I submit there should be a limit somewhere. There should be some recognised rules and recognised exceptions. I have never quarrelled with your ruling in particular cases that the change is regular. In this case, I submit with all humility, that a new article is sought to be introduced without the usual safeguard of giving the Members clear notice of the exact change. If you allow this amendment, I have other serious objections on the merits, but I do not wish to submit them now. At least we should have got some notice. There should have been consultation

[Mr. Naziruddin Ahmad]

with Minorities, as Sardar Patel did in a similar context. This is highly unfair.

Mr. President: Will it meet your case if it is put off to some other date?

Mr. Naziruddin Ahmad: I do not know, Sir, whether the House will be in a better mood to consider it on some other date, but I leave the matter entirely in your hands. In fact I think things would not very much improve by then. I object to this clause being put in this manner. My point is that the amendment should be rejected on technical as well as substantial grounds.

Shri T. T. Krishnamachari (Madras: General): May I submit, Sir, that my honourable Friend is wholly out of Order in raising this point of Order, because this matter was accepted by the House. The honourable Member had two clear days' notice of it and if he is not able to understand the significance of the amendment in two days, I am sure he cannot undrstand it in two months.

Mr. President: Is it suggested that when the question was reopened last time with regard to reservation of seats this also was one of the point considered and on this point also a decision was taken then?

Shri T. T. Krishnamachari: My suggestion is that since Muslims and Indian Christians are no longer to be treated as minorities this point does not arise.

Mr. Naziruddin Ahmad: Not at all. I submit that what was considered was the question of representation of minorities in the legislature. But this new article relates to a different matter, *viz.*, the protection of the minorities in getting minor jobs in the Secretariats and districts etc. On the matter of representation in the legislature Sardar Patel was kind enough to consult us and we agreed not to have any reservation in the legislature.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, the position is this. The report of the Minorities Committee provided that all minorities should have two benefits or privileges, namely, representation in the legislatures and representation in the services. Paragraph 9 of the report which was accepted by this House contained this:

"In the all-India and provincial services the claims of all minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency in the administration."

That was the original proposition passed by this House. Subsequently the Advisory Committee came to the conclusion on the consent of the two minorities—Muslims and Christians—that they were not to be treated as minorities. When the House has now accepted that the only minorities to be provided for in this manner are the Scheduled Castes and the scheduled tribes, obviously the Drafting Committee is bound by the decision of the House and to alter the article in terms of such decision.

Mr. President: The point of Order taken is that what was decided at the time of reconsideration of the articles relating to minorities referred only to reservation of seats and that the question of services was not taken into consideration and that point was not decided.

The Honourable Dr. B. R. Ambedkar: As I understand it, the decision was that they were not minorities and therefore they are not to have either of the two privileges.

Sardar Hukam Singh (East Punjab: Sikh): Sir, I have with me the reports of the Minorities Advisory Committee as well as the sub-committee, and it is

nowhere even suggested that all safeguards will go or that the minorities are not to be treated as minorities. The only decision that was agreed to was :

"That the system of reservation for minorities other than Scheduled Castes in legislatures be abolished."

That was the only decision agreed to by these minorities. But it was not the only safeguard. What Dr. Ambedkar read out related to reservation in the legislature. The claims of all minorities had to be considered under article 296 when making appointments to junior posts other than those to be recruited by the Federal Public Services Commission. So I am afraid the minorities would think that it is a breach of faith and a violation of gentlemen's agreement. If Sardar Patel were here I think he would not agree to this because what we agreed to was only about reservation of seats in the legislature. Therefore I think this proposal should be withdrawn. The original draft was a much better provision and only two articles, 266 and 299, are left for the safety of the minorities; and they are only wishful thinking. They are not fundamental, they are not even directive principles, they are not justiciable. The only comfort of minorities is that in some respects their interests will be cared for; if that is also taken away it will be a violation of a gentlemen's agreement.

Mr. President: I am afraid in view of the stand taken by some Members of the minority communities it would be necessary to let this matter stand over for reconsideration, when of course all points of view will be taken into account.

An honourable Member: We can accommodate them and decide it here.

Mr. President: In matters relating to minorities we have always proceeded with their consent. And now when there is difference of opinion it is better that they should be ironed out in private discussion. That is why I suggest that it may stand over. We shall now take up the next article.

Article 299

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move :

"That for article 299, the following article be substituted :—

'299 (1) There shall be a Special Officer for minorities to be appointed by the Special Officer, President.

Special officer for minorities

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for minorities under this Constitution and to report to the President upon the working of the safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament'"

The original article provided that there should be a minority officer both in the Centre and in each of the provinces. It is now felt that, as the number of minorities has been considerably reduced, it is not desirable to have a cumbrous provision like that for having an officer in each province. The purpose of the original article will be carried out if the Centre appoints an officer and makes him report to the President.

Dr. Monomohan Das (West Bengal : General): I rise to a point of Order. It has not yet been settled as to who these minority communities are. Minorities have been grouped for the provision of safeguards in respect of two matters; one is in respect of safeguards by means of reservation of seats in the legislatures and another is by means of reservation of posts in the services. Who these minorities are has not yet been settled.

Mr. President: This article, I understand, will not touch those points at all. Whatever the minorities are, the Special Officer will deal with all of them. Whether they are two minorities or more than two, they will all be dealt with by this officer who will be appointed.

Sardar Hukam Singh: If article 296 is to remain as it is drafted now, then there will be no other safeguard for any other minority except the Scheduled Castes. That being so, why not we wait and take up this article side by side with the other article which deals with Scheduled Castes, scheduled tribes, etc.?

Mr. President: Here there is no mention of particular minorities. The expression used here is 'minorities'. It will cover all minorities whatever their communities are.

Sardar Hukam Singh: But if article 296 is to remain as it is, and if any other Scheduled Castes and tribes are to be treated as minorities, there will be no other safeguard for them. Why should here in article 299 the word 'minorities' occur? It is illusory and will mean, that there is no other safeguard.

Shri T. T. Krishnamachari: There are minority castes, tribes and so on. This comprises all the minorities.

Mr. President: So far as this article is concerned, it covers all minorities whether contemplated under article 296 or not. There is no difficulty therefore in taking it up. This article does not mention particular minorities.

Mr. Naziruddin Ahmad: If the new article 296 is carried, this article will be meaningless.

Mr. President: It will not be meaningless, because there are more than two minorities there. For the Anglo-Indians also there is the same provision.

Mr. Naziruddin Ahmad: But the safeguards already provided are taken away here.

Mr. President: Whatever safeguards are provided for the minorities and whatever the minorities, this Special Officer will deal with them all.

Mr. Naziruddin Ahmad: But there will be no safeguards for other minorities. This therefore would be inapplicable.

Mr. President: I am leaving over article 296 for reconsideration. You proceed upon the assumption that it relates only to two minorities. We have not yet decided that it should stand in the form in which it is proposed.

Shri M. Ananthasayanam Ayyangar (Madras: General): Why not allow this also to stand over?

Mr. President: No. It would not make any difference if this is passed.

Shri M. Ananthasayanam Ayyangar: The word 'minorities' is so general that it might apply to linguistic minorities and to minorities based on religion, caste, etc. When we know that the Special Officer is to be appointed for two or three minorities, why not we say here, 'Anglo-Indians, Scheduled Castes' and so on? There is no definition of 'Minorities' in the whole of the Draft Constitution. Therefore let us specify the names of the minorities here. That is my suggestion to the Drafting Committee. We may say that the Scheduled Castes, scheduled tribes and the Anglo-Indians are the three minorities for whom we are making provision here. There are other minorities also. Let us not leave its interpretation to the jurisdiction of courts. Let us here decide what the minorities are. Otherwise any minority can come forward and ask for this or that right.

Mr. President: The safeguards are specified, and whatever the minorities are which enjoy these safeguards will have the protection of this Special Officer.

Shri M. Ananthasayanam Ayyangar: It is not stated anywhere who the minorities are. No community has been classified as a minority. There is no definition of 'minority'. If there is one, we can say this article will apply to such and such minorities. We use the word 'minority' here and do not say that this applies to this or that minority. It may be that we are contemplating to have a general officer for them all. But the Constitution is for the future. We should therefore clear up this matter and include only those minorities for whom we intend making provision.

Mr. President: Personally I thought it is not necessary to put this off. But if Members think that we take article 296 and 299 together in order that they may specify the minorities here I have no objection.

Shri T. T. Krishnamachari: It is entirely left to you. But I think your original stand was the right one.

Mr. President: But if the House wants to put off the consideration of this article I have no objection. Personally I thought this could go through without affecting the decision that may be taken in regard to article 296.

Shri T. T. Krishnamachari: I hope the House will adopt that course. That is the proper course. We have very little work before us otherwise.

Mr. President: Mr. Ananthasayanam Ayyangar takes a different view.

Mr. Naziruddin Ahmad: In that case, we may proceed with the consideration of the article.

Mr. President: I think we had better proceed with article 299. It does not create any difficulty. If we later decide that there are certain other minorities than those mentioned in article 296, they will be covered by article 299.

Pandit Hirday Nath Kunzru (United Provinces: General): I understood you to say that we may proceed, with the discussion of article 299, because our decision about it will not affect our decision in respect of article 296. But our decision as regards article 296 will affect our decision about article 299. The two are inter-connected. I cannot see really how the two can be discussed separately. The words 'minority communities' are used in both these articles. If the argument is that, as the Anglo-Indian community is to be treated as a minority in respect of the services for ten years, therefore the words 'minority communities' can be justifiably used in article 299, then the same argument applies to article 296. And so it is all the more necessary that this article also should be postponed. As you have decided that the discussion on article 296 should be postponed, I think it logically follows that the discussion on article 299 also should be postponed.

Mr. President: Dr. Kunzru, may I point out that in article 296 two particular minorities are mentioned. Therefore that article can refer only to those two particular minorities, whereas article 299 does not mention any particular minorities. It mentions the word "minorities" generally and whatever the minorities may be, they will be covered by article 299. Only the question of what communities will constitute minorities is left over. That is article 296.

Pandit Hirday Nath Kunzru: Is it agreed that if in the light of our decision on article 296 we find it necessary to revise any conclusion that we may now reach about article 299, the reconsideration of article 299 will be allowed?

Shri T. T. Krishnamachari: Very unlikely.

Pandit Hirday Nath Kunzru: My Friend Mr. Krishnamachari says it is very unlikely. That means it is a possibility, and it is the possibility that must be taken into consideration now.

Mr. President: If it has to be reconsidered, let it not be taken into consideration today at all. Let it be considered once rather than twice. Article 299 stands over. We will now proceed to the next article 302. There are certain amendments of which notice had been given, which are printed in the second volume of the printed amendments.

It is pointed out to me that there is some difficulty about article 302 also. Dr. Ambedkar has just now been telling me that there is some consideration to be given to one of the provisos in this article. He would like this article to be held over. In that case, the only thing left is Schedule III. Is there any objection to Schedule III also?

Mr. Naziruddin Ahmad: No, Sir, there is no objection.

Third Schedule

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in the Third Schedule, in Form I of the Declarations, for the words and brackets 'solemnly affirm (or swear)', the following be substituted :—

'solemnly affirm
swear in the name of God.'"

Sir, I also move:

"That in the Third Schedule, in Form II of the Declarations, for the words and brackets solemnly affirm (or swear)', the following be substituted :—

'solemnly affirm
swear in the name of God.'"

"That in the Third Schedule, in Form III of the Declarations,—

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) for the words 'solemnly and sincerely promise and declare' the following be substituted :—

'solemnly affirm
swear in the name of God.'"

"That in the Third Schedule, in Form IV of the Declarations,—

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) for the words 'solemnly and sincerely promise and declare' the following be substituted :—

'solemnly affirm
swear in the name of God.'"

"That in the Third Schedule, in Form V of the Declarations,—

(a) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted;

(b) for the words and brackets 'solemnly affirm (or swear)', the following be substituted :—

'solemnly affirm
swear in the name of God.'"

"That in the Third Schedule, in Form VI of the Declarations,—

(a) the words and figure 'for the time being specified in Part I of the First Schedule be omitted;

(b) for the words and brackets 'solemnly affirm (or swear)', the following be substituted :—

'solemnly affirm

swear in the name of God.' "

"That in the Third Schedule, in Form VII of the Declarations,—

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted;

(c) for the words 'solemnly and sincerely promise and declare' the following be substituted :—

'solemnly affirm

swear in the name of God.' "

"That in the Third Schedule, in Form VIII of the Declarations,—

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) for the words 'solemnly and sincerely promise and declare' the following be substituted :—

'solemnly affirm

swear in the name of God.' "

Sir, I also move :

"That in the Third Schedule for the heading 'Forms of Declarations' the heading 'Forms of Affirmations or Oaths' be substituted."

Mr. President : I take it that there is no objection to the heading being changed.

Mr. Naziruddin Ahmad : There is no objection, Sir.

Mr. President : Then the heading is changed.

Then we take up the first part. There are several amendments to that.

Shri H. V. Kamath (C.P. & Berar : General): Mr. President, Dr. Ambedkar has just now brought before the House a revised form of affirmation or oath prescribed in the Third Schedule to the Constitution. I find that the several amendments moved by him prescribe....

Mr. Naziruddin Ahmad : Sir, are we considering Form No. 1 or are we dealing with the heading ?

Mr. President : The heading we have passed.

Mr. Naziruddin Ahmad : I have some amendments to Form No. 1.

Mr. President : You may move them after Mr. Kamath has finished.

Shri H. V. Kamath : I find that the form of the oath or affirmation as moved by Dr. Ambedkar in this new Schedule differs from that which this House has adopted already in the case of the President and Governors. I invite the attention of the House to article 49, and also to the corresponding article 136 prescribing the oath or affirmation for the Governors of States. I refer to this copy of articles as agreed to by the Assembly, supplied to all Members of the House. Turning to article 49, my honourable colleagues will

[Shri H V. Kamath]

see that the oath or affirmation as passed by the House has got a form which Dr. Ambedkar has now inverted in the amendment that he has just moved. That form in article 49 stands thus :

"I, A B, do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$."

I remember —and I hope my memory does not betray me that when Mr. Mahavir Tyagi brought this amendment to my original amendment in this House some months ago, he made a point of this and pleaded that so far as the oath, the swearing was concerned it should go above the line, being more important, and the affirmation should go beneath the line, and the House accepted it accordingly; and this final form of the affirmation or oath was as stated in article 49 which has been incorporated in this little booklet supplied to us. I am sure Mr. Tyagi will bear me out when he makes a speech today in the House. In this connection I am also glad to see that Mr. Jaspat Roy Kapoor has tabled an amendment on the same lines as mine, that is to say restoring the form of the oath as adopted in this House. Dr. Ambedkar has inverted it now, and I appeal to the House to restore the *Status quo ante*, the original form of oath or affirmation as accepted and adopted by the House. Dr. Ambedkar might argue that the difficulty is that the language of the first amendment which he has moved today is to the effect : "Forms of Affirmations or Oaths" that is to say the word "affirmation" comes first and "oath" comes next. Therefore, according to that wording affirmation must come on the top of line and the oath must come below the line. I wonder whether Dr. Ambedkar will bring forward this argument, but if this argument is brought forward, then I for one would say that the heading could be changed to the effect "Forms of Oaths or Affirmations" and then retain the form of the oath as adopted by the House already, that is to say, the swearing of the oath should go on top of the line and the affirmation must go below the line. I am not a stickler for forms but I think that so far as the House is concerned it must not deviate from the form which it adopted long ago in December last; and I think that without adequate reason we should not alter or invert the form of oath or affirmation which the House has already adopted. Sir, I move my amendment No. 103 List II, Fifth Week, and commend it to the House for its earnest consideration. It is as follows :

"That in amendments Nos. 56 to 63 of List I (Fifth Week) of Amendments to Amendments, in the form of the oath or affirmation in the Third Schedule, for the words

$\frac{\text{'solemnly affirm}}{\text{swear in the name of God.'}}$"

(proposed to be substituted), the following be substituted :—

$\frac{\text{'swear in the name of God}}{\text{solemnly affirm.'}}$"

Mr. President : Amendment No. 110 in the name of Mr. Jaspat Roy Kapoor is the same as Mr. Kamath. So that does not arise now.

Shri Jaspat Roy Kapoor (United Provinces : General) : Yes, Sir.

Mr. President : Amendment No. 112 also stands in the name of Mr. Jaspat Roy Kapoor.

Shri Jaspat Roy Kapoor: It will serve my purpose if Mr. Kamath's amendment is accepted.

Sardar Bhopinder Singh Man (East Punjab: Sikh): Sir, I move:

"That in amendments Nos 56 to 63 of List I (Fifth Week) of Amendments to Amendments, in the form of the oath or affirmation in the Third Schedule (in the words proposed to be substituted) the words 'swear in the name of God' be deleted"

My object in moving this amendment is that God's name for swearing purposes may not be permitted. I am not being inimical to the idea of God that I move the House to delete the name of God, but on religious and ethical considerations and also on reasons of great constitutional importance that I ask the House to delete the name of God for swearing purposes. When we were in school days, we were swearing too often "By God, it is true", "By God, I will do it", "By God, I will not do it", "By God, this is wrong", etc. and invariably we had been told by our teachers and elders that it was not a good habit to swear. I wonder how our habits which was then considered to be bad now becomes to be good when we are grown ups. To be asked to swear, even otherwise, becomes too offensive. If a person is asked in spite of his declarations or solemn affirmation, to swear by God, he will say: "I am telling the truth. You must believe me as such. There is no need that I should swear by God." I believe it is beneath one's dignity to be asked to swear by God. I believe, at the same time, Sir, that is showing disrespect to God Himself that we should use His name for swearing purposes. Apart from that, I know it is doubting the individual's integrity to ask him to swear by God.

Besides this, I do not know whether the Drafting Committee and its Chairman has taken any steps to ascertain the wishes of God Himself on such a vital matter. I do not doubt the sovereignty of this Assembly; but I consider, Sir, that your sovereignty does not extend to such limits as to be binding even on God. He may not be a willing party to this affair. Without ascertaining His wishes, we are associating God's name in various places. According to Mr. Kamath's amendment, somewhere in the clauses we have already incorporated the name of God. We are again incorporating the name of God for purposes of swearing. Tomorrow, you are going to associate His name somewhere in the Preamble. I am doubtful whether God will at all like this. It may be a clever piece of Constitution for you; but still He may not like this Constitution. He may not like to be associated with this Constitution. He may be a communist God or He may have strong socialist inclinations. I would ask the Members and Dr. Ambedkar, "suppose without ascertaining His wishes you incorporate His name, what would happen to the Constitution if tomorrow He in His wisdom would withdraw His consent and would refuse to be associated with this Constitution at all?" Then, I would request you, before you incorporate His name in various ways and associate Him with your Constitution, to ascertain His wishes. In case Dr. Ambedkar had no access to God, then I request you Sir, to use your good offices to ascertain His wishes and let the House know that He is a willing party to this affair. After all, oath taking means two parties, the person who swears and the person by whom you swear. Indeed, it is a point of Order with me and I submit whether at all we can incorporate or use the name of a person who is not a Member of this House and without His consent in the Constitution. It is really of great constitutional importance. Tomorrow, the whole labour will be lost if He withdraws his consent and refuse to be associated with your Constitution.

Mr. Nazirudin Ahmad: Mr. President, Sir, I beg to move

"That with reference to amendment No. 56 of List I (Fifth Week) of Amendments to Amendments in the Third Schedule, in Form I of the Declarations, after the word 'solemnly' the words 'and sincerely' be inserted"

I beg to move.

"That with reference to amendment No. 56 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations for the words 'all manner of people' the words 'all people' be substituted"

I beg to move:

"That with reference to amendment No. 56 of List I (Fifth Week), of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations, the comma and the word 'affection' after the word 'favour' be deleted."

My first amendment would raise a very important constitutional question namely whether the Ministers, as apart from Members, are required to be sincere or insincere. The House will be pleased to note that there are eight Forms of Declarations. With regard to Ministers, of the Union, there are two Forms, I and II. The first relates to oath of office and the second relates to oath of secrecy. There are again two other forms relating to Ministers in the States, namely Forms V and VI, one relating to oath of office and the other relating to oath of secrecy. In all these cases the Ministers have to take the oath or make the affirmation to discharge their duties "solemnly" only and not necessarily sincerely. One would think that the omission of the word 'sincerely' does not mean any departure from the existing practice. I would ask the honourable Members to consider the forms of oath to members of Parliament and Judges. The Declaration which has to be made by a member of Parliament is to be found in Form III. He has to make a declaration "solemnly and sincerely." A Judge has to take an affirmation in Form No. IV. He has also to declare that he will do his duty "solemnly and sincerely." Then, Sir, the oath to a member of a legislature of a state is given in Form No. VII. He has to declare that he would discharge his duties "solemnly and sincerely." Lastly, the judges of the High Court under Form No. VIII, have to declare that they will discharge their duties "solemnly and sincerely." There is a carefully chosen phraseology, one set for the members of Parliament as well as members of the State legislatures and Judges of the Federal Court and High Courts that they will discharge their duties "solemnly and sincerely", but not so in the case of the Ministers both of the Union and of the States. I would like to know whether the omission in the case of the Ministers is intentional or purely accidental. The careful manner in which the word "sincerely" is required in the case of the members of Parliament and members of the State legislature and Judges would show that this omission is deliberate and intentional. I would like to know from the members of the House whether it is their conception that so long as they are members of the Legislature, they are to discharge their duties solemnly as well as "sincerely," but the moment he steps in the *gaddi* of a Ministry, he has to forsake sincerity. Is that the idea? If that is so, it is certainly in keeping with current ideas. In fact, Ministers are not required to be sincere, they are to be insincere. Insincerity in certain cases I know amounts to a virtue. The famous Radha addressed Shri Krishna:

"Nipata Kapata tua Shyam"

"Shyam, you are insincere". That is the highest form of adoration. Shall we address our Ministers,

"Nipata Kapata tua Shyam"

"You are our masters, but absolutely insincere." The oath is of that kind,

I would like to know whether the word 'sincere' is inapplicable to a Minister of Free India. I know that Ministers have got to be diplomatic; they have got to be clever; but I never thought that diplomacy which would be required of a Minister would preclude him from being sincere. That is with regard to amendment No. 119.

The next amendment is a mere matter of drafting. Form I says, "I will do right to all manner of people." I think the words "all manner of people" rather amount to bad use of English. The wording "all people" would be better. What the expression "all *manner of* people" implies, I fail to see. Therefore this is a drafting amendment which I think would be worthy of acceptance.

Then, my third amendment relates to the words 'affection or ill-will' occurring at the end of the form. It says that a Minister of the Union is required to do his duty in accordance with the Constitution and law "without fear or favour". That is quite good. The words "without fear or favour" are very appropriate as a Minister must discharge his duties to the people without fear or favour. But is he to discharge his duty without 'affection' to people? Should he be not imbued with a sense of love and affection to people? Yet the affirmation says that a Minister must act "without affection or ill-will" to the people 'Without affection' is absolutely mischievous. He must have some some amount of love and affection for the people but we find that Ministers today are getting away from the people. The love for the people which should characterise them is forsaking them. They are following a path of disaffection for the people. We find in the Provinces and in the Centre there is disaffection towards the people. If the Ministers take the oath that 'I will deal with you without affection' the people will reciprocate also 'we will also deal with you without any affection. So there will be mutual disaffection and ill-will. I submit that my first amendment with regard to the requirement of "sincerity" and with the requirement of affection should be accepted. But if the differential phraseology was not deliberately selected to give effect to obvious implications, I think in the first place the words 'and sincerely' should be inserted and in the second place, the words 'without affection' should be deleted.

Mr. President: These are the amendments relating to all the forms. There are certain amendments which relate to particular forms. I may take them up later. Dr. Ambedkar, there are some amendments in your name in the printed list relating to other forms. Does any Member wish to move any other amendment? Regarding other forms I have noted, there are two amendments 123 and 128 which are of a different nature.

Mr. Nazirudddin Ahmad: I think we shall confine our speeches to the present form. In that case there will be no more amendments. I do not wish to move 123 and 128 at this stage.

Mr. President: If Dr. Ambedkar moves 3401, perhaps it might become unnecessary. You consider that.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in Form VI of the Forms of Declarations in the Third Schedule, the words 'or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion' be omitted."

These are unnecessary because we do not propose to leave any discretion in the Governor at all.

Shri H. V. Kamath: May I remind Dr. Ambedkar that 143 has not yet been amended?

The Honourable Dr. B. R. Ambedkar: Yes, I remember that.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That with reference to amendment No. 57 of List I (Fifth Week) of amendments to Amendments, in the Third Schedule, in Form II of the Declarations, the following be added at the end:

'or as may be specially permitted by the President in the case of any matter pertaining to the functions to be exercised by him in his discretion.'"

Mr. President: We have abolished all discretion.

Mr. Naziruddin Ahmad: The difficulty arises in connection with the phraseology occurring at the end of Form VI.

Mr. President: That is why Dr. Ambedkar has moved for its deletion.

Mr. Naziruddin Ahmad: In that case this will not be required. I do not move 128 also as it is similar. Sir, I move:

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, after the word 'solemnly' the words 'and sincerely' be inserted."

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, for the words 'all manner of people' the words 'all people' be substituted."

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, the comma and the word 'affection' after the word 'favour' be deleted."

"That with reference to amendment No. 61 of List I (Fifth Week), of Amendments to Amendments, in the Third Schedule, in Form VI of the Declarations, after the word 'solemnly' the words 'and sincerely' be inserted."

Shri Brajeshwar Prasad (Bihar: General): Mr. President, Sir, I rise to endorse the sentiments expressed by Sardar Bhopinder Singh Man. I am opposed to the idea of dragging God in the Third Schedule. I am opposed to this because even those persons who swear by the name of God do not do everything in this world in the name of God. Where is the necessity of asking a man, however religious he may be, that he must do this and start doing that thing in the name of God. I may be a religious man but do I do everything in the name of God? When I wash my mouth in the morning do I do it in the name of God? Here we are performing a secular function. A Governor, a Minister or a President has to take into consideration the provisions of the Constitution when he is performing certain functions and duties. There is no meaning in asking him to swear by the name of God at the time of taking his appointment.

Secondly, I am quite clear in my own mind that secularism is the negation of all religion. Whatever statesmen and politicians may say on the ground of expediency, I am quite clear in my own mind that the concept of religion and the concept of secularism are poles asunder. There is no meeting ground between these two.

Thirdly, I am opposed to the idea of dragging in God here because I feel that no man would be prevented from following God, if he wishes to do so, even though he does not swear by His name at the time of taking up his office.

And lastly, I am opposed to this proposal because in politics, one has to do things which are irreligious things which are of a non-religious character.

Statesmen and politicians, we all know, have to undertake wars. A statesman has to resort to methods of violence and bloodshed, and it would be a mockery, a farce and quite ridiculous if he were to swear in the name of God and then resort to these things when the occasion arises. Having regard to all these considerations I am firmly opposed to the idea of dragging in God in the Third Schedule.

Shri Mahavir Tyagi (United Provinces : General) : Sir, the small amendment which my Friend Mr. Kamath has moved does not really warrant many speeches or many words for its support. The House has once discussed the question of the oath and it was decided that the oath should be taken in the name of God. There were my friends in the House who were really objecting to the oath being taken in the name of God, as they felt, "After all, why bring in God?" But in spite of their objection, the Constituent Assembly decided that for such persons as had faith in God, their oath must be the same as the one they usually take in their private life; and therefore the words, "Swear in the name of God" were introduced, through an amendment. In the original draft, these words, "Swear in the name of God" did not occur. These words were introduced at the express desire of the House. And so the oath was so shaped that the words "Swear in the name of God" were over the line, and "solemnly affirm" were under it.

Now I am sorry that Dr. Ambedkar has come forward just with a little trick—the trick of a school-boy, if he will pardon me. What he has done is, he has brought on the words "solemnly affirm" above the line, and brought God under the line. If it is to be only a trick, I would not mind it. But we should see that the people do not get the idea that now, after Swaraj, God has gone under. So, I say since the Constituent Assembly has once decided in connection with the oath, these words, "Swear in the name of God" should be above the line, and the other words must be below the line, and naturally too. I say naturally, because even in spite of the presence of some agnostics in India, there are still the vast majority of the masses who believe in God. And while we are making a Constitution here, the masses have not given us a blank cheque for us to do as we choose. We have to make the Constitution to the liking of the masses whose representatives we are. I submit, Sir, that Dr. Ambedkar, honest as he always is, is sometimes too clever, I would say. He has been quite honest and outspoken. So I would request him not to do anything which is against the wishes of the masses whom he represents. Why bring in a little personal prejudice of his and make God go under the line? What is the significance of putting God under the line? What is God? Sir, God is Truth. So an oath taken in the name of God means that it is an oath in the name of Truth. And 'affirmation' as opposed to 'God' is *expediency sublimated,* so to speak. So the position is *Truth* versus *'expediency sublimated'*. "What is the need of taking an oath"? They say, a gentleman when he affirms a thing, it may be taken that he means it and shall act up to it. Similarly, one would argue that when a gentlemen is elected to an office voluntarily, why need he even affirm? Why ask him for an affirmation? It must be taken for granted that he will remain a gentleman, and he will always be acting in a truthful manner. Then why have the formality of having any affirmation or oath. But when we are having the formality of an oath, I should be allowed to distinguish between an oath and an affirmation. As I have said, God is *Truth* and affirmation is *'expediency sublimated'*. I desire expediency to go under the line and Truth to go up. I am afraid some of the honourable Members may not attach much importance to this question, and really I also admit that it is not a matter of very great importance. But Dr. Ambedkar seems to be playing pranks with us. Why does Dr. Ambedkar come out with an amendment when on a previous occasion the House had already

[Shri Mahavir Tyagi]

given its decision on this question? Through his amendment Dr. Ambedkar wants the whole House to commit itself to putting God under the line. But let us not forget that India gave the idea of God to the whole world. I have heard leaders of his House say that we must own the international numerals as against the Hindi numerals because the former were given to the world by India. Similarly I submit that when the world was rotting in chaos, we gave it the idea and conception of Truth and God. India gave it to the world. Why then should God go down particularly when He has made us free? God primarily belongs to India. This is the land of God. So God should be above and affirmation below. Let us stick to the original draft. So I hope the House will not accept Dr. Ambedkar's amendment. There is no question of party discipline, let not the Members be afraid of any Whips. My appeal to them is to reject the amendment of Dr. Ambedkar. Let us not be duped by what agnostics say. I am sorry for the word, but.....

Mr. President: You want the House to accept the amendment of Mr. Kamath?

Shri Mahavir Tyagi: I want the House to oppose the amendment of Dr. Ambedkar and stick to the original draft we had decided upon in the beginning in connection with the oath to the President.

Shri Prabhu Dayal Himatsingka (West Bengal: General): Sir, I find a storm has been raised unnecessarily about the form which has been suggested by Dr. Ambedkar. In fact this one has been brought in, in place of two forms. Two alternative forms have been put into one form. Some people swear in the name of God and others solemnly affirm. Instead of having two different forms, it is put in one form. If originally instead of underlining, there was a stroke between "swear in the name of God" and "solemnly affirm", that also will serve the purpose. There is no meaning in suggesting that because in the amendment or the form proposed by Dr. Ambedkar, "solemnly affirm" has been put above the line, and the words "swear in the name of God" underneath, there is a suggestion that one is more important than the other. Alternative forms had to be used by those who either belong to the Christian religion who "swear" and the Hindus and other solemnly affirm. Therefore, there is no reason why there should be any formal amendment. In fact, the form suggested by Dr. Ambedkar and the form suggested by Mr. Kamath are one and the same. Whichever is accepted it will make no difference.

Shri Jagat Narain Lal (Bihar: General): Sir, discussion might be obviated if Dr. Ambedkar himself gets up and accepts the amendment. There is no meaning in putting one above the other. There is sentiment involved in it. Both are one and the same. He may put "swear in the name of God" above and "solemnly affirm" below, so that it may suit peoples of both tastes and feelings.

The Honourable Dr. B. R. Ambedkar: In proposing this amendment, I have not the slightest desire to offend the sentiments of some of the Members who have spoken against the draft on the ground that God has been placed below the line. Sir, in this matter I must admit that we have really no consistent policy which we have followed. For instance, in article 49, which has been passed, God has been, I think, placed above the line and affirmation below the line. In article 81, we have placed affirmation first and the oath afterwards. In this article, to which we have moved amendments, we have merely followed the wording of the principal clause, which runs: "Affirm or Swear". That being the language of the principal clause, the logical sequence was that the affirmation was placed above the line and the oath was placed below. It is a purely logical thing. Now, the reason why we

have thought it desirable to place affirmation first and oath afterwards, was because in this country, at any rate, the Hindu, when he is called upon in any Court of Law to evidence, generally begins by an affirmation. It is only Christians, Anglo-Indians and Muslims who swear. The Hindus do not like to utter the name of God. I therefore thought that in a matter of this sort, we ought to respect the sentiments and practice of the majority community, and consequently we have introduced this particular method by stating the position as to affirmation and oath. As I said, I have neither one view nor the other. I am perfectly prepared to carry out the wishes of the House. If the House is of the opinion that Mr. Kamath's amendment should be accepted—and I submit that that would be contrary to the practice prevalent in this country so far as the Hindus are concerned—then what I would suggest is this, that my amendments would be allowed at this stage, with the liberty that the Drafting Committee will take into consideration all the other articles which have been incorporated in the Constitution so far as to bring the whole matter in line. It will not be proper to make a change here and to leave the other articles as they stand.

Shri Mahavir Tyagi: Let grammar not stand in the way of God!

Shri H. V. Kamath: With regard to article 81, there was no amendment before the House. It was stated that every Member in each House of Parliament should make an affirmation and an oath according to the Third Schedule But what the House has already adopted is the oath or affirmation for the President and the Governors, and that is in the form set out by me in my amendment today.

Mr. President: It is not necessary to have a discussion over this matter. You had better vote on it. It is not a question on which there is room for much discussion. As Dr. Ambedkar has said, he has no particular feeling in the matter, and if the House decides one way, he will ask for the liberty to put all the articles in that form. So I shall put the amendment to the vote

Mr. Naziruddin Ahmad: My amendments have not been touched by Dr. Ambedkar at all.

Mr. President: That is different.

The Honourable Dr. B. R. Ambedkar: After the word "sincerely"? After "sincerely" I would like to add something more. It would not be enough.

Mr. President: He wants the omission of the word "affection".

(*after a pause*)

Well, I will take up the amendment. The question is :

"That in amendments Nos 56 to 63 of List I (Fifth Week) of Amendments to Amendments, in the form of the oath or affirmation in the Third Schedule, for the words

'solemnly affirm

swear in the name of God'"

(proposed to be substituted), the following be substituted :—

'swear in the name of God

solemnly affirm.'"

The amendment was adopted.

Mr. President: I take it that the House gives leave to Dr. Ambedkar to put the other articles, wherever such similar expressions occur in the same order.

Honourable Members: Yes.

Shri Jaspat Roy Kapoor: May I suggest that in all the places where we have the words "affirmation or oath" we may have the 'oath' first and 'affirmation' afterwards. It should be so in the substantive clause also.

Mr. President: That is so. It should be put in the same order wherever the expression occurs.

The question is:

"That in amendments Nos. 56 to 63 of List I (Fifth Week) of Amendments to Amendments, in the form of the oath or affirmation in the Third Schedule (in the words proposed to be substituted) the words 'swear in the name of God' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 56 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations, after the word 'solemnly' the words 'and sincerely' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 56 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations, for the words 'all manner of people' the words 'all people' be substituted."

Mr. Naziruddin Ahmad: This may be left to the Drafting Committee.

Mr. President: It is not pressed. So I take it that it is dropped.

The question is:

"That with reference to amendment No. 56 of List I (Fifth Week), of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations, the comma and the word 'affection' after the word 'favour' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in Form VI of the Forms of Declarations in the Third Schedule, the words 'or as may be specially permitted by the Governor in the case of any matter pertaining to word 'affection' after the word 'favour' be deleted."

The amendment was adopted.

Mr. President: I do not think it is necessary to put the other amendments to vote, because the voting will be the same as with regard to the other amendments.

Mr. Naziruddin Ahmad: They may be formally put and rejected by the House.

Mr. President: The question is:

"That with reference to amendment No. 57 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule in Form II of the Declarations, after the word 'solemnly' the words 'and sincerely' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, after the word 'solemnly' the words 'and sincerely' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, for the words 'all manner of people' the words 'all people' be substituted."

The amendment was negatived.

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"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, the comma and the word 'affection' after the word 'favour' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No 61 of List I (Fifth Week), of Amendments to Amendments, in the Third Schedule, in Form VI of the Declarations, after the word 'solemnly' the words 'and sincerely' be inserted."

The amendment was negatived.

Mr. President: Then I put the proposition moved by Dr. Ambedkar, as amended by Mr. Kamath's amendment and Dr. Ambedkar's own amendment, with regard to all these forms. I do not think it is necessary to read them separately.

The motion was adopted.

Mr. President: The question is:

"That the Third Schedule, as amended, stand part of the Constitution."

The motion was adopted.

The Third Schedule as amended, was added to the Constitution.

Mr. President: We now adjourn till 9 o'clock on Monday.

The Assembly then adjourned till Nine of the Clock on Monday, the 29th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 29th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(Contd.)

Seventh Schedule

Mr. President: We shall take up today the Seventh Schedule.

There is one question to which I have given some consideration and that is as regards the procedure to be followed in dealing with this schedule. We have got a large number of entries and there are notices of amendments to some of these entries. I take it that so far as those entries, in regard to which there are no amendments, are concerned there will be no speeches. I will of course put them to the vote of the House. But as regards those items to which notice of amendments has been given, they will of course be moved, but I would ask honourable Members to confine their remarks to say five minutes or so on each item. We have a very large number of items and if longer time is given to speeches we will have to set apart a good many days to go through the lists. I hope this will suit honourable Members. If there be any particular item regarding which I find that more discussion is required I will certainly allow it but ordinarily I would confine each item to five minutes.

Shri Mahavir Tyagi (United Provinces : General) : Even in the case of such items where there are no amendments will you be pleased to allow Members to put questions and ask for answers so as to remove their doubts ?

Mr. President: If there are any doubts, they will of course be removed.

Shri B. Das (Orissa : General) : There are, Sir, 91 items in List I alone. There are of course some honourable Members who have given notice of amendments in regard to particular items. But if there is a general discussion concerning the principles involved in the Union, Concurrent and State Lists it will considerably clarify the position and will help us to understand the Lists much better. This is my submission, Sir.

Mr. President: I am afraid that will only duplicate the discussion. It will not have the advantage of curtailing discussion. Therefore, any question arising in regard to any particular item will be of course taken into consideration. But I do not think any useful purpose will be served by having a general discussion with regard to the division of the subjects in the Three Lists. As a matter of fact we have had some sort of discussion on that point when we were dealing with the articles in the Constitution.

Sardar Hukam Singh (East Punjab: Sikh): We bow to your decision that those items which have no amendments may be adopted without any speeches. We understand the spirit behind this ruling. The real difficulty is that these items have been substituted afresh and the notice has been so short that we could not go through them. For my part, either I was not very vigilant or I did not have sufficient time to go through the items that have been substituted.

[Sardar Hukam Singh].

Therefore the best thing to do is to pass over a number of items on the agenda. As I said, most of the items have been substituted and they are new ones and therefore it cannot be said that there are no amendments and therefore the Members may be taken to have accepted them. On the other hand, we find difficulty in going through them

Mr. President: If any difficulty is pointed out by any particular Member I shall take that into consideration

Mr. Nazirudin Ahmad (West Bengal: Muslim): Sir, I have a point to submit. Mr. President, I do not take pleasure in repeatedly coming to the rostrum to raise points of order. It is utterly against my own nature to do so, as it must be to many honourable Members present. But today we are faced with an unprecedented situation. Dr. Ambedkar has out-done his past achievements so far as these amendments are concerned.

Sir, you may be pleased to notice that some of the amendments tabled are entire re-drafts of the items in the draft Constitution. I say with considerable thought and care that I find some serious interpolations in them. As was done in the case of the Hindu Code Bill, a large number of serious interpolations have been made here also. But there has been an attempt to disguise these interpolations and therefore they have been put in the draft amendments of to-day in the shape of re-drafts. It will certainly be claimed by Dr. Ambedkar that the changes are of a drafting nature as it was claimed in the case of the amendments to the Hindu Code Bill. But I submit that here also there are serious interpolations. I got these amendments yesterday morning and it was by chance that I and Sardar Hukam Singh met and carefully considered the texts of the amendments. We then discovered serious changes or interpolations, but the time allowed for sending in amendments was till five of the clock yesterday. We had only a few hours to consider the amendments. Like Sardar Hukam Singh I confess that I have not been able to do our duty with regard to these amendments in the way in which our constituencies would like.

I submit that in regard to these items which are entire re-drafts we may postpone consideration. We have not been able to carefully consider them. I support the suggestion of Sardar Hukam Singh that though there are no amendments submitted to some of the items it should not been taken that they are free from objection. I find that only a few Members have submitted amendments to Two Lists. No other Member has submitted amendments. I believe they have not had time to go through the new re-draft. I asked Pandit Kunzru who said that he got the Lists only last night and had no time to consider them. In the face of this grave situation we must decide our procedure once for all. I accept your ruling with regard to the limitation of speeches to five minutes. Some Members may not require the full five minutes allowed But I submit that these amendments which contain new ideas we should be given time to consider. We should settle our procedure in regard to them once for all now.

Mr. President: May I make a suggestion? If the Members promise that they will finish the Schedules tomorrow, we might rise now and sit for four hours tomorrow, instead of two hours today and two hours tomorrow.

Pandit Hirday Nath Kunzru (United Provinces: General): Nobody can give that undertaking, and even if we can, as a matter of principle, we should not. This is my feeling, Sir.

Mr. Nazirudin Ahmad: With regard to most Members, they will not be able to come to an understanding. I do not think I can come to such an

understanding. The difficulty is that we have not been able to fully consider the amendments. Most Members are in the happy position that they have not read the amendments and have not noted their significance. I am not in that happy position.

Mr. President: I do not think the Member has any justification for supposing that other Members do not study the amendments.

Mr. Naziruddin Ahmad: I have been assured by some very serious Members that they have not read the amendments. Therefore, in view of the serious nature of the amendments I say that the House should have time to consider them. If it is stated that some of the Members, who try to do their duty in a fashion which is not the general fashion in the House, have considered these amendments and that no useful purpose will be served by further discusion or consideration of those amendments, then we should leave the matter entirely to Dr. Ambedkar & Co. to do what they like.

Mr. President: If any question is raised with regard to any particular amendment or item and if Members want time, we shall consider that at that time. Let us now proceed item by item.

The Honourable Dr. B. R. Ambedkar (Bombay: General): I would like to say that these amendments were circulated on Saturday, day before yesterday.

Mr. President: Were they circulated on Saturday.

Some Honourable Members: Yes, Sir.

The Honourable Dr. B. R. Ambedkar: On Saturday evening, I think. So far as Mr. Naziruddin Ahmad is concerned, there are some forty amendments standing in his name.

Mr. Naziruddin Ahmad: Only twenty.

The Honourable Dr. B. R. Ambedkar: They cover the whole of List I. Therefore my submission is that the complaint, so far as he is individually concerned, that he did not have time, must be regarded as absolutely unfounded.

UNION LIST

Entry 1

Mr. President: We shall proceed with the items now. Item No. 1. I do not find notice of any amendment to this item. A list has just been handed over to me of certain amendments by Dr. Deshmukh. I have received it today just now.

Shri T. T. Krishnamachari (Madras: General) There is no amendment to Entry 1.

Mr. President: In that list, there is an amendment to Entry 1.

Dr. P. S. Deshmukh (C.P. & Berar: General): That was the earliest I could do.

Mr. President: Very well, you can move your amendment.

The Honourable Dr. B. R. Ambedkar: At least we should have a copy of the amendment.

Mr. President: I myself have not got a copy. I have handed over the only copy to the Member.

Dr. P. S. Deshmukh: Sir, I beg to move my amendment which is to the following effect:

"Substitute for Entry 1 the following:—

'defence of India and of every part thereof and generally for all purposes of defence including all such acts as may be necessary in times of war including training, conscription, demobilisation, etc.'"

Sir, apart from the fact that my amendment is better expressive of the purpose of the Entry, there are one or two things which, I think, it is necessary to include specifically *e.g.* conscription and training. Demobilisation of course finds a place in the Entry as it stands, but there is no mention during times of war of training which is most essential for purposes of war. There is also no mention of conscription. We are fighting more and more total wars these days and it may be necessary at any moment for the Union Government to declare and have conscription. It is not a matter which can be said to form part of the defence arrangements of the country. This is a special item which requires special enactment and Ordinances would be necessary, and in view of that, it would be advisable to have a specific provision for the Union Government to have recourse to conscription, whenever the necessity arises.

Shri H. V. Kamath (C.P. & Berar: General): Is not conscription comprised in "all such acts as may be conducive in times of war to its successful prosecution"?

Dr. P. S. Deshmukh: I do not think so Sir. If it is necessary to mention demobilisation, which is a part and parcel of the consequences following a war, then I think there is every reason why conscription should be specially mentioned. Of course this is only a suggestion. My Friend, Mr. Kamath, appears to take a different view. If that is so he is welcome to have it. But so far as I am concerned, my view is that the Entry as it is worded is not so comprehensive as it should be. I think it is necessary to mention conscription as part of the defence arrangements. In the Entry as it stands there is no mention of all the purposes so far as defence or the preparation for war is concerned, and I would therefore recommend this re-draft of the Entry for the acceptance of the House.

Mr. President: You had not given notice of this amendment originally, not even in the first instance.

The Honourable Dr. B. R. Ambedkar: This is not an amendment to an amendment.

Mr. President: This is altogether a new amendment.

Dr. P. S. Deshmukh: I am moving this amendment on the same principle as that on which Dr. Ambedkar has been moving his amendments so far as the articles are concerned.

Mr. President: There was previously no notice of an amendment to entry 1.

This is the first time we have an amendment to this entry.

Dr. P. S. Deshmukh: It is afact, Sir. If Dr. Ambedkar feels that a rewording of this Entry is necessary, he might perhaps accept it; otherwise I am prepared to withdraw it.

The Honourable Dr. B. R. Ambedkar: This is merely a paraphrase of Entry 1. You have ruled that we should not spend more than five minutes on an Entry and it is already more than five minutes.

Mr. President: As Dr. Ambedkar has pointed out, this being merely a paraphrase of the Entry, we might leave it to him to consider. I do not think we should have much discussion on these matters, especially when they do not happen to be new ideas.

Prof. Shibban Lal Saksena (United Provinces : General): Sir, we should be allowed to have our say.

Mr. President: About the original Entry or the amendments ?

Prof. Shibban Lal Saksena: On both.

Mr. President: Is it necessary to say anything on the original Entry when there is no opposition ?

Prof. Shibban Lal Saksena: I want to say something on the Entry.

Shri T. T. Krishnamachari: May I point out, Sir, that in regard to these three lists, the main objection can only be that a particular Entry should not find a place in list I, but should find a place in list II or list III. This is how the arguments should proceed. So far as this particular Entry is concerned, it is a matter beyond dispute altogether. It must be in the Central List. Dr. Deshmukh's amendment is merely an amplification of the entry as it is. I think that there should be no discussion on a vital matter like this on which all persons are generally agreed, that the responsibility belongs to the Union.

Mr. President: In this amendment it is not suggested that this should be put in any other List. The only idea is that it should be amended so as to express the same ideas in a somewhat different form. Is much discussion necessary on that ? If the proposal was that it should be transferred from one List to another, then it would be a question of substance.

Prof. Shibban Lal Saksena: We are entitled to suggest improvements in the wording also.

Mr. President: I do not question your right of doing it. I am only suggesting whether it is at all necessary in this case. You have not given notice of any amendment for that purpose.

Prof. Shibban Lal Saksena: But another honourable Member has given notice of an amendment.

Mr. President: But he is prepared to leave it to Dr. Ambedkar to improve the wording if he so feels.

Prof. Shibban Lal Saksena: Those Members who have given no amendments, can they not speak on the Entry ?

Mr. President: I do not question the rights of Members to speak on anything but I am only suggesting whether it is necessary when there is really no difference of opinion.

Prof. Shibban Lal Saksena: I would not have risen to speak if I did not feel it to be necessary.

Mr. President: If there is any question of substance.

Prof. Shibban Lal Saksena: I think it is a question of substance.

Mr. President: If I allowed in one case, I shall have to allow in many other cases and at every time there will be discussion and once discussion starts, I cannot stop one Member when I allow another Member. So it means an interminable discussion which might go on for weeks on these Lists.

Shri Mahavir Tyagi: Prof. Saksena himself would be able to carry on for the whole day, if you allow him to speak once.

Shri H. V. Kamath: There are at least some entries which are important, on which I hope you will be so good as not to shut out general discussion.

Mr. President: If I find that there is any question of substance raised, I shall certainly allow it, but if it is merely supporting the entry as it is or suggesting something in the matter of language, I think that it be left to the Drafting Committee. As Prof. Saksena does not wish to say anything against the entry and simply wants to support Dr. Deshmukh's amendment, which Dr. Deshmukh himself has referred to the Drafting Committee, I do not see where a question of principle arises in this case.

Prof. Shibban Lal Saksena: He has not accepted it.

Mr. President: It is not a question of accepting. It is a question of improving the language and he says he will leave it to the Drafting Committee.

Prof. Shibban Lal Saksena: At least I thought the word "conscription" should be there.

Mr. President: Well, if it is a matter of wider, then in that case other considerations come in, but I thought that it was not a new matter and that is why I told him like that.

Shri T. T. Krishnamachari: Conscription all preparations for defence, that is the wording, Sir, and that includes everything, not merely conscription but also something beyond that.

Prof. Shibban Lal Saksena: I want it to be made explicit.

Mr. President: That is not necessary. The question is

"That Entry 1 stand part of the Union List."

The motion was adopted.

Entry 1 was added to the Union List.

Entry 2

The Honourable Dr. B. R. Ambedkar: Sir, I move

"That for entry 2 of List I, the following entry be substituted

'2. Central Bureau of Intelligence and Investigation'."

The only words added are "and Investigation". Otherwise the entry is the same as it exists in the draft.

Shri Mahavir Tyagi: What is the significance of this addition? Will you please throw light as to why you have added these words?

The Honourable Dr. B. R. Ambedkar: The idea is this that at the Union office there should be a sort of Bureau which will collect all information with regard to any kind of crime that is being committed by people throughout the territory of India and also make an investigation as to whether the information that has been supplied to them is correct or not and thereby be able to inform the Provincial Governments as to what is going on in the different parts of India so that they might themselves be in a position to exercise their Police powers in a much better manner than they might be able to do otherwise and in the absence of such information.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

"That in amendment No. 1 for List I (Sixth Week) in the proposed entry 2 of List I, the words 'and investigation' be deleted."

Then I move my next amendment which is an alternative to the first:

"That in amendment No. 1 of List I (Sixth Week) in the proposed entry 2 of List I, for the word 'investigation' the words 'Central Bureau of investigation' be substituted."

The original entry was "Central Intelligence Bureau". The re-drafted entry is "Central Bureau of Intelligence and Investigation". The words "and Investigation" seem to me to appear to give an ambiguous effect. I submit that the duty of the Union Government would be to maintain a Central Intelligence Bureau. That is all right. Then we have the words "and Investigation", and we do not know what these words really imply. Do these words "and investigation" mean that the Bureau of Investigation was merely to carry out the investigation? They will mean entirely different things. If it is to enlarge the scope of the Central Intelligence Bureau as well as the Bureau of Investigation, that would have been a different matter but Dr. Ambedkar in answer to a question put by Mr. Mahavir Tyagi has said that the Central Government may think it necessary to carry on investigation. Sir, I submit the effect of this amendment, if that is the kind of interpretation to be given to it, would be extremely difficult to accept. We know that investigation of crime is a provincial subject and we have already conceded that. If we now allow the Central Government also to investigate, the result would be that for a single crime there must be two parallel investigations, one by the Union Government and other by the State Government. The result of this would be that there will be a clash and nobody will know whose charge-sheet or final report will be acceptable. The Union Government may submit a final report and the Provincial Government may submit a charge-sheet, and there may be a lot of conflict between these two concurrent authorities. If it is to carry on investigation, then it will not be easy to accept it. It was this suspicion that induced me to submit this amendment, though without any hope of being accepted, at least to explain to the House my misgivings and these misgivings are really substantiated by Dr. Ambedkar himself. I would like to know whether it is possible at once to accept this implication, to give the Central Government power to investigate crimes. My first amendment is intended to remove the words "and investigation". If you keep the investigation within this entry it should be the Central Bureau of Intelligence, as well as Bureau of Investigation. If there are two Bureaus only there could be no difficulty and there will be no clash and let us have as many Bureaus as you like but if you want investigation, it will be inviting conflict. Rather it is another attempt to encroach on the provincial sphere. I find there is no limit to the hunger of the Central Government to take more and more powers to themselves and the more they eat, the greater is the hunger for taking more powers. I oppose the amendment of Dr. Ambedkar. I appeal to the House not to act on the spur of the moment; it is easy for them to accept it as it is easy for them to oppose it and the entry does not seem to be what it looks.

Sardar Hukam Singh: I do not move my amendment as it is already covered

Mr. President: There is no other amendment.

Shri Brajeshwar Prasad (Bihar: General): I would like to speak a few words on this item

Mr. President: I do not like to permit any one if I can help it

Shri Brajeshwar Prasad: It is entirely in your hands.

Mr. President: We have already had an explanation given by Mr. Naziruddin Ahmad of his point of view. Dr. Ambedkar will explain his point of view and we can put the entry to vote.

Dr. P. S. Deshmukh: I have something very substantial and important to urge. I will be brief.

Mr. President: If I allow you, I cannot disallow others.

Prof. Shibban Lal Saksena: Sir you are taking away the right of the Members to speak. We will be brief. We should not be shut up.

Shri Brajeshwar Prasad: For certain reasons, it would be better if without moving the amendments we are permitted to speak on the items.

Mr. President: Dr. Ambedkar has spoken on the item and the mover of the amendment has also made his speech.

Shri Brajeshwar Prasad: If discussion is not allowed the result would be that a large number of Members would be prevented from expressing their views. Probably, the amendments may not be moved at all.

Mr. President: I am only thinking of the number of entries. If I allow discussion even for ten minutes on each, it means a week.

Dr. P. S. Deshmukh: I want to make a suggestion to the Drafting Committee.

Mr. President: So far as this entry is concerned, I do not think there is much room for discussion.

Shri Brajeshwar Prasad: If I am permitted to speak only two lines, I would be content.

Mr. President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I am not in a position to accept any of the amendments moved by my Friend Mr. Naziruddin Ahmad. These amendments seem to be the result of a muddled head....

Mr. President: Dr. Ambedkar ned not use strong language.

The Honourable Dr. B. R. Ambedkar: Amendment No. 146 seeks to remove the words 'and investigation'. The ground for removing the word 'investigation', as suggested by my Friend Mr. Naziruddin Ahmad, is that there would be conflict between the jurisdiction of the Centre and the Provinces. If that is how he understands the entry as I have moved it, I do not quite understand how he can consent to allow the word 'investigation' to remain in the two subsequent amendments which he has moved, numbers 147 and 148.

Mr. President: 147 only.

The Honourble Dr. B. R. Ambedkar: He has got another.

Mr. President: Amendment No. 148 has not been moved.

The Honourable Dr. B. R. Ambedkar: The point of the matter is, the word "investigation" here does not permit and will not permit the making of an investigation into a crime because that matter under the Criminal Procedure Code is left exclusively to a police officer. Police is exclusively a State subject; it has no place in the Union List. The word "investigation" therefore is intended to cover general enquiry for the purpose of finding out what is going on. This investigation is not investigation preperatory to the filing of a charge against an offender, which only a police officer under the Criminal Procedure Code can do.

Mr. Naziruddin Ahmad: Then, why not use the word "enquiry"? The word "investigation" has acquired a very definite meaning. Why use a word which has acquired another meaning?

Mr. President: I will now put the amendments to vote. The question is:

"That in amendment No. 1 for List 1 (Sixth Week) in the proposed entry 2 of List I, the words 'and investigation' be deleted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 of List I (Sixth Week) in the proposed entry 2 of List I for the word 'investigation' the words 'Central Bureau of investigation' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That for entry 2 of List I, the following entry be substituted.

'2 Central Bureau of Intelligence and Investigation'"

The amendment was adopted.

Entry 2, as amended was added to the Union List.

Entry 3

Mr. President: The motion is :

'That entry 3 form part of the Union List"

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move :

'That for entry 3 of List I, the following entry be substituted :—

'3. Preventive detention in the territory of India for reasons connected with defence, foreign affairs, or the security of India; persons subjected to such detention.'"

Comparing this entry with the original entry in the Draft Constiution, it will be noticed that there are only two changes : for the words 'external affairs' we have now used the words 'foreign affairs'. "Persons subjected to such detention" is an addition; this did not exist in entry 3 as it stands. But, this again has already been passed by the House in the amendment to the Government of India Act. Therefore, substantially, there is no change in the amendment that I am proposing.

Mr. Naziruddin Ahmad: Sir, in moving my next amendment, I take a great risk of disclosing a further muddled head. But, I should however state with great respect to Dr. Ambedkar that though I have a muddled head, I have not a guilty conscience. The expressions which Dr. Ambedkar has chosen to use in giving his explanation are considerably beneath the dignity of the House I, however, will not emulate his example and I shall rather confine myself to some of the difficulties which I have a right to address the House, not to Dr. Ambedkar, whose mind is locked, whose conscience is guilty and whose intelligence is prejudiced by preconceived ideas. I do not wish to move the rest of the amendments. It is useless. When an honourable Member takes an unusual course of describing another Member as having a muddled head, I was pained to see that a few Members to my left.....

Mr. President: I myself asked Dr. Ambedkar not to use strong language.

Mr. Naziruddin Ahmad: I was pained to see that it caused some amount of vulgur response from a certain section of the House. The object of my amendment is this. The wording has been changed to 'foreign affairs' from 'external affairs' We have been accustomed to use of the expression 'external affairs'. What is wrong with 'external affairs'? Is there any difference? If there is any difference, the difference may be explained. I have come here only to raise a point so as to get clarification. As Mr. Mahavir Tyagi said that he wants clarification, I also want clarification, by my amendment No. 149, which reads :—

"That in amendment No. 2 of List I (Sixth Week) in the proposed entry 3 of List I, for the word 'foreign' the word 'external' be substituted."

[Mr. Naziruddin Ahmad]

With regard to amendment No 150, I submit "persons subjected to such detention" would be absolutely needless. The words "preventive detention" includes certainly "persons subjected to such detention". These are words added to the original entry without any purpose. Though I may disclose a muddled head, I only like a muddled head to be cleared not by unseemly expressions, but by reason Reason would be appreciated more than hard expressions.

Mr. President: Your next amendment No. 150?

Mr. Naziruddin Ahmad: I do not move amendment No. 150; it is useless.

Dr. P. S. Deshmukh: I am not moving the amendment.

Shri Brajeshwar Prasad: I am not moving my amendment, but I would like to speak.

Shri H. V. Kamath: It is a very important item. I shall only put two questions to the Drafting Committee There are some lacunae in this, and one or two aspects of the matter have been left untouched. I am not going to make a speech.

Mr. President: Put the questions from there.

Shri Brajeshwar Prasad: I would also like to put one question.

Shri H. V. Kamath: The first question that arises in my mind is,—we have provided for preventive detention in this entry but can there not be a situation when Government may find it necessary to extern persons from the territory of India in connection with defence, foreign affairs or India's security? How will you provide for such externment of persons from Indian territory?

The second question is: we have already adopted article 275 in the Draft Constitution in a slightly different form from what it was in the original draft. Article 275 as it originally stood provided for the President proclaiming an emergency when the security of the country is threatened but later on the House has changed it. The new article says that 'where the security of India or any part of the territory thereof is threatened'. Here this entry provides for detention only when the security of India is threatened. Should we not make it clear and say that 'where for reasons connected with defence, foreign affairs or the security of India or any part of any territory thereof' in consonance with 275 which we have already adopted?

As regards the point raised by Mr. Naziruddin Ahmad, I support him because the Ministry of Foreign Affairs is still called the Ministry of External Affairs and not Foreign Affairs and so I do not see any reason for changing the term.

Dr. P. S. Deshmukh: Sir, on reconsideration, I would like to move my amendment.

Mr. President: Yes.

Dr. P. S. Deshmukh: Sir, I thank you for permitting me to go back on my decision, but the amendment I have suggested is really of very vital importance. I move:

"That after the word 'reasons' the words 'of State' be added to the item as has been re-drafted."

My first argument in favour of this amendment is that wherever you have such powers in the Government of India Act, the reasons are always mentioned

as reasons of State. If my friends were to retort and say that reasons connected with defence and external affairs are by themselves sufficient, I would plead that it is not so. All reasons on the strength of which we are going to give this power of preventive detention must have reference to the interests of the State as such, and therefore I hope the learned Doctor will accept this amendment It is a small amendment but highly important. In the Government of India Act also we have these words "for reasons of State". Otherwise, any reason which may have the remotest connection with external affairs would also be a reason for preventive detention which would really be a bad thing in principle. The power which the British Government in India was not prepared to take in its hands by the Government of India Act we would be giving to the Union, which is absolutely unnecessary if not dangerous also. Preventive detention is being already resorted to in such a widespread manner that I think we ought to be cautious and not omit the words 'of State' which are of vital importance so far as this item is concerned. This is an amendment of substance and I hope this will be accepted.

Shri Brajeshwar Prasad: I should like to seek clarification on one point only. I want to know whether the words 'reasons connected with defence' include "public safety or interest".

Prof. Shibban Lal Saksena: Sir, I want to oppose the amendment of Dr. Ambedkar. This is a very important entry in this list. I have throughout held and protested against the powers of the Executive to detain persons without trial and I opposed those provisions which enable the President to pass Ordinances, and in consistency with my view I have come here to oppose this entry also. I do not think we should disfigure our Constitution by such denial of personal liber y. If we have any suspicion against anybody then we must give him a chance to rebut the evidence against him in a proper trial. I, therefore, think that this entry continues the same line that the British took to take away the civil liberties of the people. I know there may be cases where it might be necessary to detain some persons, and probably it might be in the interest of the State also to do that, but what I am afraid of is that this power may be abused more than used in the interest of the country.

On balance I think it is better to take the risk of allowing personal liberty to the fullest extent than to feter it by this provision. When we are framing a Constitution for free India, we must not disfigure it with this entry. Uptill now if a person is interned in Assam the practice is that his relatives can go and see him; but once this power comes under the Centre, then that man could be transferred to Bombay or Coorg and thus his relatives will not be able even to see him. Therefore Dr. Ambedkar's amendment to the original entry makes it worse for then it will be possible that those persons who are detained shall be liable to be removed from their normal place of residence and removed to places which may be extremely difficult of approach by his relatives and friends. I therefore think this addition makes the article worse. I am totally opposed to the entry.

The Honourable Dr. B. R. Ambedkar: In answer to the question put to me by my Friend Mr. Kamath I should like to tell him that there can be no provision for the externment of a citizen. There can be detention and not externment. The externment law can be applied only to aliens, and there is an entry in our list dealing with aliens etc. According to that, the State will be able to deal with an alien, if it wants to extern him.

Shri H. V. Kamath: Where is the entry in the list?.

The Honourable Dr. B. R. Ambedkar: Entry No. 19. Now, with regard to the question put to me by my Friend Dr. Deshmukh, he wants that the

[The Honourable Dr. B. R. Ambedkar]

words "for reasons connected with the State" should be substituted. In my judgment, that would be a limiting entry, and ours is a much better one as it specifies the subject-matter in connection with which the preventive detention may be ordered.

And then Mr. Brajeshwar Prasad wants public safety to be introduced.

Shri Brajeshwar Prasad: I did not want it. I only wanted to know whether the phrase "reasons connected with defence etc." included "public safety or interest."

The Honourable Dr. B. R. Ambedkar: Yes, 'security of India" is a very wide term.

Shri Brajeshwar Prasad: I am not referring to 'security of India" but to "public safety or interest".

The Honourable Dr. B. R. Ambedkar: Now, with regard to Mr. Naziruddin Ahmad's question, he wants the words 'persons subjected to such detention" to be deleted.

Mr. President: No, he has not moved that amendment. He only wants to substitute the word "external" for the word "foreign".

The Honourable Dr. B. R. Ambedkar: We are hitherto using the word "foreign" throughout, and I think it is better we keep to the same word.

Shri H. V. Kamath: Is the security of India the same as the security of any part of it? And is the present entry in consonance with article 275?

The Honourable Dr. B. R. Ambedkar: Yes, undoubtedly.

Mr. President: I shall put amendment No. 149 of Mr. Naziruddin Ahmad to vote. The question is:

"That in amendment No. 2 of List I (Sixth Week) in the proposed entry 3 of List I, for the word 'foreign' the word 'external' be substituted."

The amendment was negatived.

Mr. President: Then I put Dr. Deshmukh's amendment. The question is:

"That after the word 'reasons' the words 'of State' be added to the item as has been re-drafted."

The amendment was negatived.

Mr. President: Then I put the entry as it was moved by Dr. Ambedkar.

The question is:

"That for entry 3 of List I, the following entry be substituted:—

'3. Preventive detention in the territory of India for reasons connected with defence, foreign affairs, or the security of India; persons subjected to such detention.'"

The amendment was adopted.

Entry 3, as amended, was added to the Union List.

Entry 4

Mr. President: Then we come to entry 4.

The Honourable Dr. B. R. Ambedkar: I move:

"That for entry 4 of List I, the following entry be substituted :—

'4. Naval, military and air forces; any other armed forces of the Union.'"

Honourable Members will see that this entry was a very large entry, and it consisted of two parts. Part one of the entry related to the raising of the forces by the Union. Part two related to the forces of the States mentioned in Part III. In view of the fact that it has been decided to put the States in Part III on the same footing as the States in Part I, it is desirable to delete the second part of this entry. And so far as any States have today any forces, it would be provided for by a provision in the part dealing with the transitory provisions of this Constitution.

With regard to the first part of the entry, it is felt that it is a mouthful, and that many of the words are not necessary, and that the short phraseology now proposed—naval, military and air-forces—would be quite sufficient to give the Union all the powers that are necessary for the purposes of maintaining an army, navy and air-force.

Mr. President: There is an amendment to this, of Mr. Naziruddin Ahmad, No. 151. Yes, Sardar Hukam Singh, you may move it.

Sardar Hukam Singh: Mr. President, Sir, I beg to move:

"That in amendment No 4 of List I (Sixth Week), in the proposed entry 4 of List I, the words 'any other armed forces of the Union' be deleted."

So far as I can see, there are only three armed forces—naval, military and air-force—and they have specifically been mentioned here, and I think all the forces are covered even now. Just now we have heard the honourable Dr. Ambedkar say that all these three are covered, and I think there are no other forces that are not covered.

Shri Brajeshwar Prasad: Armed police is not covered.

Sardar Hukam Singh: Armed police is not a force of the Union, therefore, my friend is beside the point.

If we look at the original draft, we see that the "raising, training, maintenance and control of the Naval, Military and Air Forces" are mentioned. And there, no other force has been mentioned. Entry 6 also has only "Naval, Military and Air Force Works." The Drafting Committee has been at this work for a year or more, and if the Drafting Committee is getting wiser every day, and its brain is getting clearer there is no wonder that the brains of some Members might be getting muddled. But it is quite clear that there are no other forces, and this addition now suggested would be a useless appendage here in this item.

Mr. President: Are you not moving the alternative?

Sardar Hukam Singh: No, Sir.

Shri H. V. Kamath: May I ask Dr. Amedkar whether semi-armed forces such as the Prantiya Raksha Dal, or the Home Guards raised by the Provinces will be brought under the jurisdiction of the Union Government?

Mr. President: Dr. Deshmukh has got an amendment?

Dr. P. S. Deshmukh: I do not propose to move it.

The Honourable Dr. B. R. Ambedkar: It is necessary to retain the words "any other armed forces of the Union" because, besides the regular army, there are certain other forces which come under the armed forces and which are maintained by the Centre. For instance, there are what are called the "Assam Rifles" to guard the border. There are certain armed police forces maintained by the Centre with regard to the certain Indian States. In order, therefore, to give them a legal basis, it is desirable to include them in this entry 4. I might also mention that they were also recognised in entry I of the Government of India Act, 1935, as distinct from the naval, military and air forces.

Mr. President: I shall put Sardar Hukam Singh's amendment to the House The question is :—

"That in amendment No 4 of List I (Sixth Week), in the proposed entry 4 of List I, the word 'any other armed forces of the Union' be deleted"

The amendment was negatived.

Mr. President: Then I put the entry moved by Dr. Ambedkar. The question is :—

"That for entry 4 of List I, the following entry be substituted :—

'4. Naval, military and air forces; any other armed forces of the Union'"

The amendment was adopted.

Entry 4, as amended, was added to the Union List.

Entry 5

Mr. President: Then we take up entry 5. There is an amendment by Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad: I am not moving it.

Mr. President: Then there is no amendment to Entry 5. I shall put it to the vote now. Does anyone want to speak about it?

Prof. Shibban Lal Saksena: Sir, I want to say a few words, as I think this entry is much too sweeping.

Mr. President: Do you then oppose it? You can either oppose it or support it. There is no amendment.

Prof. Shiban Lal Saksena: We had no time to give amendments.

Shri Mahavir Tyagi: He wants to know if the D.T.S. is also included.

Mr. President: I think the entry is quite clear, but if you want to oppose it you can do so.

Prof. Shibban Lal Saksena: Mr. President, Sir, this item is in my opinion far too sweeping and by virtue of it, the Parliament may by law bring in fact every industry under the purview of the Centre. It can say that every industry is remotely connected with the purpose of defence or the prosecution of war. There is no single industry which cannot be said to be necessary for the prosecution of war. Therefore, if Parliament is given this right, then it is quite possible that the Provinces will be denied all rights over all the industries. As I said, the entry is far too sweeping. There should be some limitation. If any industries are to be taken over from the Provinces by the Centre I suggest that it should be done by a Constitutional amendment with two-thirds majority.

Shri Brajeshwar Prasad: Mr. President, Sir, the meaning of this entry is that in respect of industries declared by Parliament to be necessary or expedient in the public interest or for the purpose of defence or for the prosecution of war Parliament will have the right to frame laws. it does not mean that such industries will be taken over by the Government of India.

Secondly, I am not in favour of asking Parliament to make a declaration to that effect. This power should have very well been vested in the President himself. If the President declares these industries to be necessary, then the power of Parliament to frame the necessary law should come into operation.

The Honourable Dr. B. R. Ambedkar: Sir, entry No. 5 should be read along with entry No. 64. Entry 64 deals with the control of industries which Parliament has declared to be necessary in the interests of the public. This, that is entry 5, relates to the taking over of industries for the purpose of defence or for the prosecution of the war That being the important difference, I think it would hamper war effort considerably if entry 5 was made analogous to entry 64. Declaration by Parliament will be necessary in both cases. But the scope of entry 5 is much wider than that of entry 64. Having regard to the different ends and aims in view, it is sought to differentiate entry 5 from entry 64.

Mr. President: The question is :

"That entry 5 stand part of the Union List."

The motion was adopted.

Entry 5 was added to the Union List.

Entry 6

Entry 6 was added to the Union List.

Entry 7

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for entry 7 of List I, the following entry be substituted —

'7. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of House accommodation (including the control of rents) in such areas.' "

There is an amendment to this standing in the name of my honourable Friend Mr. T. T. Krishnamachari the effect of which is merely to omit the word "self" in the expression "local self-Government" so that it will read "local government".

Shri Mahavir Tyagi: Mr. President, Sir, as the entry is rather controversial and pertains to the control of house rents and allotments as well I would suggest that you might please agree to hold it over and not decide it today, for we have not been able to table any amendments. I also submit that this Schedule is the basic provision by which we are distributing powers between the Centre and the States. It is very important from that point of view. But amendments could not be tabled for want of time. I do not want to interfere with every item but in this case my request is that you might please agree to hold it over so that the question may be decided as to whether the cantonment boards will decide and control house rents, allotments etc. or the local governments will control them.

Shri T. T. Krishnamachari: May I point out that Mr. Sidhva has already tabled an amendment (Nos. 3515 and 3516) and actually the Drafting Committee's amendment follows the lines indicated by Mr Sidhva's amendment because we thought that there was something in it which could be incorporated, into the entry.

Shri Mahavir Tyagi: My friend has forgotten my name. I am not Mr Sidhva I am Mahavir Tyagi.

Shri R. K. Sidhva (C.P. & Berar. General): Sir, if you will kindly see the printed list I have tabled an amendment--No 3515. I am very much obliged to the Drafting Committee for having accepted my amendment. My Friend Mr. Tyagi is forgetting that the amendment that has now been proposed covers rents and other things which may come hereafter. The main point is that the cantonments were allowed, within the area where the troops are, to be administered by the Centre. We have now allowed the delimitation of the civil areas, that is where the civilian population resides, and I am thankful to the Drafting Committee for having accepted my amendment.

The only important difference is that just now by his amendment Mr. T. T Krishnamachari wants to delete the word "self" so that instead of "local self-government" it will become "local government". The idea underlying was that the local body should be allowed and not the local government which means the Provincial Government. I do not know why that change is sought to be made. Otherwise it was a very sound and reasonable amendment which the Drafting Committee accepted. I would only request the honourable Dr. Ambedkar to allow the words "local self-government" to remain and not substitute them by putting in "local government".

Shri Mahavir Tyagi: Sir, in case you are not acceding to my request you might please agree to allow me to put in this amendment, namely:

"That the last words 'and the regulation of House accommodation (including the control of rents) in such areas' be deleted."

I want that I should have consultation with other friends also. It is a very vital point.

The Honourable Dr. B. R. Ambedkar: He might speak on it.

Mr. President: As a matter of fact that very idea is contained in Mr. Sidhva's amendment. You could have moved an amendment to Mr. Sidhva's amendment.

Snri R. K. Sidhva: If these words are deleted it will spoil the whole structure. It will be a negation of the amendment that has been accepted.

Shri Mahavir Tyagi: I would like to understand what Mr. Sidhva's amendment would mean. Would it leave powers in the hands of the States? In other words will the State law apply or the Central law apply in the case of regulation and control of rents?

Mr. President: "Regulation of house accommodation and relation between landlord and tenants", I take it, includes rent also.

Shri Jagat Narain Lal (Bihar: General): Now that Provincial Governments have become 'States', 'local government' is enough; 'local self-government' is not necessary.

Dr. P. S. Deshmukh: Sir, the amendment which has been moved by Dr. Ambedkar is more or less a paraphrase, as he is pleased to describe such thing, or a re-wording of the original item as it stood in the draft. My amendment also is somewhat in the nature of a paraphrase but it also includes

the point of view that has been urged by Mr. Tyagi. The amendment which I wish to move and the wording I want to propose for this item is as follows :

"Delimitation of and local self-government in Cantonment areas, constitution and powers of Cantonment authorities within such areas and regulation and requisition of accommodation in such areas."

I think the wording I have proposed not only puts the whole item in a much better phraseology but it removes the necessity of having a reference to rent because rent is a part of the regulation and requisition of accommodation, and there is no necessity of specifically pointing out that the Union Government will have power of control of rents in any particular area.

Secondly, I think my Friend Mr. Sidhva was quite correct in asking that the word "self-government" should be retained and the word "government" should not be introduced. The words "local self-government" are very clearly understood; and although it is contended by certain friends that because there will be no local Governments hereafter there will be no confusion, I am certain that if we retain the words "local government"—unless we are prepared to define it somewhere in the Constitution—it would lead to much confusion. It is better therefore that Mr. T. T. Krishnamachari's amendment is not accepted, the word "self-government" is retained and the wording I have proposed is approved.

Shri Mahavir Tyagi : Sir, may I suggest that the entry be held over ?

The Honourable Dr. B. R. Ambedkar : Why ? I do not understand. If you have any comments to make we are quite prepared to hear and give you a reply.

Shri Mahavir Tyagi : I feel that either we must be given a full chance of tabling our amendments and putting our case before the House, or such articles as are controversial may please be ordered to be held over.

The Honourable Dr. B. R. Ambedkar : This amendment standing in the name of Mr. Sidhva has been there from 26th January ! My friend has now become awake to the situation. There was plenty of time for him to give an amendment and I am even now prepared to say that he can make out his case for such changes as he wants and I am prepared to satisfy him.

Shri Mahavir Tyagi : Sir, we have accepted Dr. Ambedkar's speed—he is going very fast—we have taken no objection to that But on items like these he might agree.. . .....

The Honourable Dr. B. R. Ambedkar : Why don't you say what you want to say ?

Shri Mahavir Tyagi : My submission is that such items on which there are controversies or on which honourable Members say or feel that they want to table an important amendment, such items may please be held over. It will smooth the way, it will accelerate the work.

Mr. President : Then the House will adjourn till 9 o'clock tomorrow. We shall take all the amendments tomorrow as they come, but I shall not give any further time.

The Honourable Dr. B. R. Ambedkar : I am entirely in your hands, Sir, so far as this amendment is concerned. If I can know what objections may Friend Mr. Tyagi has, I am prepared to deal with his case now in the House.

Shri Mahavir Tyagi : Sir, if you give me a few minutes .....

Mr. President: No; we shall adjourn till tomorrow 9 o'clock. I shall not give any more time for amendments. All amendments must come in by 5 o'clock to-day and we shall take up the entries tomorrow morning

The Assembly then adjourned till Nine of the Clock on Tuesday, the 30th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 30th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Seventh Schedule—(Contd.)

Entry 7—(Contd)

Mr. President: We shall take up the discussion of Entry No. 7. I find that several Members have given notice of amendments. No. 172—Dr. Deshmukh.

Dr. P. S. Deshmukh: (C. P. & Berar: General): I have moved it already, Sir.

Mr. President: Then 173. Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari: (Madras: General): Mr. President, I move:

"That with reference to amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I of the Seventh Schedule, for the words 'local self-government' the words 'local government' be substituted.

This has been explained by Dr. Ambedkar yesterday. There is no need for me to explain that further.

Shri Mahavir Tyagi: (United Provinces: General): Sir, I am sorry that for a small matter yesterday you adjourned the House; otherwise I think it would have been clairfied yesterday. My difficulty is that when you put the Cantonments and Cantonment Boards and the regulation of house accommodation (including the control of rents in such areas in the hands of the Government of India) a great inconvenience will be felt. Personally, I feel that the cantonments in various States are not imperial islets. For all practical purposes, all the civil population in cantonments is controlled by the States. The cantonments were brought into being just to see that the sanitation of those places was suitable to the military neighbourhood and that all local government activities were in the hands of the military authorities or at least influenced by military authorities, so that the military areas may not find any sort of inconvenience with regard to health, hygiene or other matters.

Now, Sir, in the beginning the cantonments were mostly comprised of military barracks and officers' mess and a few other bungalows considered to be of military. Now what has hapened is; let us take an instance. Take Meerut. In Meerut there is a military Cantonment, three-fourths of which is composed of civil population. There is the Sadar Bazar and there are lawyers and others living in that cantonment area. That area is within the area and the jurisdiction of the Cantonment Board. All the laws of the U.P. apply to the inhabitants of the cantonment areas. For instance, in the bazar there is the same sales tax as is elsewhere in U.P. For all purposes of law and order, they are controlled by the very same civil authorities of the Provinces

[Shri Mahavir Tyagi]

everywhere in India. It was only the local government part of it which was transferred or rather intended to be transferred to the hands of the Cantonment Boards and the rest of the laws of the States equally apply to the citizens of cantonments.

Now, Sir, at most of the places cantonment area is exactly adjacent to the city areas. If the house rent controls and all similar powers were handed over to the Centre, and if those adjacent areas were to be controlled by the Centre, then it will be an anomaly. One shop on this side of the demarcation line will be controlled by one law; the other shop on the other side of the line will be controlled by another. For a few years we controlled the house rents and house allotments by means of a law in the U.P. which was equally effectively controlling the rents of the cantonment areas. For two or three years it was getting on peacefully, but for the last one year or so, when in our Province the Rent Act was amended, they excluded the cantonment area, perhaps on the desire of the Central Government, with the result that I have received a number of letters from the cantonments of my province, complaining against the hardships which their civil population was undergoing with regard to house rents. I will read a few lines from the letter of the Secretary of the Cantonment Taxpayers' Association "More than 1,000 suits for ejectment of tenants from houses and shops in Meerut Cantonment have already been filed in the civil courts, and decrees for ejectment in some cases have already been passed." This is not a case where the ownership of the buildings or shops belongs to Government. It is about the civil area. The Secretary further says. "In Meerut alone the civil population in the cantonment is more than one lakh". Now, this one lakh of people belonging to one State shall now for all practical purposes be controlled by a different law from the Centre just as Delhi is controlled by the Centre. When that State enacts a law it will not automatically apply to the civil population in cantonments. The law will only apply if and when the Centre thinks it fit to extend the application thereof to those areas. If this is going to be the state of affairs under the future Constitution. I must protest against it, because all those civilians living in cantonment areas are as good as the rest of the population in a State. To make this distinction will be invidious and unfair. I therefore submit that, except for the local self-government part of it, the civil population of cantonment areas must be controlled on an equal footing with their fellow citizens living as neighbours in the very same State.

I therefore move :

"That in amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I, the words 'and the regulation of House accommodation (including the control of rents) in such areas' be deleted."

Rent control is the function of the State everywhere in the Union. Why should the civil areas in the cantonments now be handed over to the Centre?

My alternative amendment, which I shall presently move, will come in only in case this is not accepted. It runs thus :

"That in amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I, for the brackets and words '(including the control of rents)' the brackets and words '(excluding the control of rents)' be substituted."

I mean this control of rent must not be left in the hands of the Union administration. I have received another letter from Jhansi saying that the people there are in trouble, because the United Provinces has not been permitted to control the rent in cantonment areas. I therefore submit that if my first suggestion is not approved my alternative proposal may be accepted; or Dr. Ambedkar's genius might find some other way to accommodate my wishes.

(Amendments Nos. 175 to 177, were not moved.)

Shri R. K. Sidhva (C.P. & Berar : General) : Mr. President, I want to speak on Mr. Tyagi's amendment.

Mr. President: Very well, but do not take more than three minutes. I shall be looking at the clock.

Shri R. K. Sidhva: Yesterday, while speaking on this amendment I made the position very clear that the Drafting Committee will accept the amendment. But the point is that Mr. Tyagi wanted to cover the extent to which delimitation of cantonments could take place. Mr. Tyagi wanted that house-rent should be deleted from this. That means delimitation also would come to the Provincial List. Unless you absolutely remove from this List delimitation also, you cannot have house-rent regulation left in the Central List. I know the difficulty he has mentioned about the control of rents in the United Provinces Complaints have come to me also that the Rent Act is not applicable to the cantonment areas. That is a matter of opinion of the various provincial Governments. In Bombay the position is different. In Poona Cantonment the House Rent Control is made applicable by the provincial Government. Apart from that, I do not think it is germane to Mr. Tyagi's amendment, because it will take away the entire delimitation now in the hands of the Centre.

Shri Mahavir Tyagi: For the information of my Friend I may say I have given notice of an amendment to include this in the Provincial List.

Shri R. K. Sidhva: When it comes we shall see. But so far as this is concerned, you cannot divide the two, rent and delimitation. I am not prepared to support his amendment. I think that the Drafting Committee's amendment serves the purpose.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, the amendments moved by my Friend Mr. Tyagi are the only amendments which call for reply. His amendments are in alternative form. In the first place, he wants to delete the whole part dealing with regulation of house accommodation including the control of rent. In his alternative amendment he is prepared to retain the control and regulation of house accommodation, but wishes to delete the words 'rent control'. It seems to me, the matter is really one of commonsense If my Friend has no objection to the retention of the words "regulation of house accommodation", as is clear from his alternative amendment, then it seems to me that the control of rent is merely incidental to the power of regulation of house accommodation. It will be quite impossible to carry out the purpose, namely, of regulating house accommodation, if the authority which has got this power has not also the power to control rents. Therefore my submission is that the control of rents is incidental to the regulation of house accommodation. If Mr. Tyagi has no fundamental objection to the retention of the power to deal with house accommodation, I think he must not have any objection to the transfer of control also.

Mr. President: I will now put the amendments to vote. The first is that of Dr. Deshmukh.

Dr. P. S. Deshmukh: I will be content if the Drafting Committee will be pleased to consider it at the time of the final draft.

Mr. President: It is only a matter of drafting so far as I can see. So we might leave it to the Drafting Committee.

The question is :

"That with reference to amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I of the Seventh Schedule, for the words 'local self-government' the words 'local government' be substituted.

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I, the words 'and the regulation of House accommodation (including the control of rents) in such areas' be deleted"

The amendment was negatived

Mr. President: The question is:

"That in amendment No. 6 of List I (Sixth Week) in the proposed entry 7 of List I, for the brackets and words '(including the control of rents)' the brackets and words '(excluding the control of rents)' be substituted."

The amendment was negatived.

Mr. President: We have now disposed of all the amendments

The question is:

"That for Entry 7 of List I, the following entry be substituted .—

"7. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulations of House accommodation (including the control of rents) in such areas"

The amendment was adopted.

Mr. President: The question is.

"The Entry 7, as amended, stand part of List I."

The motion was adopted.

Entry 7, as amended, was added to the Union List.

Entry 8

Mr. President: I find there is no amendment to Entries 8, 9, 10 and 11 originally.

Shri Brajeshwar Prasad (Bihar: General): There is one amendment No. 178 to Entry 8.

Mr. President: It is a new amendment. I was referring to the original printed list of amendments to Entries 8, 9, 10 and 11. Consequently there was no amendment even in the smaller printed list. Now, I have got notice of new amendmends, but I do not think I will allow new amendments to the original entries. So, amendments Nos. 178, 179 and 181 are ruled out.

The question is:

"That Entry 8 stand part of List I."

The motion was adopted.

Entry 8 was added to the Union List.

Entry 9

Entry 9 was added to the Union List.

Entry 10

Entry 10 was added to the Union List.

Entry 11

Entry 11 was added to the Union List.

Entry 12

Mr. President: There is an amendment in the name of Professor Shibban Lal Saksena that entry 12 be deleted. It is opposition. If he wishes to speak about it, he may do so. I also understand that there is an amendment by Mr. Kamath.

Shri H. V. Kamath (C.P. & Berar : General) : Mr. President, I move, Sir :

"That in entry 12 in List I the words 'or any other international body' be inserted at the end."

That is to say, I want this entry to be modified so as to comprehend any international body other than the United Nations Organisation. In moving this amendment, Sir, I would like to state that the United Nations Organisation is not the only or the last word in international organisation. My honourable Colleagues are very well aware of a certain League of Nations which was founded after the First World War and which died an untimely death a few years later. World War II has given birth to the United Nations Organisation, but he would be a rash prophet who would give a long lease of life for this Organisation also. Already there are rifts and cracks..... .

Mr. President Would not your purpose be served by entry 13 ?

Shri H. V. Kamath: No, Sir. I would come to that entry presently. There are already rifts and cracks in this Organisation and one never knows when this United Nations Organisation will go the way of the League of Nations. I hope that our Constitution will last quite a long time, and I need not point out that sceptics and pessimists are not wanting who are predicting an early death for the United Nations Organisation. God forbid that its end should come about in that manner, but nobody knows whether this Organisation would stand or whether some other Organisation will take its place. Apart from that, it is quite likely that in the future we might have regional organisations in the world. We are well aware that an Asian Relations Conference was held in April 1947 and in pursuance of that Conference an organisation called the Asian Relations Organisation has been set up. It may be that in times to come the Government of India along with the Governments of some other States might elect to become members of the Asian Relations Organisation. It may be that that Organisation may prove to be even more permanent than the United Nations Organisation.

You were good enough to draw my attention, Sir, to the fact that my proposal might probably be covered by what is mentioned in entry 13, that is to say, international associations and other bodies. If that were so, then my plea would be that there is no need for entry 12 as well, because the United Nations Organisation is also an international body or association. I suppose that what is meant by entry 13 is participation in these conferences and bodies from time to time, while entry 12 refers to membership of the organisation with its attendant consequences, responsibilities, duties and obligations. This, Sir, seems to be the distinction between entries 12 and 13 Entry 13

refers to participation in these conferences while entry 12 is more comprehensive and includes the obligations and responsibilities resulting from membership of a particular international organisation. I therefore plead that considering that the United Nations Organisation is not at all a permanent body so far as we can see, and considering that we hope that our Constitution will last much longer than any other international body, I think we should provide for this contingency in the List and provide for our membership, with its attendant consequences and responsibilities, of not merely the United Nations Organisation but also any other international organisation which might come into being in the future. I therefore move amendment No. 351 and commend it to the House for its consideration

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President I beg to move that this entry No 12 be deleted, and my reasons for demanding its deletion are as follow : I would like to draw the attention of the House to the Report of the Union Powers Committee and in that report in paragraph 2 it is said

"'Foreign Affairs' connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects :—

(1) Diplomatic, consular and trade representation,

(2) United Nations Organization;

(3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat; etc."

In fact 17 subjects are mentioned and here we find almost all of them reproduced verbatim in this list. In entry 10 we have said : "Foreign Affairs; all matters which bring the Union into relation with any foreign country." So this entry No. 10 is very comprehensive and in fact includes all the entries which follow, at least 17 of them. I do not see any need of duplication. My second point is more important and it is this. We are framing a Constitution for our country and I do not see that in this Constitution we should provide an entry relating to the United Nations Organization, as a permanent part of our Constitution. As we all know the United Nations Organisation has only come into existence about four years back and even now it is not an organization in which all the nations put trust, and I very well know that in spite of its existence the nations are trying to prepare for war and they have no trust that the United Nations Organization can prevent war. If we lay down the United Nations Organization as one of the entries in this List that means that we give to it importance which is not justified by plain facts. It may be that the United Nations Organization may cease to exist tomorrow. It may be that India may desire to leave it and if so what is the sense in keeping this entry in the Union List? I personally feel that entry No. 10 is very comprehensive and it is a matter of foreign policy whether we should continue our membership of the United Nations Organization or whether we should get out of it. So I do not see any reason why we should put this entry in our Constitution. I also personally feel that the experience of India as a member of the United Nations Organization has not been very happy and the amount of expenditure which it has involved was not at all commensurate with the advantages, if any, which we have derived from its membership, and in the Kashmir question, we know that we have not been able to get things settled. In fact it has become more complicated. We had hoped that we will get justice and, instead of that, international politics have vitiated the whole thing, and we are involved therein.

Similar is the case in the matter regarding the treatment of Indians in South Africa. We very well know that India has not got any real voice

in the United Nations Organization. The United Nations Organization has got five permanent seats in the Security Council, and countries like Britain, America, Russia, France and China have each got one seat and India with a population almost bigger than any of them has not been given any seat. I therefore, think that it is not very honourable for India to be there on these terms.

It is quite possible that tomorrow the Parliament may decide that we shall not be in the United Nations Organisation and in that case this entry in the Constitution may be a sort of hindrance. The United Nations Organization is mentioned as something permanent and I therefore think that this entry in the Union List is superflous as well as injurious. It really binds down the Parliament, and so I personally feel that this entry has no place in this list. Neither India is committed for ever to the United Nations Organization nor does the House wish to aspire to do so and when we study the reactions of the world to this United Nations Organization, we find that there is always criticism that it can only be a real world organization when other nations are ready to part with a little of their sovereignty. The veto power gives power to the United States of America and the Soviet Russia, who do not want to part with any of their sovereignty, to veto any proposal and in this way, I do not think it can go very far with this sad state of affairs.

I therefore, think that the United Nations Organization is not an organization of such a character that it should be put down in our Constitution as entry No. 12 in List No. 1 of Seventh Schedule. I think that entry No. 10 is quite comprehensive and it will include the United Nations Organization. I therefore strongly feel that this entry 12 must be deleted and we must not have this in our Constitution.

The Honourable Dr. B. R. Ambedkar: Sir, there are various considerations which arise with regard to this amendment. As my honourable Friend, Mr. Kamath will see this is not the only entry which relates to foreign nations. There is, in the first place, an entry called Foreign Affairs which is broad enough, to be operated upon by this country if it wishes to establish itself as a member of any international organization. There is also the entry following, which we are dealing with now, which permits legislation relating to participation in any international conference or any international body. In view of that, I should have thought that the kind of amendment which has been moved by my honourable Friend, Mr. Kamath is really unnecessary. Secondly, it must be remembered that this is merely a legislative entry. It enables the State to make legislation with regard to any of the entries which are included in List I. If there was an article in the body of the Draft Constitution which limited the legislative power of the State given by any one of these entries, the question such as the one raised by my honourable Friend, Mr. Kamath would be very relevant, but I do not find that there is any limiting article in the Constitution itself which confines the legislative power given under this entry to the membership of the United Nations Organization and there is no such entry at all in the article. Therefore the State can act under any of the other items and be a member of any other international organization. But if the House is particular about it, I think no harm can be done if Mr. Kamath's amendment is accepted and therefore, I leave the matter to the House to decide.

Mr. President: The question is:

"That in entry 12 in List I the words 'or any other international body' be inserted at the end."

The amendment was negatived.

Mr. President: The question is :

"That entry 12 stands part of List I."

The motion was adopted.

Entry 12 was added to the Union List.

New Entry 9-A

Mr. President: There is notice of one amendment by Prof. Shibban Lal Saksena for adding one more entry : "Cosmic energy, and scientific and industrial research and other resources needed for its production, development and use." It comes after entry No. 9. I missed it just then. I should have put it after entry No. 9.

Would you like to move it, Mr. Shibban Lal Saksena ?

The Honourable Dr. B. R. Ambedkar: I do not know what it means.

Mr. President: We have atomic energy; he wants to have cosmic energy also.

Prof. Shibban Lal Saksena: Sir, I beg to move :

"That after entry 9 of List I, the following new entry be added :—

"9-A. Cosmic energy, and scientific and industrial research and other resources needed for its reproduction, development and use."

Sir, we have provided in entry No. 9 for atomic energy and mineral resources essential to its production. We very well know that atomic energy has revolutionised the whole conception of defence. In fact, the biggest problem in the U.N.O. is about the atomic energy. You all very well know that there is also the cosmic energy. About this also, researches are being made by Russia. We have often heard that on the Pamir Plateau there are laboratories where Russia is investigating into cosmic rays and its use for war purposes. In these days we cannot remain ignorant of this great advance in science. I think our State should also undertake this research work which is at present being carried on by Russia and other countries. Therefore, I think there should be entry No. 9-A in which we should provide for this item. We have recently passed a Bill for atomic energy and we are doing something about it. About this cosmic energy and cosmic rays also about which we have heard so much in the scientific magazines, I think we should make provision in our Constitution. I hope Dr. Ambedkar will see that this lacuna is removed.

The Honourable Dr. B. R. Ambedkar: Sir, all I can say is that if the amendment moved by my Friend Prof. Shibban Lal Saksena is at all necessary, I think we have enough power under entry No. 91 of List I to deal with that : "any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". That matter could be covered by this.

Shri H. V. Kamath: That would cover many of the entries in the List itself.

Mr. President: The question is :

"That after entry 9 of List I, the following new entry be added :—

"9-A. Cosmic energy, and scientific and industrial research and other resources needed for its reproduction, development and use."

The motion was negatived.

Entry 13

Mr. President: There is an amendment of which notice has been given by Messrs Mohammed Ismail, Pocker, and Ahmed Ibrahim. I find none of them here. So that is not moved.

There is no other amendment to this entry.

Entry 13 was added to the Union List.

Entry 14

Mr. President: There is no amendment.

Shri Brajeshwar Prasad: I would like to speak on this, Sir.

Mr. President: Speak on war and peace? Why? We all understand war and peace. It is there.

Shri Brajeshwar Prasad: I would like to speak a few lines.

Mr. President: Oppose it or support it?

Shri Brajeshwar Prasad: I would like to have further elucidation.

Mr. President: Very well; come along.

Shri Brajeshwar Prasad: Mr. President, Entry 14: War and Peace. While discussing entry No. 5, I had suggested that instead of the word Parliament, the word 'President' ought to be incorporated—"such industries which are declared by Parliament to be essential for certain purposes". Here, it is not defined whether the question of declaration of war or peace shall be the sole jurisdiction of the President or Parliament. On the lines of the American Constitution, I would like clarification of this question. It is a very vital question, Sir. The power to frame laws regarding war and peace has been left to Parliament. But, I want that this power should not be left in the hands of Parliament. It should be left in the hands of the President. I have nothing more to add.

Mr. President: Dr. Ambedkar, would you like to say anything in reply?

The Honourable Dr. B. R. Ambedkar: No elucidation is necessary.

Mr. President: The question is:

"That entry No. 14 stand part of List I."

The motion was adopted.

Entry No. 14 was added to the Union List.

Entry 15

Mr. President: There is no amendment to this.

Entry No. 15 was added to the Union List.

New Entry 15-A

Mr. President: There is a suggestion by Mr. Kamath that another entry be added, No. 15-A, Mr. Kamath, you may move it.

Shri H. V. Kamath: Mr. President, I move :

"That after entry 15 in List I, the following new entry be inserted :—

"15-A. The acquisition, continuance and termination of membership of any international or supra-national organisation."

I am sorry there is a printers devil : it is 'supernational' it should be 'supra-national'.

I feel, Sir, that in view of the rejection of my last amendment which happily enough commended itself to Dr. Ambedkar.....

Mr. President: But not to the House.

Shri H. V. Kamath: Unhappily though, not to the House. I feel, Sir, there is some *raison d'etre* for this amendment of mine. Had my last amendment been accepted, namely, membership of the UNO or any other international body, then, there would have been no need for this amendment. But as the House, as on one or two rare occasions which I recollect did not accept the advice of Dr. Ambedkar, I think that this provision should be made in this List. My honourable Friend Dr. Ambedkar pointed out to me Entry 10 and said that it had a very wide field and covered many things not otherwise specifically mentioned. It may be that the term 'foreign affairs' means all things to all men. But in a matter like this *i.e.*, in the Union List (Legislative) we ought to be specific as far as lies in human power. It is not enough to say just 'foreign affairs'. It conveys either everything or nothing. Apart from that, the second part of Entry 10 refers to all matters which bring the Union into relation with any foreign country. No organisation or association or international body is mentioned as such. Entry 12 which we had adopted refers only to UNO. This list therefore to my mind suffers from a little lacuna and that is, our membership of any international body, or I may call it supra-national body, other than the UNO. I have made a distinction between "international" and "supra-national." Supra-national in political parlance today connotes more than merely international. In modern political theory, after the birth of the League of Nations, politically interested people started talking of the Super-State—the Super-State to which all component States would willingly surrender a portion of their sovereignty. That was called a Super-State. But here we are talking of an organisation which has no powers, coercive powers of the State apparatus which we may find in a World Government of which many are dreaming today. Here we are confining ourselves to an organisation of nations where various nations assembled in conclave or in conference might discuss several matters affecting all of them and arrive at certain decisions for implementation by the various Governments concerned or members of the particular organisation; and here comes the moot point, *viz.*, the membership of any international or supra-national organisation must be a matter which has got to be considered in great detail before one elects to become a member of any organisation. Today membership of an organisation carries with it several commitments of various sorts and therefore it is necessary to provide for not merely the acquisition of membership but also its continuance and termination. If we say mere membership, it is in my judgment too vague, and therefore we must specifically state everything. I am not mentioning only UNO because it is only one of the many organisations which human wisdom has created. There are no bounds to man's wisdom, here as elsewhere. I, therefore, feel that in view of the rejection of my previous amendment, and in view of the non-mention of this particular item in the other entries of this List, that this is a very vital matter which not merely Dr. Ambedkar but also the House might choose to consider in all seriousness. I, therefore, commend my amendment to the House for its consideration.

Shri S. V. Krishnamoorthy Rao: (Mysore) : Mr. President, acquisition, continuance and termination of membership of international or supernational organisations can be only according to the rules,—bye-laws framed by those bodies and I think it has already been provided in entry 13 which we have already accepted—participation in international conferences, associations and other bodies and implementation of decisions made therein. So I feel that entry 13 which the House has already accepted covers this and this amendment is superfluous I, therefore, oppose it.

Mr. President: The question is :

"That after entry 15 in List I, the following new entry be inserted :—

"15-A. The acquisition, continuance and termination of membership of any international or supra-national organisation"

The amendment was negatived.

Entry 16

Mr. President: We go to Entry 16. There is no amendment to that. I put it to vote

Entry 16 was added to the Union List.

Entry 17

Entry 17 was added to the Union List.

Entry 18

Entry 18 was added to the Union List.

Entry 19

Entry 19 was added to the Union List.

Entry 20

Entry 20 was added to the Union List.

Entry 21

Entry 21 was added to the Union List

Entry 22

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for entry 22 of List I, the following entry be substituted :—

'22. Piracies and crimes committed on the high seas or in the air, offences against the law of nations committed on land or the high seas or in the air'"

[The Honourable Dr. B. R. Ambedkar]

The second part of this entry—"offences against the law of nations committed on land or the high seas or in the air." is new. It was an omission made in the earlier part of the draft. With regard to the first part, we are substituting the word "crimes" for "felonies and offences", as it is the common word used in India. "Felonies and offences" are English technical terms. We are also taking out of the first part, the words, "against the law of nations" because piracies and crimes are matters which can be regulated by any country by reason of its own legal jurisdiction and authority. It has nothing to do with the law of nations.

Mr. President: There are two amendments to this, of which notice is given by Mr. Diwakar and Mr. Brajeshwar Prasad. But they do not arise after the amendment which has been moved by Dr. Ambedkar. Then there is the amendment of Prof. Saksena. But is your amendment any different?

Prof. Shibban Lal Saksena: No, it is covered by the same amendment.

Mr. President: Then there is the amendment of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir. I move:

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I —

(i) for the word 'Piracies' the word 'Piracy' be substituted; and a semi-colon be inserted thereafter;

(ii) the word 'and' after the word 'Piracies' be deleted; and

(iii) the words 'committed on land or the high seas or in the air' be deleted."

Sir, with regard to the first part of my amendment, I want to change the word "Piracies" from the plural to the singular. I shall not press this matter to the vote, but I would ask the Drafting Committee to consider the matter. I would like to draw the attention of the House to certain other items which precede this item, and to say that they are all in the singular. I submit that the word "piracy" is quite sufficient to include the subject. It is not necessary that we should use the word in the plural. For instance, we have in item 11, said—"Diplomatic, consular and trade representation", and not "representations". So also in item No. 14 we speak of "War and Peace" and not "Wars and Peaces". Then we come to item 16—"Foreign jurisdiction" and not "Foreign jurisdictions." We come to item 17—"Trade and Commerce" and not "Trades and Commerces". Then we come to item 20—"Extradition" and not "Extraditions". I think these would be enough to show that the singular is quite sufficient in this item also. But as I said, I shall be quite content to leave the matter to the tender care of the Drafting Committee.

Then with regard to the second part of my amendment, I want to remove the word "and" occurring after the word "Piracies" or "Piracy"—whichever would be more acceptable. I say that that word, Piracy or Piracies should stand alone, and then there should be a semi-colon so as to entirely separate this from what is coming on, because they are entirely different. A semi-colon has been accepted as a favourite device in similar other places. This is also a matter of drafting.

Then comes the expression "crimes committed on the high seas or in the air". I should leave it untouched. But when we come to the words "offences against the law of nations", and then there is an unnecessary explanation—"committed on land, or the high seas or in the air". The addition of those last words, I think, is first of all, absolutely unnecessary. If we leave it at

"offences against the law of nations," it includes offences committed anywhere. As the honourable Member Dr. Ambedkar has just now explained, in dealing, with another article, we should be elaborate when dealing with a subject in an article, but in specifying a certain subject in the legislative list, it is enough to mention the subject, and the question as to in what direcion the legislature will act, that is a matter for the legislature alone. We need not try to elaborate the jurisdiction of the legislature in that respect. In this case, I humbly suggest that the words—"committed on land, or the high seas or in the air" have the effect—if they have any effect at all—of curtailing the jurisdiction of the Union Legislature, and quite unnecessarily too, and without perhaps appreciating the curtailment effected. I submit that if we leave the expression "offences against the law of nations" that will imply offences committed anywhere. By saying that the offences must be committed on "land, the high seas or in the air," we are needlessly elaborate. I also submit that the very mention of the expression "high seas" would leave out offences against the law of nations committed in the low seas or within the limits of the territorial waters. If any offence against the law of nations is committed between the land and the high seas, then I think entry 22 as it is now drafted, would preclude it from the jurisdiction of the Union Legislature. Therefore I submit it is better to omit the words "committed on land, or the high seas or in the air".

Sir, while considering a previous entry the honourable Member referred to entry 91. That is a residuary article. There it is stated—"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". But I submit it would not be a very safe thing to rely upon the curative virtues of entry 91. It is not meant, I submit most respectfully, to cure any specific omission of a certain subject in a specific part of a list. It is a well-known law of interpretation that where you make a specific mention of a subject, and omit certain specific subjects, then the general words in any other part would not cover that omission, and would not cure any defect or omission which might have been left in the specific items. I suppose the items introduced by the Honourable Dr. Ambedkar have been submitted to the House with careful thought and careful consideration. So it would be said that offences against the law of nations committed in this no-man's area would be out of the jurisdiction of the Union Legislature. Therefore, I submit it will be better to leave out the explanatory portion altogether. That part is, in my humble judgment, absolutely unnecessary and may lead to some amount of quibbling. I know my fears are justified by some leading cases on this point. There are some very authoritative rulings to the effect that general words at the end of a list do not enlarge the powers already given or to supply the gaps which are definitely left in the body of the enumerated list. That is a well-known law of interpretation. But I believe probably that I am submitting my arguments to the Honourable Dr. Ambedkar without any effect, because he has not heard me and was engaged in conversation.

Mr. President: There is then Mr. Kamath's amendment, No. 184.

Shri H. V. Kamath: Sir, I move:

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I, the words 'and crimes' be deleted."

I am not sure, Sir, in my own mind as to whether crimes of all types should be within the exclusive jurisdiction of the Union Government and not also concurrently with the State Governments. As regards high seas there is no doubt on that point, because shipping, navigation and allied subjects are within the purview of the Union Government.

[Shri H. V. Kamath]

The House is very well aware that many States and provinces have made considerable headway in civil aviation. Most of the provinces have now flying clubs and some of the provinces have planes of their own for their Ministers. Facts reported in the press recently—not in our country, but in other countries like America and Europe—have brought to light different types of crimes committed when a plane was in mid-air. There has been *mar peet* inside a plane; there have been scuffles for money, or rum or liquor. Suppose, for instance, one of the provincial or State planes, or the plane of a flying club is up in the air and some sort of offence is committed. Or, consider, for instance, a pilot who may be drunk tries to jump out of the plane, either with parachute or without it; then he is certainly attempting to commit suicide and putting the lives of people inside it into danger. In such contingencies should we leave these matters solely to the exclusive jurisdiction of the Union Government? Should we not make such matters concurrent between the Union and the State Governments and confer power upon the States also to make rules or regulations, or even to legislate in matters of this kind?

I feel, that this matter needs some attention because of the recent developments in civil aviation.

The Honourable Dr. B. R. Ambedkar: Sir, listening to what my honourable Friend Mr. Naziruddin Ahmad said, I am afraid I have again to say that he has not got a very clear notion of what this entry 22 proposes to do.

Mr. Naziruddin Ahmad: The difficulty was that Dr. Ambedkar was engaged in conversation and did not hear me.

The Honourable Dr. B. R. Ambedkar: I was no doubt engaged in conversation; but I was quite avadhan to what he was saying.

My Friend first posed the question as to why we should use the term "piracy and crime" in plural. Well, the other way in which we can use piracy and crime would be in collective terms. I think in matters of this sort, where criminal legislation is provided for, it is much better not to use the word in collective form. He cited some examples, but he forgets the fact that in some cases the generic use of the term is quite sufficient; in other cases it is not sufficient. The Drafting Committee, therefore, has deliberately used the word "piracies and crimes" in plural because it is appropriate in the context in which it is used.

My Friend Mr. Naziruddin Ahmad said as a second count against this entry that there ought to be a semi-colon after 'Piracies'. Now, that, I think, would distort the meaning and the purport of item 22. Supposing we had a semi-colon after 'piracies', 'piracies' in item 22 would be dissociated from the rest of the entry. Now, if piracies are dissociated from the rest of the entries, it would mean that the Centre would have the right to legislate on all piracies, including piracies in inland rivers also. It is not the intention of this entry to give to the Central Legislature the power to legislate on piracies of all sorts. The words "committed on high seas or in the air" are words which not only qualify the word "crime" but they are also intended to qualify the word "piracy".

Then, the third count of my Friend was that we should omit the words "on land, on high seas and in the air" after the words "offences against the law of nations". That would not make it clear that the second entry is an all-pervasive entry and gives the power contrary to the first part of the entry to the Central Legislature to deal with offences against the law of nations, not merely on the high seas and in the air but also on land. In other words, the States

will have no kind of power so far as the second part of the entry is concerned. I, therefore, submit that the entry as proposed carries the intention of the draftsman and no amendment is necessary.

Mr. Naziruddin Ahmad: The honourable Member has not heard me. What about offences committed against the law of nations, which is neither on land, nor on high seas, nor in the air, but in the low seas?

The Honourable Dr. B. R. Ambedkar: It can only be in his imagination, it cannot be anywhere else.

Sardar Hukam Singh: (East Punjab : Sikh) : If piracies are not dissociated from the remaining items, then would these words 'in the air' also qualify the word 'piracy'?

The Honourable Dr. B. R. Ambedkar: There may be piracies in the air also.

Mr. Naziruddin Ahmad: Piracies are always on water, never on land or in the air.

Mr. President: I will now put the amendments to vote.

Mr. Naziruddin Ahmad: I would like only the last one to be put to vote.

Mr. President: The question is :

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I, the words 'committed on land or the high seas or in the air' be deleted"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I, the words 'and crimes' be deleted."

The amendment was negatived.

Mr. President: The question is :

"That for entry 22 of List I, the following entry be substituted :—

"22. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air."

The amendment was adopted.

Entry 22, as amended was added to the Union List.

Entry 23

Entry 23 was added to the Union List.

Entry 24

Entry 24 was added to the Union List.

Entry 25

Entry 25 was added to the Union List.

Entry 26

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for entry 26 of List I the following be substituted :—

'26. Import or export across customs frontiers; definition of customs frontiers.' "

This is just a re-arrangement of the original entry.

Mr. Naziruddin Ahmad: Sir, I move :

"That in amendment No. 9 of List I (Sixth Week), for the proposed entry 26 of List I, the following be substituted :—

'26. Customs frontiers; import and export across customs frontiers.' "

I fully admit that this is more or less of a drafting nature and therefore I should explain the reasons which induced me to suggest this amendment and then leave it to the Drafting Committee for final consideration. The entry as moved by Dr. Ambedkar says "import or export across customs frontiers". I fail to see the real purport of the word "or". Are the subjects "imports" and "exports" alternative? Should it be import or export, or should it be import and export? The form in which it is moved makes the entry "either import or export". It would seem from the alternative way of expression that if the Union will have "import" it cannot have "export" and *vice versa*. I do not think that this contingency was intentional but it is a drafting error which should be corrected.

Dr. Ambedkar's amendment puts it as "definition of customs frontiers". I think the expression "Customs frontiers" would include the entire subject of customs frontiers and necessarily implies the power to define customs frontiers. You cannot have jurisdiction to pass laws over customs frontiers without having jurisdiction to define customs frontiers. The very fact that customs frontiers is within the cognisance of the Union legislature also empowers it to define it and it is absolutely unnecessary to expand it further. The word "and" in "import and export" in my amendment is most important. As I have said already this is more or less of a drafting nature and therefore I would leave it to the Drafting Committee to deal with it without having my motion put to the House.

The Honourable Dr. B. R. Ambedkar: Sir, I am content with clarity and I do not wish to run after elegance.

Mr. President: The question is :

"That for entry 26 of List I the following be substituted :—

'26. Import or export across customs frontiers; definition of customs frontiers.' "

The amendment was adopted.

Entry 26, as amended, was added to the Union List.

New Entry 26-*A*

Mr. President: The honourable Member's (Mr. Shibban Lal Saksena) amendment No. 185 is already covered by one of the articles we have passed (271-A). We have already passed the chapter dealing with ownership of property. That gives the right to the legislature to deal with the subject.

Prof. Shibban Lal Saksena: I want that the power to legislate on the subject should be given only to the Union legislature and not to the States.

Mr. President: It will come under entry 42 which will cover that.

Prof. Shibban Lal Saksena: Will it exclude the power of the State?

Mr. President: Oh, yes. All properties of the Union are covered by entry 42. I do not think the amendment is necessary at all.

Prof. Shibban Lal Saksena: Sir, there have been cases in the Supreme Court of America on this subject and I would like it to be clearly stated. I would therefore like to move my amendment. Sir, I move:

"That after entry 26 of List I, the following new entry be added:—

'26-A. Ownership of and dominion over the lands, minerals, and other things of value underlying the ocean seaward of the ordinary low watermark on the coast exceeding three nautical miles.'"

I am aware that in the Constiution we are taking over these things but I do want that it should be made absolutely clear. I would refer to one important case recently decided by the Supreme Court of America on June 23rd, 1947. The case was United States *vs.* California. In that case, they had found some very valuable quantities of oil and gas underneath the land near California. The case went to Supreme Court and although the majority of the Court were in favour of the United States, two judges, Justices Reed and Frankfurter were against it. I think it is a very important thing that this right of the Union should be absolutely above suspicion. I would quote a paragraph from that judgment:

> "The very oil about which the State and Nation here contend might well become the subject of international dispute and settlement. The ocean, even its three-mile belt in this of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual State, so if wars come, they must be fought by the nation. The State is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks. Conceding that the State has been authorized to exercise local police power functions in the part of the marginal belt within its declared boundaries, these do not detract from the Federal Government's paramount rights in and power over this area. Consequently, we are not persuaded to transplant the Pollard rule of ownership as an incident of State sovereignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of national concern."

This is from the judgment of the U.S. Supreme Court, who laid down that the property underneath the ocean belongs to the Federal State. If this is mentioned specifically in the Union List, then there is no likelihood of any future dispute arising in regard to any such minerals or other wealth which may be found in the coast underneath the land. I, therefore, suggest that if this entry is added, it will make the whole thing very clear.

The Honourable Dr. B. R. Ambedkar: This matter is already covered, if I may say so, by article 271A. My difficulty is: my Friend Prof. Shibban Lal's amendment speaks of ownership. Now, in all these legislative lists, we only deal with power to make law, not power to appropriate. That is a matter which is regulated by another law, and not by legislative entries. I therefore cannot accept it.

Mr. President: He has referred to a judgment of the Supreme Court of the United States, but I think that is based on the absence of something like article 271A of our Constitution.

The Honourable Dr. B. R. Ambedkar: We discovered that there was no entry and this was therefore a matter of doubt and in order to clear that doubt we put in 271A. It is practically a verbatim reproduction of Mr. Shibban Lal's amendment.

Mr. President: So I shall put Mr. Shibban Lal's amendment. The question is:

"That after entry 26 of List I, the following new entry be added —

'26-A. Ownership of and dominion over the lands, minerals, and other things of value underlying the ocean seaward of the ordinary low watermark on the coast exceeding three nautical miles.'"

The motion was negatived.

Entry 27

Entry 27 was added to the Union List.

Entry 28

Mr. President: Then we come to entry 28. There is an amendment by Mr. Naziruddin Ahmad No. 158.

Mr. Naziruddin Ahmad: Not moving, Sir.

Entry 28 was added to the Union List.

Entry 29

Mr. President: Now we come to entry 29. There is an amendment by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Not moving, Sir.

Entry 29 was added to the Union List.

Entry 30

Mr. President: There are no amendments to entry 30.

Entry 30 was added to the Union List.

Entry 31

Mr. President: I find there are some amendments to entry 31.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 31 of List I, the following entry be substituted:

'31. Highways declared to be national highways by or under law made by Parliament.'"

It is just transposition of words to make the matter clear.

Mr. President: There is notice of an amendment to the original entry by Mr. Karimuddin, but that is not to be moved. There is no other amendment. So I put this entry No. 31 as moved by Dr. Ambedkar.

The question is:

"That entry 31, as amended, stand part of List I"

The motion was adopted.

Entry 31, as amended, was added to the Union List.

Entry 32

Mr. President: There is an amendment to entry 32, but that is only for deletion.

Entry 32 was added to the Union List.

Entries 33 *and* 34

Entries 33 and 34 were added to the Union List.

Entry 35

Mr. President: There is an amendment to entry 35 by Mr. Santhanam.

The Honourable Shri K. Santhanam: (Madras: General): Not moving, Sir.

Entry 35 was added to the Union List.

Entry 36

Entry 36 was added to the Union List.

Entry 37

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in amendment 12 of List I, in entry 37, for the words 'by air or by sea' the words 'by railway, by sea or by air' be substituted."

This is just caused by an omission.

Dr. P. S. Deshmukh: Sir, I beg to move:

"That in amendment No. 12 of List I (Sixth Week), in entry 37 of List I for the words 'by railway, by sea or by air' (proposed to be substituted), the words 'by land, sea or air' be substituted."

My reason is quite plain. The present change introduced according to the amendment moved by Dr. Ambedkar is for the addition of the words 'by railway'. I do not see any reason why the change should be so restricted. If the transport of goods and passengers by railways have to be brought within the jurisdiction of the Union Government, why not we use the term 'by land'? If this is not done, the carriage of goods and passengers on the national highways will not come within the jurisdiction of the Union Government. If there is any particular reason why this should not be made applicable to passengers moved by roads, I would not press my amendment. I do not think so because although road transport falls within State jurisdiction exclusively inter-State road-transport cannot. I would like therefore to know why the amendment should be confined to railway traffic only and should extend to traffic on roads also?

Shri R. K. Sidhva: What about buses run by provincial Governments?

Mr. President: They all come under your amendment.

Dr. P. S. Deshmukh: Bus transport in the States will be excluded. It will apply to inter-State traffic only.

Shri R. K. Sidhva: This could be applied to them.

Mr. President: This could be applied to the carriage of passengers by air, by sea or by railway.

Dr. P. S. Deshmukh: If goods and passengers carried by railway are to be placed under the Union Government according to my amendment it should include also goods and passengers carried by road, but only where the movement covers more than one State. The States having been given exclusive jurisdiction within their territories will not be affected.

Mr. President: The entry does not cover only inter-State traffic. It may be within one State, but if the transport is by railway it will be within the cognisance of the Central legislature. If you put down 'by land', it will bring in the ekka, the tongas and even the bullock-carts.

Dr. P. S. Deshmukh: I intend my amendment to be limited to traffic covering more than one State only.

Mr. President: It is not limited like that here.

Dr. P. S. Deshmukh: That was my intention. If it covers more than one State, it will be necessary for the Union to have this jurisdiction.

Mr. President: The next amendment stands in the name of Mr. Kamath to substitute the word 'rail' for the word 'railway'. Is a speech necessary for moving this amendment?

Shri H. V. Kamath: I shall leave it to the cumulative wisdom of the Drafting Committee which I am sure is abundant. My knowledge of English language, though very meagre, impels me to say that the expression 'carriage by railway' is not quite correct and opposite. We usually say 'carriage by rail' and not by 'railway'. Therefore I just formally move this amendment, *viz.*,

"That in amendment No. 12 of List I (Sixth Week), in entry 37 of List I, for the word 'railway' (proposed to be substituted), the word 'rail' be substituted."

The Honourable Dr. B. R. Ambedkar: Sir, I am afraid I cannot accept the amendment moved by Dr. Deshmukh, because if we include it, it will become a central subject.

Dr. P. S. Deshmukh: If it is between two provinces?

The Honourable Dr. B. R. Ambedkar: .That will come under inter-State traffic.

Dr. P. S. Deshmukh: I am prepared to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn

(Shri H. V. Kamath did not press his amendment.)

Mr. President: The question is:

"That in entry 37 of List I, for the words 'by air or by sea' the words 'by railway, by sea or by air' be substituted."

The amendment was adopted.

Entry 37, as amended, was added to the Union List.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 38 of List I, the following entry be substituted :—

'38. Railways'"

I think this change requires some explanation. If honourable Members will turn to entry 38 as it stands in the Draft Constitution, they will notice in the first place the distinction made between Union railways and minor railways. The disinction was necessary because, in respect of the Union railways, the Centre would have the authority to legislate with regard to safety, minimum and maximum rates and fares, etc. The responsibility of actual administration as carriers of goods and passengers, in respect of minor railways, was limited. In other words, so far as maximum and minimum rates and fares, station and service terminal charges etc. are concerned, they were taken out of the jurisdiction of the Central legislature. It is felt that it is desirable that, as the railway service is one uniform service throughout the territory of India, there should be a single legislative authority to deal with railways in all matters on a uniform basis. Consequently the entry in the First Part is now extended to all railways including minor railways. Again, as legislation is intended to be uniform, it is felt that it is unnecessary to retain the second part of the entry which makes a distinction between Union railways and minor railways.

I might also say that this entry is purely a legislative entry. It is not an entry which deals with ownership. That means that even if the Centre had power to regulate minimum and maximum fares and rates and terminal charges, every State which owned a minor railway, whether it is a State in Part I or Part III, if it was the owner of the particular railway, would be entitled to receive and keep the proceeds of the rates and fares as may be fixed by the Centre. It does not affect the rights of ownership at all. They remain as they are. If the Centre wishes to acquire any minor railway now owned by any State either in Part I or Part III the Union will have to acquire it in the ordinary way. Therefore this is purely a legislative entry. The object of the amendment is to have a uniform law with respect to all matters dealing with railways and it does not affect any question of ownership at all.

The question of tramways is however separated from the question of railways. We propose in the Interpretation Clause of define railways in such a manner as to exclude tramways so that the States in Parts I and III will retain the power to regulate tramways in all respects as though they are not covered by 'railways'.

Shri R. K. Sidhva : There is a Minor Railways Act which is worked by the Provincial Government. May I know whether it is intended to repeal that Act and bring it into the Union ?

The Honourable Dr. B. R. Ambedkar : Yes, the Union will have power to abrogate that Act, make any other law or retain it if it so feels. It is only an enabling entry which will enable the Centre either to make different laws regulating the major and minor railways or make one single law regulating all railways irrespective of whether they are a major railways or minor railways.

Shri R. K. Sidhva : Then the minor railways will be governed by the Minor Railways Act ?

The Honourable Dr. B. R. Ambedkar : Yes, the existing law will continue until Parliament changes it. This is merely to give power to the Parliament to change it.

Mr. President : I would now put entry 38 to the vote. I am told there is an amendment which I have received this morning after nine. I am afraid I cannot accept it. The question is :

[Mr. President]

"That for entry 38 of List I, the following entry be substituted :—

'38. Railways.' "

The amendment was adopted.

Entry 38, as amended, was added to the Union List.

Entry 39

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 39 of List I, the following entry be substituted :—

'39. The institutions known on the date of commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.' "

The substance of the entry is the same as it exists at present, except for a few verbal changes which have taken place in the nomenclature of the institutions subsequent to the 15th August 1947.

Shri B. Das : (Orissa : General) : When the Constitution comes into force, will the name "Imperial War Museum" be changed to "National War Museum" as "Imperial Library" has been changed to "National Library" ?

The Honourable Dr. B. R. Ambedkar : I understand that the "Imperial Library" has been changed to "National Library", but the Imperial War Museum retains its existing name. These descriptions are intended merely to identify the institutions, whenever Parliament wishes to make any law about them.

Shri B. Das : I want to know whether when the Constitution comes into force and the Adaptations are made, the word "Imperial" will go. I expect words like "His Majesty's Government", "The Crown" etc., will vanish.

The Honourable Dr. B. R. Ambedkar : Adaptations will apply to laws and not to names.

Mr. President : This entry gives the right to Central Legislature to change the names.

There is an amendment to this by Mr. Naziruddin Ahmad, No. 160.

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move :

"That in amendment No. 14 of List I (Sixth Week), in the proposed entry 39 of List I—

(i) for the words 'on the date of commencement' the words 'at the commencement' be substituted;

(ii) for the words 'other institution' the words 'other similar institution' be substituted; and

(iii) for the words 'by Parliament' the words 'by or under any law made by Parliament' be substituted."

With regard to the first part of my amendment, it is of a drafting nature. Entry 39 as it is at present refers to the "date of commencement of the Constitution". I submit the "commencement" of the Constitution means the date on which the Constitution comes into effect. We have used this expression in numerous places in the Draft Constitution in the articles which have been accepted by the House. We have described the date of commencement of the Constitution as the "commencement of the Constitution". The words

"date of" would be not only unnecessary but would not be in keeping with the nomenclature and the phraseology used in other articles which have been accepted by the House. I submit that there should be some amount of uniformity, and instead of "on the date of commencement" of the Constitution, we should have "at the commencement" of the Constitution which certainly means the date. Commencement always starts on a date and it begins immediately after twelve midnight of the previous day. This is of a drafting character and I merely draw the attention of the House and of the Drafting Committee to this so that they can make the necessary change, if they so choose, in the interest of uniformity.

The second part of my amendment is important. The item moved by Dr. Ambedkar runs thus: "The Institutions known as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the Government of India". I want to change the last part to read as "any other similar institution" financed by the Government of India. Sir, here we are dealing with a particular class of institutions. The National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, they all belong to a class, and if we do not restrict the last part of the entry to any other "similar" institution, we would be unconsciously including many other institutions of an entirely dissimilar character. This will enable Parliament to cover under this entry any other institution financed wholly or in part by the Government of India, apart from its character, apart from its being related to cognate subjects specifically included herein. I submit, therefore, that in order to clarify the meaning of this entry and restrict it to similar class of institutions, we should definitely say "any other similar institution". There is again the rule of interpretation to which I referred a little while ago that if we specify certain items and at the end we include a general expression, the general expression will be controlled by the items mentioned. Courts will be inclined to declare that "any other institution" will enlarge the scope of the entry beyond the class or character of the institutions specifically mentioned. This is known to every lawyers but may not be known to every non-lawyer. That is why I say that though the meaning should be clear, it is far better to be on the safe side. That will certainly maintain the integrity of the entry and also make it sufficiently elastic to include similar institutions. But if the expression "any other institution" is intended to include other classes of institutions, then I think it is vague and it should be definitely be brought in by means of an independent entry. So this amendment raises a question somewhat of principle.

The other part, the last part of my amendment is for the words "by Parliament" the words "by or under any law made by Parliament" be substituted. In this connection I would only refer to amendment No. 10 introduced by Dr. Ambedkar, the insertion of a substituted entry No. 31. It reads:—"Highways declared to be national highways by or under law made by Parliament." There is a distinction between a declaration made by Parliament and a declaration under any law made by Parliament, and in the one case Parliament makes the declaration on the floor of the House but in the other case Parliament empowers others to make the declaration and declarations are made under the law. In order to keep to the phraseology of the amended entry No. 31, I have also attempted to introduce "or under law made by Parliament". It will make it more elastic and Parliament need not be required to make the declaration directly but will permit the declaration being made by some other authority empowered in this behalf. I have seen in many other entries the expression "by or under law made by Parliament". So I wanted to make it uniform so as to make it more elastic. I submit this is more or less of a drafting nature

[Mr. Naziruddin Ahmad]

and may be left to the Drafting Committee but with regard to the second portion of my amendment, namely, "similar institution", I think it may have some important consequences. So I will ask the House to consider the second part of the amendment.

Prof. Shibban Lal Saksena: Sir, in this entry we have named a few institutions and we have said that they shall be in the Union List. The institutions which have been mentioned are such as the Imperial War Museum, the Victoria Memorial, etc., and in the end we have also got a clause which says: "any other institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance". If it is only one institution of its kind, there would be no objection. But so long as we put in our Constitution the words "Imeprial War Museum" I think that it is not worthy of Free India. In our Constitution also we are trying to perpetuate things which remind us of that imperial power which kept us under bondage so long. I think, Sir, that any trace of that imperialism or a reminder of that must not find a place in our Constitution. I, therefore, think that we must only mention that there should be some institutions and it should be left for the Parliament to define the institutions and in the meantime if you put this in the Constitution, it will be difficult for us to change it afterwards. I, therefore, think that it will be better that these things should be left for the Parliament to decide instead of putting them in this Constitution.

The Honourable Dr. B. R. Ambedkar: I do not think that much explanation is necessary as to why I cannot accept the amendment of Mr. Naziruddin Ahmad. As you will see the entry really falls into two parts. In the first part it deals with specific institutions which are enumerated therein. In the second part it deals with institutions which are either financed by the Government of India, wholly or in part. Therefore, it is not possible to use the words "similar" because that would circumscribe the object of the entry, which is to give the Central Government power to take over any institution which is either financed by itself or financed partly by itself and partly by the Provinces.

Mr. President: The question is:

"That in amendment No. 14 of List I (Sixth Week), in the proposed entry 39 of List I—

(i) for the words 'on the date of commencement' the words 'at the commencement' be substituted;

(This was not pressed by the Mover.)

(ii) for the words 'other institution' the words 'other similar institution' be substituted; and

The amendment was negatived.

(iii) for the words 'by Parliament' the words 'by or under any law made by Parliament' be substituted."

(This was not pressed by the Mover.)

Mr. President: The question is:

"That for entry 39 of List I, the following entry be substituted:—

'39. The institutions known on the date of commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the Government of India, wholly or in part and declared by Parliament by law to be an institution of national importance.'"

The amendment was adopted.

Entry 39, as amended, was added to the Union List.

Entry 40

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 40 of List I, the following entry be substituted :—

'40. The institutions known on the date of commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University, and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance.' "

I submit the word "university" is a mistake and it ought to be "institution" and I hope you will permit me to substitute it.

There is no fundamental change in this except that the latter part permits also Parliament to take over any institution which it thinks is of national importance.

Dr. P. S. Deshmukh : May I suggest that 40A may also be taken together? It is part and parcel of the same thing.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 40 of List I, the following new entry be inserted —

"40A. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance."

Mr. President : There are some amendments to entry No. 40. Item 162 stands in the name of Mr. Nazimuddin Ahmad and item 1 thereof substituting "at the commencement" for "on the date of commencement" need not be moved.

Mr. Nazimuddin Ahmad : Sir, I beg to move :

"That in amendment No. 15 of List I (Sixth Week) in the proposed entry 40 of List I,

"the words 'and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance' be deleted.' "

I have slightly altered my amendment to suit the change introduced by Dr. Ambedkar in his own amendment. I submit that Dr. Ambedkar's amendment would unduly enlarge the jurisdiction of the Centre and many things which would be otherwise cognizable by the Provinces would now, by virtue of the words which I seek to delete, be included within the jurisdiction of the Centre. The Benares Hindu University and the Aligarh Muslim University have been regarded from their very inception as institutions of a national character and importance and therefore they have been rightly regarded so far as national institutions and they have been rightly placed under the jurisdiction of the Union. But, Sir, the wording "any other institution declared by Parliament by law to be an institution of national importance", would give undue latitude to the Centre. By virtue of these words, the Union Government will be enabled at any time to acquire jurisdiction over one institution or another of a similar kind. In fact, from a University, a College or school down to a small village school, anything may be claimed as within the jurisdiction of the Centre. While one can appreciate the desire of the Centre to express a carnivorous instinct in this respect, trying to eat everything good or bad, whether belonging to somebody else or belonging to it, I should think that the Centre is getting seriously encumbered with a large number of subjects. The effect of that would be that the Provinces or the States as they are now called will feel less and less responsibility. They will have less and less money and so they will have less and less responsibility. They will develop an irresponsibility and a sense of grievance against the Centre. The result would be that for everything, the Provinces will throw the responsibility upon the Centre.

While there is a natural desire on the part of the Centre to be the guardian of the Provinces who are regarded as not having attained the age of majority,

[Mr. Naziruddin Ahmad]

the Centre is taking an undue responsibility which would make it cumbersome and will highly complicate its machinery and induce it to go into matters of details of administration which should be left to the Provinces. After all the Provinces should be allowed to meddle with their own affairs, to make mistakes and learn from experience. This is the only way that Democracy grows. It is not by the extension of your paternal jurisdiction over the Provinces that you can make them learn democracy by experience. In fact, in this respect the present Constitution as it is now being shaped goes far beyond the acquisitive tendency of even the British Government.

I would point out the dangers that may arise out of these words. With regard to the Delhi university, it may be supposed that the Centre should have some amount of jurisdiction. But, the Centre has already jurisdiction over the matter. It is a University in an area which is centrally administered. Therefore, so long as the Centre has jurisdiction to maintain it as a centrally administered area, Delhi University will certainly continue to be within its jurisdiction. But we are looking forward to a day when the Delhi University or Delhi itself may be made over to a Corporation or other authority and if it is desired to make Delhi a separate Province, then Delhi University will be on the shoulders of the State and not on the Union.

Then, again, we say, "any other institution declared by Parliament by law to be an institution of national importance." Any other institution may mean an institution which is not even educational. Supposing it to mean any other educational institution, it would have the effect of unduly enlarging the jurisdiction of the Union, and curtailing the jurisdiction of the Provinces. This tendency should stop. After all the House took serious decisions in this House before the Draft Constitution was prepared. There were resolutions on individual topics and the Draft Constitution was prepared in accordance with these resolutions. Those decisions should be respected; but we find those decisions have been flouted or circumvented without any justification, without telling the House that our own resolutions were being violated and in what respect and to what extent. In one case, we have found, Sardar Patel thought, rightly thought, that the decision of the House should be changed. A strong and powerful man as he is, he felt the necessity of taking the House into confidence; he placed his cards fully on the table and got the decision altered in a formal way. The House cheerfully accepted it. So far as the present amendments are concerned, there are wholesale changes of the decisions which we have arrived at after careful consideration in this House, which are recorded in our proceedings. They are being changed without adequate reasons being assigned and without allowing the House an opportunity to consider them. This tendency is a thing to which I have referred on previous occasions and I oppose this tendency. I hope the House will carefully consider the implications of this tendency and the tremendous burden of responsibility which the Centre is taking. I believe, if there was an enemy of the Central Government, he would do the very thing that we are doing to discredit it in the end. This is the best and the most effective way of encumbering it and making unpopular any future Central administration. I think we are doing something which only our enemies would like us to do. This tendency should stop. The Drafting Committee or the men behind it want to eat more, the more they are fed.

Sardar Hukam Singh: I am not moving my amendment as it is covered.

Shri Brajeshwar Prasad: Sir, I move :

"That in amendment No. 3529 of the List of amendments, for the proposed entry 40 of List I, the following be substituted :—

"40. Education."

May I move the other amendment, Sir ?

Mr. President: Yes.

Shri Brajeshwar Prasad : Sir, I move :

"That in amendment No. 3529 of the List of Amendments, for the proposed entry 40 of List I, the following be substituted :—

"40. All the Universities, advanced scientific research institutes and public and private educational and cultural organisations in the Indian Union shall be subject to the supervision, superintendence direction and control of the Union Government.

I consider this subject to be of vital national importance. The only way that India can rise rapidly in the councils of the nations is by providing education to the illiterate masses of this country. No form of Government can be laid on a secure basis unless the people are educated. Especially in a Parliamentary form of Government, unless the people are educated, Parliamentary democracy cannot function. The danger that, by vesting a large number of powers in the hands of the Centre, the whole machinery of administration will break down seems to me clearly an ephemeral one. Till recently India was governed on a unitary basis and the British people ran the administration on scientific, sound and efficient lines. There is no reason why there should be a change from a unitary to a federal form of Government. But, at the present moment, I am not going to enter into that discussion. My object is of a very limited character. I want education to be placed in the Central list. Power, Sir, must have some relation to the economic and financial resources of the provincial Governments. The financial implications of the powers that are going to be vested in the hands of the Provincial Governments have not been ascertained. I am quite clear in my own mind that they are not competent, they have not got the economic resources to fulfil or discharge even one-tenth of the powers that are going to be vested in their hands.

Sir, I do not like to make a long speech on this subject but I would like to urge another point before I conclude. There are linguistic minorities living in different provinces and the provincial governments have not got the resources even to impart education to the permanent people living in their regions. To ask them to impart education in the mother-tongue of those linguistic minorities who have come from different provinces is to ask them to perform an impossible task. Therefore, for the sake of uniformity, for the sake of the rapid development of our education I am definitely of opinion that this subject should be vested in the hands of the Centre.

Shri H. V. Kamath : Mr. President, may I hope that you will extend to me the same latitude that you have extended to Dr. Ambedkar to permit me to change the word 'university' to 'institution' ?

Mr. President : Yes.

Shri H. V. Kamath : Sir, I move :

"That in amendment No. 15 of List I (Sixth Week) in the proposed entry 40 of List I, the words 'and any other institution declared by Parliament by law to be an institution of national importance' be deleted."

Sir, I would like to move 191 also as Dr. Ambedkar has moved 40A.

Mr. President : Yes.

Shri H. V. Kamath : I move :

"That in amendment No. 19 of List I (Sixth Week), in the proposed new entry 40A of List I, after the word 'education' the words 'and research' be inserted."

Taking my first amendment first, I feel that the acceptance of the amendment moved by Dr. Ambedkar, referring to an institution which may be declared by Parliament by law to be one of national importance,—I am not referring to Delhi University at all but the second part of the amendment—is fraught with dangerous consequences. I hope the House will pause to consider whether such a sweeping provision for bringing within the purview of the Central Government any institution—which of course Parliament may declare by law

[Shri H. V. Kamath]

to be of national importance—is at all necessary. The House will see that in the previous Entry No. 39 which we have passed we have given power to the Union to legislate about any institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance. This entry goes further and gives power to Union to legislate in regard to institutions, whether financed wholly or in part or not at all by Government. I have in mind certain institutions in this country which are doing very good work, wholly privately run but run on efficient lines without any Government interference. The amendment just now moved by Dr. Ambedkar shows that the grabbing instinct of the Drafting Committee is growing by leaps and bounds; and if this passes muster, if this is accepted by the House I am sure the day is not far distant when the acquisitive instinct of the Union Government will run riot and the Union will try to step in where perhaps angels fear to tread. This is a possibility, not merely possibility but probability which, I do not desire, should eventuate in our country.

As regards the two Universities mentioned in this entry, the Benares Hindu University and the Aligarh Muslim University—of course, either, it may be true that they are of national importance or because they have the communal tag attached to them, Government to show their impartial non-communal nature might legislate in regard to these Universities. As regards Delhi too because the status of Delhi is not yet defined it is perhaps desirable that it should be within the purview of the Union. But to specify here very vaguely that any other institutions may be also taken over by the Union, legislated upon by the Union—though of course the saving proviso is there that Parliament should declare by law those institutions to be of national importance—but, Sir, in modern times Parliaments are becoming more and more very pliant tools in the hands of the Executive; and if a Government takes into its head to take over or legislate or administer any particular institution not financed by Government at all, Parliament according to the dictates of the Executive may declare that to be one of national importance, and then the Government could take it over and administer it as it likes. I have in mind certain institutions—to take only one instance—several Yogic Institutes in this country; one very well-known Yogic Institute is Kaivalyadhama in Lonavala, in Bombay. Some Government of the future may smell a rat where there is none. Of course our present Government is well disposed towards this, but there is no guarantee that the present Government will continue for many long years to come. Suppose a Government comes into power, and it is hostile to our ancient culture, especially Yogic and Spiritual matters, that Government may get a very obedient Parliament to declare that institution as of national importance and take it over and ultimately suppress it. The House must be well aware that Herr Hitler, soon after he became the Fuhrer and Reichskanzler of Germany, closed down certain Natur Kultur, Nature Culture institutions because.....

Dr. P. S. Deshmukh: He did not act on any list.

Shri H. V. Kamath: We have the facade of democracy, which is worse. Hitler found perhaps through his Gestapo that people assembling in those Natur Kultur institutions were undesirables and were planning and plotting against the Government and so he closed them down. Here we are proceeding in another way which is more vicious than that one. At least that was a straightforward course. Here we are enabling the Union to give it a colour of propriety and legality.

Mr. President: I do not think the matter requires much discussion.

Shri H. V. Kamath: I will close in one minute. I bow to your ruling. I would crave your indulgence for two or three more minutes only, Sir, not

longer. But if you think otherwise, I am at your service and your disposal.

As I said, if you have this entry, you will give power to the Union Government to take over any institution, firstly which is financed wholly or partly or not all by Government, and secondly, which the Government may think is contrary to their interests, for the time being. I think entry 39 as already passed is quite sufficient to cover such institutions as may be financed wholly or in part by the Government of India. There are other institutions, and these may be left free to act in any manner that is not contrary to the national interest.

Sir, one word more about the universities. In list II of the Schedule, there is item 18—"Education including Universities other than those specified in entry 40 of List I." This, of course, is to be modified in the new draft which will be brought before the House shortly. But I do feel that the Union has taken more power than is necessary, more power than is desirable with regard to these matters. Personally I hold that that university is the best which is the least contaminated by governmental interference. But in modern times, of course, education, including higher education suffers from such interference. I am not against primary and secondary education being regulated by government. But the true university is, to my mind, a centre of learning and it must be the least touched, if not completely untouched by governmental interference. But I know in these days there is dragooning and regimentation not only in the primary schools and the secondary schools, but also in the higher stages of education, in the universities, though it is contrary to the true spirit of freedom, of learning which has been so aptly summarised in the Gita as—

नहि ज्ञानेन सदृशं पवित्रमिह विद्यते ।

"Na hi jnanena sadrisam

Pavitramiha Vidyate."

But the purity, Pavitrata, of Jnanam is being sought to be polluted by governmental interference at every step. I hope, Sir, that at least so far as the universities are concerned, apart from these three universities, we shall leave them to be regulated not overmuch by the State Governments concerned. But provision in this entry is a very sweeping provision as regards other institutions. It is a very pernicious provision, and I hope this House will not accept it, and that this House will pass the entry only with regard to these three universities, Benares, Aligarh and Delhi. I also hope that at no distant date the communal tag of the Benares and Aligarh universities will also disappear.

As regards the second amendment, No. 191, I do not know whether any provision has been made in this List for research of this type. There is some provision for research, but whether there is provision for scientific and technical research. I am not sure. If there is provision for research in the scientific and technical fields, I shall withdraw amendment No. 191. But if there is no such provision for research in scientific and technical fields, I should like to see this provision included in the entry 40A through my amendment No. 191

I move amendments Nos. 188 and 191 and commend them to the House.

Mr. President: Dr. Deshmukh, do you want to move your amendment?

Dr. P. S. Deshmukh: Yes, Sir. I move:

"That in amendment No. 15 of List I (Sixth Week), in the proposed entry 40 of Li I, after the words "any other university" the words "academy or institution" be inserted.'

And as a consequence to this, I would like to move my amendment No. 190-

"That amendment No. 19 of List I (Sixth Week), be deleted."

[Dr. P. S. Deshmukh]

My reasons for moving these amendments are quite simple. I was glad to find that the Honourable Dr. Ambedkar himself was of the opinion that the word "university" should be changed to "institution". But the amendment which I have proposed seeks to retain the word "university" also and add to it the words "academy or institution". And if these words are there, then there is no necessity for defining what kind of institutions will come under the purview of the Union, and the long and unnecessary entry No. 40A could be easily deleted. Institutions can include scientific institutions, technical institutions, research institutions, etc. There is no necessity whatsoever to particularise and to give all these details, as well as to refer to the fact whether they are financed by the Government or not. The entry will be quite comprehensive and will meet all the purposes that are in view, if these words are added. The word "university" also should be there. You might have seen, Sir, it was only this morning, that a suggestion was made by Dr. Jayakar that university education should be taken over by the Centre. One need not go so far as that. If there are universities of national importance or academies, it should be permissible for the Union to take them over.

My friend Mr. Naziruddin Ahmad and my Friend Mr. Kamath have gone far beyond what is contemplated here, and they have attributed motives which have no foundation. Mr. Kamath has smelt a rat where none exists. It does not give power to the Executive. I was rather surprised that they also do not trust the future Parliament. There need be no apprehensions. Everywhere in this schedule power is sought to be given, and authority sought to be conferred on the Parliament and there is therefore no room or justification for any apprehension of the executive acquiring power over the institutions. Nor will the Central Government be keen to acquire institutions. It will be the institutions that will be keen that the Centre should take them up. The whole thing is absolutely beside the point.

My amendments make the position clear, and if the Honourable Dr. Ambedkar will kindly listen a little more carefully, I am sure he will agree that they do away with the necessity for another item, and also the specification of the various kinds of institutions. On the other hand, even if you have the institution as specified in the entry No. 40A, even then you will not be able to bring art institutions within the provision of the entry. We have scientific and technical institutions, but we know art institutions are different from these and they will not be included. So if you have these three words that I have suggested, then the entry will be sufficiently comprehensive and that will serve the purpose far better. I hope the Honourable Dr. Ambedkar will at least once be reasonable enough to accept this amendment.

Mr. President: Mr. Naziruddin Ahmad has two amendments.

Mr. Naziruddin Ahmad: I am not moving them, Sir.

Mr. President: Then there are no more amendments.

Prof. Shibban Lal Saksena: Sir, I want to speak. I want to oppose it.

Mr. President: Very well; but please do not take more than three minutes.

Prof. Shibban Lal Saksena: Sir, the entry as it stands envisages central control over three universities. But I feel university education should be a central subject. This important subject has been debated all over the country and the Inter-University Board in our country has also discussed it, and it has come to the opinion that university education should be a central subject. So I feel we need not mention here these three universities only. In fact, this proposition that university education should be in the Union List has got a very large number of supporters. In fact, a large number of members of the universities themselves are in favour of it.

At present these universities are provincial subject and are under Provincial Governments. If there is coordination between these universities and some of them specialise in some branches of learning and others in other branches, it will lead to considerable advancement in the field of education and research and there will be economy in expenditure. I know that in Oxford and Cambridge, particular colleges specialise in particular subjects. If, therefore, all the Universities in the country are brought under the purview of the Centre, we can have planned education for the whole country. At present there is a lot of duplication, leading to waste. Centralisation will lead to better coordination and also to better control, resulting in greater national unity.

The Honourable Dr. B. R. Ambedkar: Sir, I find my honourable Friends, Mr. Naziruddin Ahmad and Dr. Deshmukh, running at cross-purposes. One wants to enlarge the scope of the article by adding the word "academy". The other wants to limit the scope of the article by dropping the word "Delhi University and any other institution declared by Parliament by law to be an institution of national interest".

So far as Dr. Deshmukh's amendment is concerned, it seems to me quite unnecessary to introduce the word "academy" because the word 'institution' is large enough to include both University and academy. Therefore, that is quite unnecessary.

With regard to the amendment of my honourable Friend Mr. Naziruddin Ahmad, Delhi University is as was pointed out by him already under the Central Legislature by virtue of the fact that the Delhi University is in a Commissioner's province, which is subject to the legislation of the Centre. Therefore, in introducing the words "Delhi University" we are really not departing from the existing state of affairs. With regard to the subsequent part of the entry relating to any other institution declared by law by Parliament, it seems to me, that it is desirable to retain those words, because there might be institutions which are of such importance from a cultural or from a national point of view and whose financial position may not be as sound as the position of any other institution and may require the help and assistance of the Centre. In view of that, I think the last part of the entry is necessary and I am not prepared to accept his amendment.

Now with regard to my honourable friend, Mr. Kamath, he wanted to introduce the words "research institution". He has forgotten, or probably his attention has not been drawn to my amendment dealing with entry. No. 57A which deals with research institutions. Of course, that entry is limited to coordination and maintenance of standards. Mr. Kamath has, perhaps, in mind agencies established by the provinces and which it may be desirable for the Centre to take over. It seems to me that it is no use overloading the Centre with every kind of institution. It would be enough if, as I said, the provisions contained in 57A were allowed to pass because that will give the Centre enough power to maintain by law coordination and the maintenance of standards for higher education in scientific and technical institutions. I think that ought to suffice for the present.

Mr. President: I will now put the amendments. The first is, amendments Nos. 16 and 17 of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: I ask for leave to withdraw both my amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: Next, I shall take up Mr. Naziruddin Ahmad's amendment No. 162.

[Mr. President]

The question is :

"That in amendment No. 15 of List I (Sixth Week), in the proposed entry 40 of List I,—

"the words "and the Delhi University and any other university declared by Parliament by law to be an institution of national importance" be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 15 of List I (Sixth Week), in the proposed entry 40 of List I, the words "and any other institution declared by Parliament by law to be an institution of national importance" be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 15 of List I (Sixth Week), in the proposed entry 40 of List I, after the words "any other university" the words "academy or institution" be inserted."

The amendment was negatived.

Mr. President : The question is :

"That for entry 40 of List I, the following entry be substituted :—

"40. The institutions known on the date of commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University, and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance."

The amendment was adopted.

Entry 40, as amended, was added to the Union List.

Mr. President : I shall now put the amendments to 40-A. There is an amendment (No. 191) by Mr. Kamath.

The question is :

"That in amendment No. 19 of List I (Sixth Week), in the proposed new entry 40A of List I, after the word "education" the words "and research" be inserted."

The amendment was negatived.

Mr. President : I now put entry 40A to vote.

The question is :

"That after entry 40 of List I, the following new entry be inserted :—

"40-A. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance."

The motion was adopted.

Entry 40A was added to the Union List.

(Amendment No. 18 relating to new entries 40A and 40B, and Amendments Nos. 3530, 3531, and 3532 were not moved.)

New Entry 40B

Pandit Thakur Das Bhargava : (East Punjab : General) : Sir, I would like this to be held over as I would like to consult my friends on this subject.

(The entry was held over.)

Entry 41

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in entry 41 of List I for the words "and Zoological" the words "Zoological and Anthropological" be substituted."

Shri H. V. Kamath : Sir, I move :

"That with reference to amendment No 20 of List I (Sixth Week), in entry 41 of List I, for the words "and Zoological" the words "Zoological, Anthropological and Ethnological" be substituted "

I am glad to see that this entry runs the whole gamut of life on our planet. Modern science has established that there is no such thing as inanimate matter at all. Every thing is animate : it might be occult or manifest life.

An Honourable Member : It is not modern science : it is very anicent science.

Shri H. V. Kamath : Our philosophy has held :

सर्वं खल्विदं ह्म । नेह नानाऽस्ति किंचन ।

Sarvam khalvidam Brahma.
Neha nanasti kinchana !

Modern science is coming to the same view, that every thing in the Universe has occult or manifest life. "Geological" refers to what is called in ordinary parlance inanimate matter—ordinary matter without life but of course even there life is occult. Then we come to botanical, plants where you have the first quivering of sensation and of life. Higher up is zoological, animals with life and in whom a rudimentary mind by way of instinct has developed. Dr. Ambedkar perhaps rather feels it below or derogatory to human dignity to include man also in the term "zoological". Zoology comprehends all animals and man has been described as a social, political or philosophical animal, but a higher animal all the same. Perhaps Dr. Ambedkar feels that man should be assigned a separate category. I do not know whether anthropology includes ethnology also. Some of us are aware that many years ago during the British regime certain surveys were conducted in this country called ethnological surveys which showed the ethnic distribution of population in India. Their results have been incorporated in various history books. I do not know whether the science of anthropology would include this as well. Anthropos means man and anthropology will mean the science of man. If I am assured by the wise men of the Drafting Committee that ethnology is comprehended in the term anthropology I should not like to press my amendment. Otherwise it is an important branch of human science and if there is any doubt on that point, whether it does or does not include ethnology, I would certainly like to press my amendment and commend it to the House for acceptance.

The Honourable Dr. B. R. Ambedkar : The word "anthropological" is very wide and would cover even "ethnology".

Shri R. K. Sidhva : Sir, I move :

"That in entry 41 in List I, the word "Geological" be deleted and the words "the Geological Surveys" be inserted."

My object in deleting the word "geological' from the Union List is that in the past the Centre has neglected this very important department of survey. The country is full of potential wealth and there are rich minerals but the Government of India have taken no pains or care to discover them or survey them. If the Government of India in the past had appointed a sufficient number of geologists to do the surveys in various parts of the country we would have

[Shri R. K. Sidhva]

enough of minerals for our own consumption, as also to spare a large quantity for export to other countries. Thus our country would have been richer and wealthier.

I find that in the Government of India there has been a practice prevailing that once in five years geologists are sent to the provinces and they make a survey for three months and then the next turn will come after another five years. If the geologist finds some mineral he does not know whether commercially it is useful or not. Perhaps because the Government of India has not a sufficient number of geologists or because of lack of efficiency in the department concerned this has been neglected. Many provincial governments have complained in the matter and they are prepared to appoint geologists if the subject is transferred to the provincial List. I beg the Drafting Committee to consider this matter. It is in the interest of the country and if the Government of India is not going to exploit our rich minerals it is better to leave it to the provinces who are considerably interested in the matter. I may state that wherever the geologists have gone they have found some rich minerals existing but no effort was made to develop them for commercial purposes. I, therefore, strongly plead that geology be removed from the Union List and transferred to the Provinces.

The Honourable Dr. B. R. Ambedkar: Sir, I am afraid my Friend Mr. Sidhva has drawn too much upon the attitude of neglect and indifference shown by the Central Government in the past towards geological surveys in India. I quite admit that hitherto this matter has been neglected by the Centre, but it does not follow from that that the provinces are going to take any more interest in geology than the Centre has taken hitherto.

First of all, this is a matter of very great magnitude involving a great deal of expense and I do not think that the provinces will be able to find the resources to develop the minerals which are to be found within their area. From that point of view I think there will be no advantage in transferring geology to the Concurrent List so as to give the provinces an opportunity to legislate about it.

The second difficulty I find in accepting his amendment is that we have in the Union List an entry stating that the mineral resources of India may be developed by the Centre. If Parliament were to make a law that the mineral development of the country shall be a central subject obviously there would be very great difficulty created in the way of Parliament executing that law or developing the mineral resources, if the provinces retained with themselves concurrent power of legislation. Therefore, my request to Mr. Sidhva is to allow the entry to remain as it is.

Mr. President: Then I put the amendments to vote. The first amendment moved by Mr. Kamath.....

Shri H. V. Kamath: As Dr. Ambedkar assures me that the word "anthropological" includes the word "ethnological", I accept his superior wisdom and won't press the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then Mr. Sidhva's amendment.....

Shri R. K. Sidhva: In view of the assurance given, I beg leave to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is :

That entry 41, as amended, stand part of List I.

The amendment was adopted.

Entry 41, as amended, was added to the Union List.

Entry 42

Mr. President: I do not find any amendments to entry 42.

Entry 42, was added to the Union List.

Entry 43

Mr. President: Now we take up entry 43. Dr. Ambedkar has to move an amendment.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 43 of List I, the following entry be substituted:

'43. Acquisition or requisitioning of property for the purposes of the Union'"

Members will see that the original entry as it stood had other words along with it, namely, the principles of compensation etc. Those words, it is proposed to put in a separate entry in the Concurrent List. So it is unnecessary to retain those words here. That entry will be entry 35 in the Concurrent List.

Shri Syamanandan Sahaya: (Bihar General): Sir, I want to make a suggestion.

Mr. President: Just wait a little. There is an amendment to be moved.

Shri Syamanandan Sahaya: I want to make it before the amendment is moved. This item on the list which is proposed by Dr. Ambedkar will have a deal to do with the language of article 24 and I suggest therefore that this item be held over till we have passed article 24. It may be said that in any case acquisition and requisitioning of property by the Union will be a necessary factor and will have to find a place in the items somewhere. I concede that that is an important consideration and this item will have to be included, but, after we have passed article 24, we will be in a better position to frame the language of this item, because it may be that certain powers with regard to the acquisition in the States also may according to article 24 have to be vested in the Centre. I would therefore suggest that this item on the list may be held over till we have passed article 24.

The Honourable Dr. B. R. Ambedkar: I submit that is unnecessary because the power to lay down principles in any case will have to be given to the legislature. The question is whether the Centre should have a separate entry and the Province should have a separate entry for laying down principles of acquisition. What is proposed is this, that for both Centre as well as the provinces, there should be a common entry in the Concurrent List. Therefore, whatever happens to article 24, this entry regarding principles will have to be put in somewhere. Unless my friend has any objection to putting the matter in the Concurrent List, there is no object served by postponing the consideration of this entry.

Shri Syamanandan Sahaya: I was thinking of a case where even in the matter of acquisition by States the principle may have to be decided by the Central Parliament.

The Honourable Dr. B. R. Ambedkar: That is exactly the point. If my friend would understand it, if we put it in the Concurrent List, the Centre also will have power.

Shri Syamanandan Sahaya: Precisely, but you say that the "Centre also will have". My submission is....

The Honourable Dr. B. R. Ambedkar: What I am saying is this: that we are cutting out the words "principles" etc. and putting them in entry 35 of the Concurrent List. If my Friend will refer to the two entries, 43 in the Union List and 9 in the State list he will find both of them are exactly in the same terms. In other words, both of them not only give the power to compulsorily acquire property but also give the power to lay down principles. Instead of distributing the entry regarding principles between the Centre and the provinces independently of each other, it is now proposed to take out those words "principles" etc., and put them in entry 35 of the Concurrent List.

Prof. Shibban Lal Saksena: Would there be any harm if the thing is postponed until the other article is passed?

The Honourable Dr. B. R. Ambedkar: No good will be served by postponing. I am not in favour of having these things postponed. There is already so much time taken in the consideration of this matter.

Dr. P. S. Deshmukh: Sir, I move:

"That in amendment No. 21 of List I (Sixth Week), in the proposed entry 43 of List I, after the words "of property" the words 'according to law of the Union' be inserted."

From the discussion that has just taken place, it is quite clear that it is understood that this matter, so far compensation or the principles of acquisition or requisitioning are concerned, will be subject to the legislation of Parliament. My purpose in proposing this amendment is to be make this intention obvious and leave no room for any doubt. This does not raise the question as to what should be the compensation or whether there should be compensation or anything of that nature. The Parliament should have the latitude and the power to determine all these things just as occasion may arise from time to time, but it would not be correct to leave the wording as has been proposed at the moment without referring to the powers of the Parliament or the law making powers of the Union. I think this would lead to clarity and will obviate any ambiguities hereafter which might lead to very serious trouble. I, therefore, hope that the amendment proposed by me which specifies that any acquisition or requisitioning of property shall be by law passed by the Parliament and shall not be undertaken arbitrarily will be accepted.

The Honourable Dr. B. R. Ambedkar: It is quite unnecessary. These entries do deal with legislative power. What is the use of adding the words 'according to the law of the Union'? According to the entry as it is, the Union will have the power to make the law. It cannot mean anything else.

Dr. P. S. Deshmukh: I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawan.

Mr. President: The question is:

"That for entry 43 of List I, the following entry be substituted:

'43. Acquisition or requisitioning of property for the purposes of the Union.'"

The amendment was adopted.

Entry 43, as amended, was added to the Union List.

Entry 44 was added to the Union List.

Entry 45 was added to the Union List.

Entry 46 was added to the Union List.

Entry 47

Mr. President: There is an amendment to entry 47 standing in the name of Mr. Santhanam. As Mr. Santhanam is not moving it, I shall put the entry to the vote of the House.

Entry No. 47 was added to the Union List.

Entry 48

Entry 48 was added to the Union List.

Entry 49

Mr. President: There are certain amendments to entry 49. Thakur Cheedi Lal may move his amendment No. 3537 in the Printed List.

As the Member is not in the House, the amendment is not moved. Amendments Nos. 3538 and 3539 are also not moved. Now I will put entry No. 49 to vote.

Entry 49 was added to the Union List.

Entry 50 . .

Mr. President: Entry 50. Mr. Brajeshwar Prasad has an amendment to this entry.

(Amendment 22 was not moved.)

Shri T. T. Krishnamachari: Sir, I move :

"That for entry 50 of List I, the following entries be substituted :—

'50. The incorporation regulation and winding up of trading corporations, includnig banking, insurance and financial corporations but not including co-operative societies.

50A. The incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State but not including universities'."

Sir, the reason for this amendment is that the existing entry 50 which is a comprehensive entry was found to be a little confusing by some Members of the House. They represented to us that the language is a little involved and it might be made to express clearly the objects indicated therein. For instance, there was doubt whether a co-operative society carrying on trading operations in more than one State will be included in the entry or not. It was thought desirable, therefore, to split up the entry into two, clearly demarcating the position of trading corporations including banking, insurance and finance corporations and other corporations whether trading or not when they operate in more than one State, and also excluding universities. This is merely a clarificatory amendment and I do not think there is any need for explanining it further. It has been framed to meet the wishes of several Members of the House who expressed the view that the entry as it originally stood did not clearly indicate the purpose for which it stood.

Mr. President: I understand that Mr. Krishnaswami Bharathi and Shri K. Santhanam are not moving the amendments standing in their name in the printed list.

Shri Jagat Narain Lal: (Bihar : General) Sir, I venture to suggest that splitting up of the entry into two may not be necessary in case the words "coperations, that is to say", are omitted. If this is done the entry will read thus :

"The incoiporation; regulation and winding up ....but not including universities."

[Shri Jagat Narain Lal]

This will make the meaning quite clear. There will be no ambiguity. I suggest this to Shri T. T. Krishnamachari. The object they have in view can be achieved by adopting my suggestion.

The Honourable Dr. B. R. Ambedkar: I will consider the matter. For the present the entry proposed by Shri T. T. Krishnamachari may go in.

Mr. President: The question is:

"That for entry 50 of List I, the following entries be substituted —

'50. The incorporation regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

50A. The incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State but not including universities'."

The amendment was adopted.

Entries 50 and 50A were added to the Union List.

Entry 51

Entry 51 was added to the Union List.

Entry 52

The Honourable Dr. B. R. Ambedkar: I move:

"That for entry 52 of List I, the following entry be substituted:—

'52. Constitution and organisation of the Supreme Court and the High Courts; jurisdiction and powers of the Supreme Court and fees taken therein; persons entitled to practice before the Supreme Court or any High Court'."

The last words are additions. It is found necessary to have them because the time has come when it is necessary to regulate the right to practise of persons practising in both the High Court and the Supreme Court.

Mr. President: There are certain amendments to this.

Shri Brajeshwar Prasad: I am not moving amendment No. 24, Sir.

Mr. President: Mr. Naziruddin Ahmad who has given notice of an amendment to this entry is not in his place.

Sardar Hukam Singh: Sir, I beg to move:

"That in amendment No 23 of List I (Sixth Week), in the proposed entry 52 of List I—

(i) the words "and the High Courts" be deleted; and

(ii) the words "or any High Court" be deleted."

We have just listened to Dr. Ambedkar. He said that the last portion was newly included. The original draft entry 52 reads thus:

"Constitution, organisation, jurisdiction and powers of the Supreme Court and fees taken."

There is absolutely no mention of the High Courts in that entry in the original draft. This is an innovation. When we started, we had in view the framing of a federal Constitution and it was clearly observed by the honourable the Mover then—and he took credit for its flexibility—that in normal times

this is framed to work as a federal Constitution, and in times of war it is so framed that it would work as a unitary Constitution. But now what do we find? With every day that passes, we are progressing more and more towards a unitary system, not merely in times of war as was first intended, but in normal times as well. Everywhere you find that there is an attempt to grab all powers for the Centre and emasculate the provinces altogether. Provincial autonomy has been made a farce. There is nothing left there. They are only municipal boards now. The reasons given are that the circumstances have changed; there are some dangers on the borders and we have to provide against them; the Centre must be sufficiently strong. I agree with all this; I am second to none in lending my support to making the Centre as strong as possible, but I differ about the way in which the Centre is going to be made strong. The question is whether the units should be free, whether sufficient confidence is reposed in them, whether there should be sufficient initiative with them, in which case they would be willing partners in lending every support to the Centre, or whether we should frame an authoritarian Constitution and impose our will on them.

The Honourabale Dr. B. R. Ambedkar: I do not wish to interrupt the debate, but I would like to point out that we have already passed articles 192A, 193, 197, 201 and 207 which deal with the constitution of the High Courts. Under those articles, except for pecuniary jurisdiction, the whole of the High Courts are placed, so far as their Constitution, organisation and territorial jurisdiction are concerned, in the Centre. It seems to me, therefore, that this amendment is out of order.

Sardar Hukam Singh: All I can say is that I differ from the honourable Doctor. I was going to submit that I do not agree that this pressure from outside would make the Centre strong and would make the units voluntary partners in lending their support to the Centre. So, in my humble opinion, we should not try to take every power for the Centre. So far as the persons practising in the High Courts are concerned, this can be safely left to the provinces themselves. Sir, many things are being done not even with the object of making the Centre strong, but their sole desire is to grab everything for the Centre. So, I move that the words "and the High Courts" and "or any High Court" be deleted from the entry.

Dr. P. S. Deshmukh: Sir, I move :

"That in amendment No. 23 of List I (Sixth Week), for the proposed entry 52 of List I, the following be substituted :—

'52. Constitution, jurisdiction and powers of all courts including the Supreme Court; enlargement of the appellate jurisdiction of the Supreme Court and conferring of supplemental powers thereon, regulation of fees chargeable by the Supreme Court and licensing and regulation of persons entitled to practise before the Supreme Court or any High Court'."

According to the first draft, entry 52 was to be worded as follows :—

"Constitution, organisation, jurisdiction and powers of the Supreme Court and fees taken."

That is to say, it was solely intended to cover the Supreme Court and there was no reference to High Courts at all. According to the present amendment, all the High Courts have been brought in, not only for purposes of constitution and organisation, but also so far as the persons entitled to practise therein are concerned. So, Sir, it has been found necessary to widen the scope of the item as it stood originally. I have tried to make it still wider in its application so as to bring it into line with the original of this

[Dr. P. S Deshmukh]

entry to be found in entry 53 of the Government of India Act of 1935. That entry reads as follows :

> "Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers."

So, if it is necessary to include the High Court, I do not see why we should not refer back to what was provided in the Act of 1935 and provide for the constitution, jurisdiction and powers of all courts including the Supreme Court.

The second point that I want to urge is that it is necessary that there should be a provision, just as there is in the Act of 1935, for the enlargement of the appellate jurisdiction of the Supreme Court and conferring of supplemental powers thereon. Then the last portion really seeks to give a better shape to the amendment that is proposed, so far as licensing of legal practitioners and the levying of fees chargeable by the various courts are concerned. I would be glad, if this could be accepted.

In any case, if any satisfactory and cogent explanation is coming forth which would convince me that it is not necessary to refer to the powers of all the courts or to make any provision for the enlargement of the appellate jurisdiction of the Supreme Court, I would see my way not to press this amendment. Otherwise, I think it would be necessary that the Union should have powers of enlargement of the jurisdiction of, as well as for giving supplemental powers to, the Supreme Court.

Mr. President : Amendment No. 197 is covered by the amendment moved by Sardar Hukam Singh.

Shri H. V. Kamath : All right, Sir.

Shri Alladi Krishnaswami Ayyar (Madras : General) : With regard to the amendment moved by Dr. Ambedkar, I should like to say a few words. In the first place, we have already taken a particular step in regard to the High Court; that is, the appointment of the judges is in the hands of the President. Secondly, so far as the organization and jurisdiction is concerned, the idea is that there must be uniformity in the organization of the High Courts in the different parts of India, subject of course to the provisions of the Constitution. Therefore, in so far as the organization is concerned, with a view to emphasize the principle of uniformity and to see that there is uniformity in the different High Courts, this power is transferred to the Central Legislature. It will be realized that we have High Courts and High Courts. There are High Courts which have been functioning for several years, for a century. There are High Courts which have come into being recently, and it is also proposed to bring in all the High Courts in the States under the jurisdiction of Parliament, and see that there is a certain uniformity in the organization and constitution of the different High Courts in India. The only legislature that can function in this regard is the Parliament. That is why that part of the amendment provides for it.

Secondly, it makes some important provision in regard to the right of practitioners in the Supreme Court and in the different High Courts in India. Under the present law as it stands, each High Court makes its own rule for the enrolment of an Advocate and for the right of a person to practise in a particular High Court. So far as the Supreme Court is concerned, the Supreme Court has the power to make its own rule in regard to the person entitled to practise before the Supreme Court. The power of the Supreme Court is subject to the power of Parliament. The power of the High Court also is subject to the power of the appropriate legislature.

Now, there are certain anomalies which have necessary to be removed, an anomaly which was adverted to by Sir S. Varadachari when he retired from the Federal Court. Today any practitioner entitled to practise in the Federal Court can appear in that Court but if the case is remanded, say, to the High Court of Bombay, that practitioner will not be entitled to appear in the High Court unless he is an advocate of the Bombay High Court. That is an anomaly. You might have done a good part of the case; you might have mastered the details, the facts and the law of the case when the case was presented before the Federal Court and there is neither reason nor principle behind permitting the practitioner to appear before the Federal Court and not before the High Court from which an appeal is lodged. The proposed amendment does not give straightaway a right of audience in the High Court. It enables Parliament to remove anomalies and to see that there is a uniform judicial system throughout the country. I can give one instance, for example when the Honourable Sir Tej Bahadur Sapru applied, for permission to appear in the Bombay High Court, on account of the rules of the Bombay High Court, permission was refused to Sir Tej Bahadur Sapru to appear in the original side of the Bombay High Court. Similar instances have occurred in the case of other practitioners of eminence and position at the bar; and therefore to see that these anomalies are removed the Parliament is invested with the right to regulate the right of audience of the practitioners in the Supreme Court as well as in the High Court. Of course, until and unless the plenary power is exercised in a particular manner by the Parliament the existing rules of the Supreme Court and of the different High Courts in India will continue to operate. In the Parliament different sections are represented and I have no doubt that the Parliament will take a wise step calculated to improve the tone of the judicial administration as also to see that there is a certain uniformity observed in the different parts of India. That is the object of the amendment. I do not think any exception can be taken to the amendment as proposed by Dr. Ambedkar. It is a move in the right direction.

Shri H. V. Kamath: Mr. President, I shall be content with a bare and bald statement of my view in this regard. I seek to delete the words "or any High Court" appearing at the end of this proposed entry. My amendment is No. 197, List III, Sixth Week. Neither Dr. Ambedkar nor my jurist friend, Mr. Alladi Krishnaswami Ayyar has shown any valid reason why the power in this regard to make regulations in respect of persons entitled to practise before the High Court, should not be given to the State Legislatures. Mr. Alladi Krishnaswami Ayyar said that at present every High Court makes regulations in this regard but we have certainly not tried to consider why this power could not be conferred on the State Legislatures. We can trust the State Legislatures to enact laws which will not be contrary in spirit to the laws of the Central Parliament. I invite your attention and the attention of the House to article 208. Dr. Ambedkar pointed out article 207, and in the light of article 207 I do not dispute the desirability of the Union Legislature to regulate in regard to the constitution and organization of High Courts; but the point with regard to persons entitled to practise, the practitioners in the High Courts, is on a different footing. Article 208 which the House has passed confers certain powers on the State Legislature with regard to jurisdiction of certain High Courts in certain circumstances. If that power can be given to the State Legislatures. I do not see why this trifling power of legislating with regard to practitioners appearing in the High Courts could not also be given to the State Legislatures, and so that matter might be transferred to List II, *i.e.*, the State List. Otherwise I feel that by empowering Legislatures as has been done in article 208 with regard to jurisdiction of High Courts and divesting the Legislatures of power to mak

[Shri H. V. Kamath]

regulations with regard to practitioners appearing before the High Courts, I feel that the Drafting Committee is straining at a gnat while swallowing a camel.

Mr. Naziruddin Ahmad: Mr. President, as I was coming to the rostrum, I heard a remark from my honourable Friend Mr. Mahavir Tyagi that this concerns the lawyers. I should however think that the subject concerns not merely the lawyers, but the entire population of India. In fact, the independence of the High Courts, their judicial integrity are matters of concern for all.

I would like to draw the attention of the House to the manner in which the words 'and the High Courts' have been introduced into the amended entry. I submitted yesterday that there were certain interpolations in many of the entries. The present is a good example of this bad tendency. The original entry read thus: "Constitution, organisation, jurisdiction and powers of the Supreme Court and fees taken". Fees have been taken out and I have no quarrel with that. The original entry dealt with the Supreme Court only. In the new entry proposed by Dr. Ambedkar, it reads. "Constitution and organisation of the Supreme Court and the High Courts;" Then again, he has added "persons entitled to practise before the Supreme Court or any High Court".

My first objection is as to the surreptitious manner in which important things are interpolated into the entries. I could have well understood.....

(*Interruption*).

Shri Mahavir Tyagi: On a point of order, Sir, is the word "surreptitiously" parliamentary?

The Honourable Dr. B. R. Ambedkar: Is it a proper argument, Sir, to say that the Drafting Committee has surreptitiously tried to introduce something? My honourable Friend is entitled to ask me an explanation as to why I have altered the entry. There is nothing surreptitious. I am perfectly prepared to justify every item and every part of it.

Shri Mahavir Tyagi: I want your ruling, Sir, is the word "surreptitiously" parliamentary?

Mr. President: I confess I am not acquainted with parliamentary practice to such an extent as to say whether 'surreptitiously' is or is not parliamentary. I would ask the honourable Member not to use expressions which may be offensive.

Mr. Naziruddin Ahmad: I bow down to your ruling, Sir. I submit that it would have been much more straightforward to say that we should insert the word 'High Courts'. What I meant was that instead of doing the obvious thing in the open way of clearly and specifically indicating the exact changes proposed, by the addition of the words "and the High Courts", the whole entry has been re-written, and my submission was that this was done for the purpose of not making it apparent that the words 'High Courts' are introduced here by way of change. It would require long and patient comparison between the amended entry and the original entry to bring this out. It took us a few hours, including Sardar Hukam Singh and others, long and patient comparison in order to enable us to discover this. I fail to see any reason for not moving these introductions as so many specific amendments to the original entries. This I consider to be highly objectionable and at the same time highly inconvenient.

Mr. President: Consideration of every amendment involves a study of the original which is sought to be amended by the amendment and it is nothing extraordinary if the honourable Member had to study the original along with the amended form of the entry.

Mr. Nazimuddin Ahmad: All that I was respectfully submitting was that the exact change might have been indicated by the suitable amendment that the word 'High Court' be introduced at the proper place. The objection was that in every case we have to carefully compare each entry with the past entries and it took us a very long time. In fact, nothing has been gained except that it put the Members to additional labours. That is in regard to the manner in which they are being introduced. There are numerous other cases where objectionable words are not introduced openly, but through the device of a re-draft. I fully admit the justice of your remark that every Member should come prepared to read and compare them. What I was submitting was that matters might have been made easier. We have only a very short time to consider innumerable innovations. Matters have been unnecessarily made more difficult, considering the short time at our disposal.

So far as the High Courts are concerned, they were all under the Provincial jurisdiction except the Calcutta High Court. The Calcutta High Court, for reasons of history, enjoyed a peculiar position of its own. The Calcutta High Court was situated geographically at a place where before 1911 the Government of India had its seat. So, somehow or other, the Government of India and the Imperial Council had been enjoying jurisdiction over that High Court. Then, with the passing of the Government of India Act, 1935, jurisdiction over the Calcutta High Court was made over to the Provincial Government and Legislature. There were long disputations over this. One of the reasons assigned was that the Provinces were getting greater rights and as the Centre was establishing the Federal Court, the Centre should be dealing with the Federal Court and not with the High Courts. In that way, the Calcutta High Court which was under the jurisdiction of the Centre for long was taken away and was placed under the jurisdiction of the Province. Thenceforward, all the High Courts were under the jurisdiction of the Provinces. The Centre is sufficiently encumbered with Central matters. The Centre should have been concerned, I submit, with matters relating to the Supreme Court, leaving it to the Provinces and the Assemblies to deal with the High Courts. I find that every item, financial, political, legal and others, is being taken away one by one in a systematic manner from the Provinces and made over to the Centre. I submit that the position of the High Courts is of great importance. I do not know why the Centre should assume jurisdiction in a summary manner like this over the High Courts.

I wish to raise another constitutional point with regard to this. So far as the High Courts are concerned, they were placed before in the Provincial list by common consent. We debated these matters as to the jurisdiction of the High Courts and the Supreme Court here before and the Drafting Committee was asked to draft a Constitution in accordance with those decisions. I submit that we should not disregard those decisions. In fact, if we disregard those decisions, many things would be upset. I would ask your ruling, Sir, as to whether we should lightly upset those decisions. Jurisdiction over the High Courts is a matter which was provincial, and I beg to ask whether it is proper to allow this being upset without a proper consideration of the subject, without the matter being placed directly b[illegible] going to make these changes.

[Mr. Naziruddin Ahmad]

I submitted a few minutes ago the example of Sardar Patel. On a very important occasion, he came to the House and asked for a reconsideration of the decision and then suitable amendments were incorporated in the Constitution. So far as the High Courts are concerned, this is only one of the instances. I submit that is a very important constitutional step and the matter should have been placed straightforwardly before the House instead of its being put in this way. The matter will cause much dissatisfaction. Taking jurisdiction over the High Courts in this manner is highly improper and this should have been allowed to be dealt with by the provincial assemblies. I submit, the Provinces should have been allowed full jurisdiction over their High Courts; instead of that, if the Provinces are to be deprived of their privileges one by one like this, I would rather have the Provinces abolished entirely.

Shri T. T. Krishnamachari: The attention of the Members of the House has already been drawn by Dr. Ambedkar to article 207. May I say, Sir, in view of that that the honourable Member need not labour this point?

The Honourable Dr. B. R. Ambedkar: I can reply. I want only ten minutes. I have understood what he wants to say.

Mr. Naziruddin Ahmad: There is a promise to reply but it would be an unusually fortunate thing for me actually to get a reply from Dr. Ambedkar Hitherto, points have not been replied to. I should submit that the subject of jurisdiction over the High Court should have been introduced only after sufficient consideration and ample debate in the House. Instead of that a mere re-drafting of the entry should not have been the manner in which this should be done. This is too important a matter to be lightly dealt with. I submit that if we assume that the Drafting Committee is entitled to do whatever it likes, then of course I am entirely out of Court. I feel I am faced with certain defeat irrespective of reason.

The Honourable Dr. B. R. Ambedkar: Sir, I am constrained to begin by stating that I have on very many occasions noted that my Friend Mr. Naziruddin Ahmad has got into the habit of speaking of the Drafting Committee in most derisive terms. I have not descended to his level in order to reply to him, but I should like to give him a warning that if he persists in doing this kind of thing, I shall certainly not fail to pay him in the same coin.

Mr. Naziruddin Ahmad: Are Members to be threatened in this manner? Of course it produces no effect on me.

The Honourable Dr. B. R. Ambedkar: This is not a threat. This is a warning.

Now coming to the points raised by my Friend Dr. Panjabrao Deshmukh, I am very sorry that I cannot accept his suggestion. Because he wants to enlarge entry 52 in such a manner and to such a magnitude as to include every court in this country. It is an impossible proposition and I am afraid I cannot accept it.

I shall now deal with the arguments of my Friend Mr. Naziruddin Ahmad. First of all, he said that we were trying to smuggle in the High Court in this entry 52, because it did not find a place in the entry as it stood before. The House will remember that the Drafting Committee has been from time to time revising not only the entries but also the articles. I am not here to claim any omniscience on the part of the Drafting Committee. If the Drafting Committee has failed to grasp the whole thing at one grasp, I am not prepared to blame the Drafting Committee nor am I prepared to allow anybody to sit in judgment over it and pass censure upon the Drafting Committee. It is a huge task and we are bound to go slowly on our way.

Shri H. H. Kamath: Cannot the House sit in judgment on the Drafting Committee?

The Honourable Dr. B. R. Ambedkar: But the House should recognise what I am saying *viz.*, that it is not possible for the Drafting Committee to bring forth before the House a neat and complete formula which will not require reconsideration. now Sir, my Friend said that we have brought in the High Courts. Well, we have deliberately brought in the High Courts because we felt that it was necessary to bring in High Courts in view of certain articles that we have already passed. My Friend, Mr. Naziruddin Ahmad, evidently forgot articles 192A, 193, 197, 201 and 207 which deal with the High Courts and if he were patiently to apply his mind to these articles, he will find that the only matter that is left to the Provincial Legislatures is to fix jurisdiction of the High Courts in a pecuniary way or with regard to the subject matter. The rest of the High Court is placed within the jurisdiction of the Centre. Obviously when considering entries in the Union List which are meant to give complete power to the Centre, we were bound to make good this lacuna and to bring in the High Courts which, as I said, by virtue of these articles excepting for two cases have been completely placed within the purview of the Parliament. There is nothing surreptitious about it. This is merely correcting an error which originally crept in by reason of the fact that the article and entry were not properly composed. That is the reason why High Courts have been brought in.

Coming to the question as to why we have brought in the entry—Persons entitled to practice before the Supreme Court and the High Court—the position has been already explained by my Friend Mr. Alladi Krishnaswami Ayyar; but I will put the same matter very shortly, and it is this that, really speaking, there is nothing very extraordinary in bringing in these words—persons entitled to practice before Supreme Court or High Court—as Members will see article 121 which gives Parliament the power to make any law with regard to persons practising before the Supreme Court. Therefore, that power is already there and there is nothing new so far as the entry refers to persons entitled to practise before the Supreme Court.

Now with regard to the High Court, the position is this. The power which the Centre have today is contained in entry 17 of the Concurrent List which deals with professions, and legal profession is one of the professions. It is, therefore, perfectly possible for Parliament to enact a law regulating the practice of persons appearing in the High Court by virtue of the power given to it by entry 17 which is in the Concurrent List, but the trouble with that is this. Concurrent List means that both parties can legislate. The Centre can legislate and the provinces can legislate and the legislation may be not quite in consonance with each other. Consequently it was felt that while leaving entry 17 as it is in the Concurrent List to cover all professions, to pick out a part of the legal profession and to put it here so as to make any legislation with regard to legal profession in so far as it relates to practice of persons before High Courts an exclusive subject for legislation by the Centre, and the reason why we did it was because of the hard cases referred to by my friend Mr. Alladi Krishnaswami Ayyar and I may repeat one of them. Probably you have not heard what he said. Supposing, for instance, a lawyer or a barrister from Madras appears in a case in the Supreme Court and the Supreme Court instead of deciding the case remanded the case to Bombay High Court. What happens? The Bombay Government or Bombay law, if enacted under entry 17 may not permit a person from Madras to appear in the Bombay High Court, with the result that one Madras, Lawyer who appeared in the Supreme Court conducted the whole case but if the case is remitted back to the High Court of Bombay, that High Court may by law

[Dr. B. R. Ambedkar]

prevent him from appearing before it. I think it will be agreed that is a great hardship. In order therefore to have a uniform position with regard to persons practising in different High Courts what this entry proposes to do is to cut it from entry 17 dealing with professions and to put it here so that the practice of persons appearing in the High Court may be regulated by uniform law. There is nothing revolutionary and there is nothing surreptitious in entry 52 as is proposed by the Drafting Committee.

Mr. President: I will now put the amendments to vote. There is first the amendment of Sardar Hukam Singh. It is in two parts, and I will put the two parts separately. First part.

The question is :

"That in amendment No. 23 of List I (Sixth Week), in the proposed entry 52 of List I,—

(i) the words 'and the High Court' be deleted."

The amendment was negatived.

Mr. President: Then the second part:

The question is :

"That in amendment No. 23 of List I (Sixth Week), in the proposed entry 52 of List I,—

(ii) the words 'or any High Court' be deleted."

The amendment was negatived.

Mr. President: Then there is the amendment of Dr. Deshmukh—No. 196.

The question is :

"That in amendment No. 23 of List I (Sixth Week), in the proposed entry 52 of List I, the following be substituted :—

'52. Constitution, jurisdiction and powers of all courts including the Supreme Court, enlargement of the appellate jurisdiction of the Supreme Court and conferring of supplemental powers thereon; regulation of fees chargeable by the Supreme Court and licensing and regulation of persons entitled to practise before the Supreme Court or any High Court.'"

The amendment was negatived.

Mr. President: I will put the entry as moved by Dr. Ambedkar.

The question is :

"That for entry 52 of List I the following entry be substituted :—

'52. Constitution and organisation of the Supreme Court and the High Court; jurisdiction and powers of the Supreme Court and fees taken therein; persons entitled to practise before the Supreme Court or any High Court'."

The amendment was adopted.

Entry 52, as amended, was added to the Union List.

Mr. President: We rise now. We adjourn till nine o'clock, tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 31st August, 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Seventh Schedule—(*contd.*)

List I : Entry 53

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir I move:

"That in Entry 53 of List I, the words and the figure 'except the States for the time being specified in Part III of the First Schedule' be omitted.

This is because we propose to make no distinction between a State in Part I and Part III.

Shri H. V. Kamath (C.P. & Berar: General): There is a little amendment of mine, No. 198. Sir, I move:

"That with reference to amendment No. 25 of List I (Sixth Week), in entry 53 of List I, for the words 'and exclusion of the jurisdiction of any such High Court from', the words 'and exclusion from the jurisdiction of any such High Court of' be substituted."

This is only an interposition of words, I know, but it changes the meaning slightly and brings out what is intended in the entry. I believe that this entry has reference to exclusion from the jurisdiction of any High Court of certain areas. It is therefore not correct to say "exclusion of the jurisdiction of any such High Court". You exclude something from the jurisdiction: you cannot exclude jurisdiction from. You can say that you do not extent jurisdiction to some other area. But to say that you exclude the jurisdiction of a Court from something is not correct English. What is intended is that you exclude certain areas from the jurisdiction of a particular Court, and the entry as it stands does not bring out the meaning which it is intended to convey. I am sure Dr. Ambedkar will agree that the entry intends to exclude certain areas from the jurisdiction of the High Court. If that is so, the wording should be "exclude from the jurisdiction of a Court certain areas". The Court has jurisdiction: not, in this context, a State or any other area. I dare say this will be quite proper, and I commend this little amendment of mine to the House for its consideration.

The Honourable Dr. B. R. Ambedkar: Sir, Mr. Kamath's amendment is wholly unnecessary because the object of my amendment is to delete altogether that portion of entry No. 53 beginning from "except" to the end. If I was retaining any part of the entry then of course the question might arise whether the phraseology used in the entry is better than the one suggested by Mr. Kamath or *vice versa.*

Shri H. V. Kamath: My amendment has reference to the entry itself not to the amendment.

The Honourable Dr. B. R. Ambedkar : I think that cannot arise because I am omitting the whole thing. The second point is that the language used in entry 53 has to be in keeping with the language employed in article 207.

Shri H. V. Kamath : If this is accepted the language in the other article which has already been passed will have to be amended—at the third reading.

Mr. President: I find that Dr. Ambedkar's amendment refers only to a part of this entry.

The Honourable Dr. B. R. Ambedkar : I am taking out the last part "except the States for the time being specified in Part III of the First Schedule". The entry as amended would stand :

"Extension of the jurisdiction of a High Court having its principal seat in any State within the territory of India to, and exclusion of the jurisdiction of any such High Court from any area outside that State."

The entry merely provides for the extension or the exclusion of the jurisdiction.

Shri H. V. Kamath : My amendment refers to the second part, "exclusion of the jurisdiction of any such High Court from any area outside that State".

The Honourable Dr. B. R. Ambedkar: I am not accepting your quibbling.

Shri H. V. Kamath: It is no quibble. It is a question of correct English.

The Honourable Dr. B. R. Ambedkar: If it is a matter of mere English we can take it up at the next stage.

Mr. President: Then I shall put Mr. Kamath's amendment to vote.

The question is :

"That with reference to amendment No. 25 of List I (Sixth Week), in entry 53 of List I, for the words 'and exclusion of the jurisdiction of any such High Court from,' the words 'and exclusion from the jurisdiction of any such High Court of' be substituted."

The amendment was negatived.

Mr. President : I shall now put Dr. Ambedkar's amendment to vote.

The question is :

"That in entry 53 of List I, the words and figures 'except the States for the time being specified in Part III of the First Schedule' be omitted."

The amendment was adopted.

Mr. President: The question is:

"That entry 53, as amended, be adopted."

The motion was adopted.

Entry 53, as amended, was added to the Union List.

Entry 54

Entry 54, was added to the Union List.

Entry 55

Entry 55, was added to the Union List.

Entry 56

The Honourable Dr. B. R. Ambedkar: I move:

"That for entry 56 of List I the following entry be substituted :—

'56. Inquiries, surveys and statistics for the purpose of any of the matters in this List'."

There is hardly any difference. We have merely made it "for the purpose of any of the matters in this List".

Mr. Naziruddin Ahmad (West Bengal: Muslim): Though my amendment No. 167 will improve the text, I do not want to move it.

(Amendment No. 254 was not moved.)

Shri Phool Singh (United Provinces: General): Mr. President, Sir, the amendment suggested by Dr. Ambedkar will limit the scope of this entry. Under the original entry the Government is free to collect statistics regarding any matter, but if the proposed amendment is accepted that scope would be limited only to the matters entered in this List. For example, there is the case of fixing the price of sugar. In order to fix the price of sugar the Government of India has to find out the cost of manufacture of sugar. That is not a thing entered in this List. Unless the Union Government is in a position to legislate on that point the factories may withhold the information. So, I suggest that the amendment may not be accepted and that the original entry, namely "Inquiries, surveys, and statistics for the purposes of the Union" may be kept intact. For that will enable the Government to make enquiries, hold surveys and collect statistics for purposes even other than those entered in this List. With these few words I request Dr. Ambedkar to reconsider the situation.

The Honourable Dr. B. R. Ambedkar: Sir, I think the fear expressed by my friend is somewhat groundless and arises from the fact that he has not adverted to the fact that all other inquiries and so on relating to the States, and other matters, are now put in the Concurrent List. So there is no absence of any such purpose that he wants.

Mr. President: The question is:

"That for entry 56 of List I the following entry be substituted:

'56. Inquiries, surveys and statistics for the purpose of any of the matters in this List'."

The amendment was adopted.

Entry 56, as amended, was added to the Union List.

Entry 57

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 57 of List I the following be substituted:

'57 Union agencies and Union institutes for the following purposes, that is to say, for research, for professional, vocational or technical training for scientific or technical assistance in the investigation or detection of crime for the training of police officers, or for the promotion of special studies'"

The entry is somewhat enlarged by the introduction of the words "vocational training" and "investigation or detection of crime, for the training of police officers" and so on.

Mr. President: Now we will take up the amendments.

(Amendment No. 168, was not moved.)

Shri H. V. Kamath: Mr. President, I move, Sir, amendments Nos. 199 and 200 of List III of Week VI. Amendment No. 199 reads as follows:—

"That in amendment No. 27 of List I (Sixth Week),

that is to say, the amendment just now moved by Dr. Ambedkar,—

' in the proposed entry 57 of List I, for the word 'research' the words 'historical, scientific and spiritual research' be substituted'."

Amendment No. 200 is to the effect.....

The Honourable Shri K. Santhanam (Madras: General): Mr. President, yesterday I think the honourable Member protested against Government interference in such matters.

Mr. President: He has a right to be inconsistent!

Shri H. V. Kamath: I am sorry, Sir, Mr. Santhanam has not cared to follow. I think he is very busy with his Railway and Transport portfolio and does not follow the proceedings—at least not what I said in the House yesterday. When I make my point clear here, I believe he too will change his view.

Amendment No. 200 is to the effect that—

"That in amendment No. 27 of List I (Sixth Week), in the proposed entry 57 of List I for the word 'police' the words 'administrative and police' be substituted."

Taking the first amendment first, let me try in my own humble manner to dispose of the objection raised by my honourable Friend Mr. Santhanam. He chose to remark that yesterday I had pleaded against governmental interference.....

An Honourable Member: By the Centre.

Shri H. V. Kamath: Any way, interference by the Centre or governmental interference in *yogic* matters. I suppose he referred to the observations I made with regard to the *yogic* institutes in India. What I had pointed out yesterday—I am sorry my Friend Mr. Santhanam did not understand it—was that there are certain institutes today run by private agencies which are doing splendid work in *yoga* and *yogic* research. They should not be interfered with so long as they are running very efficiently and to the advantage of the people at large. But today the point I am making out is about Union institutes—the word used in this entry has reference to Union agencies and institutes of the Union. These are different from private institutes run by private agencies, and I hope my Friend Mr. Santhanam will understand the distinction that has been made between this entry and my remarks made yesterday.

As regards the point of my amendment No. 199, I wish to state that we should make the word "research" very clear here. Yesterday Dr. Ambedkar, moving the amendment with regard to surveys in India, expanded the term "zoological" so as to bring in or to include the word "anthropological" as well. His intentions were excellent. It was to make the meaning quite clear and unambiguous. So also, here, following in his own estimable footsteps, I want to make the word "research" absolutely unambiguous and clear. There are various kinds of research: There is historical research, conducted in various institutes; one of the well-known institutes in Poona, the Bhandarkar Institute has been doing very good work for many years. Then scientific research institutes there are so many. But institutes of the third kind, those which are doing spiritual research have so far been few in number. There have been *yogic ashramas* but they are different from institutes which carry on research in the spiritual field. The only institute which has been doing this work, to my knowledge, in a scientific manner, in the spiritual field, is the Kaivalyadhama Institute of Lonavla; and Government, during the last Budget session or soon after that, recognised this Institute and sanctioned a grant of Rs. 20,000 for advancing or promoting scientific research in *yoga*. I am speaking on very reliable authority. The head of the Institute applied for a grant to carry on scientific research in *yoga*, and Government granted to the Institute Rs. 20,000, for conducting and promoting scientific research in *yoga*.

With the advent of freedom and the dawn of Indian renaissance, I have no doubt in my own mind that our spiritual culture, our ancient culture, must be revived not in one direction only but in all possible directions. One objection that is leveled against spiritual culture—*yoga* culture especially—is that it is unscientific. Today the pioneer of scientific research in yoga, Swami Kuvalayananda, at Lonavla is doing splendid work in this field. I am sure that as we grow in stature, as India's freedom grows, there will be many more institutes of this kind which will promote research in the spiritual field. It is very necessary. As Mahayogi Aurobindo said recently, the West is turning to the East for some light and guidance, and if the East fails the West today then the world is doomed. He further exhorted us saying that India should not run after the materialistic baubles of the West. It is all right to increase the standard of living, but to become merely materialistic is not all in life. The world craves something else and the world is looking towards India. It is high time we did something in this direction and showed the light to an expectant world.

I hope the Union will promote agencies under its aegis to promote not merely historical and scientific research but also research in *yoga* and the spiritual field on a really scientific basis,—science understood in the largest and most comprehensive sense, not in the very narrow sense of having a little laboratory, test tubes, flasks, pipettes and burettes, but the real scientific outlook of experiment, the outlook of a man seeking knowledge—*scio* "to know".

As regards my second amendment, I think through an oversight the word "administrative has been omitted from this new proposed entry 57. The training of police officers has been referred to. As far as I am aware, in the olden days the members of the I.P.S. and also the I.C.S. had to undergo a period of probation first in England and then on their arrival here complete that training departmentally. During World War II, owing to unsettled conditions in England, the training of the members of the I.C.S. was conducted here at Dehra Dun. That training was an integral part of the general instruction given to members of the I.C.S. Till they passed this training course and the other departmental tests they were regarded as probationers not eligible for confirmation or to draw increments in their pay.

I understand that, after August 1947, a school for the training of administrative officers has been started in old Delhi at Metcalffe House which housed part of the old Secretariat or the Delhi University. The principal of the school is a member of the old I.C.S. Training is being imparted there to the members of the new I.A.S. which has replaced the I.C.S. If it is considered that the police officers should have this training it is all the more important that the members of the new I.A.S. should have this training too. They have replaced the old I.C.S. and hence they should have the same kind of training. I see no reason why the training of members of the I.A.S. should not be included along with the training of the police officers unless of course Dr Ambedkar in his profound wisdom can give some reason to the contrary. I suggest that the item 'training of police of officers' should be omitted. But if that cannot be done. I see no reason why the members of the I.A.S. should not be included. I commend my amendments 199 and 200 for the consideration of the House.

Mr. President: There is an amendment to this entry 57, standing in the name of Mr. Karimuddin (No. 3544). As it is not being moved, Dr. Ambedkar may reply.

The Honourable Dr. B. R. Ambedkar: Mr. President, I have compared the amendments moved by my honourable Friend Mr. Kamath with the entry as

[The Honourable Dr. B. R. Ambedkar]

proposed by me. I think except for one matter, it will be quite open to Central Government to carry out the purpose which my honourable Friend Mr. Kamath has in mind. The only thing which the Central Government will not be able to effectuate under entry 57 is spiritual research. I do not think that this House, knowing full well the various problems with which the Central Government has to carry on these days, would like to burden it with any such agency as spiritual research. The rest of the objects of the amendment will be covered by entry 57.

Shri H. V. Kamath: How do you say that the administrative service officers are covered by the entry as proposed?

The Honourable Dr. B. R. Ambedkar: I think so, because the training is not only for officers. The language used is "research, for professional, vocational or technical training". Anything can be brought in under the above.

Mr. President: The question is:

"That in amendment No. 27 of List I (Sixth Week), in the proposed entry 57 of List I, for the word 'research' the words 'historical, scientific and spiritual research' be substituted"

The amendment was negatived.

Mr. President: The question:

"That in amendment No. 27 of List I (Sixth Week), in the proposed entry 57 of List I, for the word 'police' the words 'administrative and police' be substituted."

The amendment was negatived.

Mr. President: I will now put the entry as moved by Dr. Ambedkar in the amended form. The question is:

"That for entry 57 of List I, the following entry be substituted:

'57 Union agencies and Union institutes for the following purposes, that is to say, for research, for professional, vocational or technical training for scientific or technical assistance in the investigation or detection of crime, for the training of police officers, or for the promotion of special studies'."

The amendment was adopted.

Entry 57, as amended, was added to the Union List.

New Entry 57(A)

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 57 of List I, the following new entry be inserted:—

'57A. Co-ordination and maintenance of standards in institutions for higher education, scientific and technical institutions and institutions for research'."

This entry is merely complementary to the earlier entry, No. 57. In dealing with institutions maintained by the provinces, entry 57A proposes to give power to the Centre to the limited extent of co-ordinating the research institutions and of maintaining the standards in those institutions to prevent their being lowered.

Sir, I also move:

"That in amendment No. 28 of List I (Sixth Week) in the proposed new entry 57A of List I, for the word 'maintenance' the word 'determination' be substituted."

Mr. President: Amendments Nos. 201 and 255 are only for deletion. Dr. Deshmukh and Mr. Sarwate may speak on them if they want to do so, but the amendments need not be moved.

Shri V. S. Sarwate (Madhya Bharat): I have an alternative amendment also. I will move it with your permission.

Sir, my alternative amendment runs thus:

"That in amendment No. 28 of List I (Sixth Week), in the proposed new entry 57A of List I, for the words 'Co-ordination and maintenance' the words 'Promotion by financial assistance or otherwise' be substituted."

The amended entry will read thus:

"Promotion by financial assistance or otherwise of standards in institutions for higher education, scientific and technical institutions and institutions for research."

My object in moving this amendment is that if the entry as proposed by Dr. Ambedkar is to stand it would be an unnecessary interference with the provincial sphere of education.

Yesterday, there were two propositions made casually or otherwise in the course of speeches. One was that education should be a Central subject. The reason given was that it was of national importance. Another was a remark casually made by an eminent educational scholar that education in universities should be entrusted to the Centre. The reason he assigned was that the provinces had not sufficient resources. To me both these reasons are neither proper nor sufficient. If the provinces have not got sufficient resources for advancing education, then the alternative should be not to transfer education to the Centre, but to make the provinces have sufficient resources available to them to carry on their function of imparting education.

Fortunately for us, in the new Constitution provisions have been made suitably. The Finance Commission is immediately to make recommendations for grants-in-aid to provinces. Further, in making these recommendations for grants-in-aid, the Finance Commission is expected to see what are the necessary items of expenditure which the provinces have to make for education and for social services.

The other point that was made was that because education is of national importance, therefore it should be transferred to the Centre. If this argument is to be taken to its logical sequence, then practically every sphere of activity at present entrusted to the provinces would have to be transferred to the Centre. Medicine is of national importance, hygiene is of national importance, and practically all social services which are at present in the domain of the provinces will have to be transferred to the Centre. Now I think this is not the test for fixing the functions of the Centre and the provinces. To me it appears that the best should be that the subject besides being a subject of national importance, it should satisfy either of the three things which I shall just mention. Firstly, it should have a direct and immediate bearing on defence. Secondly, it should be of such a nature that it can best be managed only by the Centre. For instance, geological survey of the whole country can be best undertaken only by the Centre. Thirdly, it should be of such a nature that uniformity is the desideratum and is necessary in the interests of the nation. For instance, standards of weights and measures should be laid down by the Centre because it is in the national interest to do so. If in any sphere uniformity is not necessary but on the other hand there should be diversity and variety, it is the sphere of education.

[Shri V. S. Sarwate]

The modern trend in education is that education should be adapted to each individual so that the personality of each individual might be developed to its fullest extent, of course consistently with the personalities of other individuals. If this is the desideratum in education, then there must be full scope for variety. There should not be any uniformity in education as uniformity would kill the growth of the individua.. Nobody can say that there should be a standard of intellectual weights and measures for human beings. Therefore I think that education should be left entirely to the provinces.

I feel that the entry as it stands, "Co-ordination and maintenance of standards" in the educational sphere would come in the way of experiments in the educational field, in the research field. If education is to be adapted to the national needs of the country, if an individual's capacity is to be developed fully, there must be variety and there must be freedom for experiment. Therefore, my contention is that it should be entirely left to the provinces. Now, the Centre has already sufficient authority which it can exercise to bring the institutions in the provinces up to the standard as far as research is concerned. There is already a provision in item No. 57 for control by the Centre of Union agencies for research and through these Union agencies the Centre can lay down standards, which it should be the business of the provinces to follow and emulate. So there is no necessity for giving power to the Centre to fix standards so far as research is concerned.

As far as higher education is concerned, the policy which has been adopted in all federal countries is that the Centre does not take power to lay down standards. They give the fullest freedom to the provinces in this sphere. But what they do is that the Centre declares that if such and such an experiment is carried out, such and such grants would be made. The same thing was done by President Roosevelt and the other Presidents of the United States and is being done in Australia and Canada. The same method should be followed by the Centre here. If the Centre wants that any particular standard should be maintained, it should do it in the universities which they control or in their Union agencies for research, or they can provide for making grants to such universities as maintain the standard it wants. There is also another way of controlling this. The university graduates, as circumstances stand today, go mostly to the services, and the Government can lay down rules so that only those who satisfy certain standards would be eligible to enter the services. In this indirect way they can make the universities adopt the standards which the Centre desires. There should be no direct laying down of standards by the Centre.

Already there is sufficiency of State control in education. Anybody who has the interests of education at heart would note with sorrow that there is not sufficient private effort in the field of education. The State should encourage private enterprise and promote private schools which can make experiments and find out new methods, new system of education. That is the desideratum and not uniformity in this way. Diversity and variety being the aim of education, there should be no direct attempt by the Centre to lay down standards. I have in my amendment followed the way which the federal countries are following. Therefore I have said—"Promotion by financial assistance or otherwise of institutions for higher education, scientific and technical institutions and institutions for research".

[At this stage, Mr. President vacated the Chair, which was then occupied by Mr. Vice-President, Shri T. T. Krishnamachari.]

One word more, Sir. I think that it will be difficult for Parliament or the Central Government to fix standards of higher education, for example in higher medical education. Would it be possible for the Parliament to find out what are the standards for medical education?

Shri T. T. Krishnamachari (Madras: General): They can have an Expert Committee to advise them.

Shri V. S. Sarwate: Why appoint a Committee when the Universities in their very nature and incorporation are expert Committee meant for this purpose? Moreover, the more the administrative burden on the Centre, the less efficient will it grow. I find that the whole trend is to take more and more functions for the Centre and I am afraid that the result of this will be that the Centre would be encumbered with so many functions that its own standards of efficiency would deteriorate. It is to avoid this that I have sought to move my amendment. Sir, I move.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. Vice-President, Sir, I think it is necessary to remind the honourable Dr. Ambedkar that we are discussing and deciding upon a list of items on which the Union will have exclusive power to legislate and if we look at this entry from that point of view, I would like to ask whether the Parliament is going to lay down by law the standards for the various institutions, of whatever status, of whatever nature so far as higher education, scientific and technical institutions etc., are concerned. I think many of the Members including some of the members, at any rate, of the Drafting Committee, are repeatedly falling into the error as if this Schedule is meant to determine and define the powers of the Union. This is not the purpose of this List and I think it would be well if the Drafting Committee Members would kindly look at this entry from that very important stand-point. I submit it was a learned speech which was just delivered by my honourable Friend Mr. Sarwate but it was probably not audible to many Members. Of course there are only a few Members who care to listen to any speeches other than their own and there are few Members who have not mortgaged their intelligence with the Drafting Committee and with that of Dr. Ambedkar. That is the reason, Sir, why in the country a feeling is growing that very few Members take this House seriously and the country is gradually learning to take the House much less seriously than it should. I do not think that this is a happy situation either for us or the country. I do not wish to take any credit for discovering this. It is a writing on the wall which anyone who runs can read and satisfy himself.

For the present I would like to say to Dr. Ambedkar that there is no necessity so far as this entry is concerned.

Shri Raj Bahadur (United States of Matsya): May I point out to the honourable Member that perhaps the remarks which he has chosen to make are not intended for the majority of the Members of this House. I suggest that he should not indulge in such generalizations.

Dr. P. S. Deshmukh: I am glad there is at least one honourable Member who is prepared to protest and probably his protest so far as he as an individual is concerned is correct. Many Members feel Sir, that University education may probably be taken over by the Centre. We have not decided to take it and university education as a whole is still left with the provinces.

Shri H. V. Kamath: Is Dr. Ambedkar listening, Sir, or is he engaged in private conversation? There is no point in Dr. Deshmukh proceeding with his speech when he is not listening.

Dr. P. S. Deshmukh: I have reconciled myself to that behaviour. My honourable Friend has yet to cultivate that virtue and I hope in time to come he will cultivate it. We do our duty and lay before this House or such parts of it as are prepared to listen and the nation outside to the extent the newspapers are prepared to give us publicity whatever we feel irrespective of what view others take or what attention Dr. Ambedkar is prepared to pay. I have given up from the beginning.... ...

Mr. Vice-President (Shri V. T. Krishnamachari): Will Dr. Deshmukh go along with his speech?

Dr. P. S. Deshmukh: Alright, Sir. As I said there were many Members who felt that higher education and especially University education should be the concern of the Union. We have neither accepted nor acted on that principle. We have not taken that step. In view of that, how are we going to coordinate and determine the standards? Are we going to alter the University Acts passed by the various provinces so as to interfere with their standards? I do not think so. Even if we take this power here, it will not be possible by any means to interfere with the autonomous powers which have been given unless you are prepared to put down University education as a subject of and for Central legislation. There is another thing which is objectionable and that is that merely sitting in judgment on the University bodies and other learned organizations and dictating from here as to what should be the proper standard and what shall not be, is not at all desirable. That should be based on something which the Centre is prepared to give. If donations or financial assistance is not given to any of the universities or institutes, then the Centre has no right to interfere in their autonomy, and if the Centre is in a position, if the Parliament wishes to spend more and more on higher education, if it is in a position to give block grants, and regular grants-in-aid then it will not be necessary to legislate for this purpose. It will be sufficient if the advice is given from the Centre, by the Union experts to rest of the universities and learned bodies and I am sure they will always be prepared to change their standards.

So it is not at all necessary to have the power of legislation which will mean compelling these several bodies by Parliamentary legislation to accept certain propositions or to accept certain standards. If you are not going to give any financial assistance, this power to legislate will be unjustifiable interference on the part of the Centre. If you give financial assistance. I am sure nobody nor any institution will be foolish enough or will be bold enough or would be careless enough in its own interests to defy the Centre's advice because of the financial assistance that it received from the Centre.

So from all these points of view, this item is hopelessly ill-conceived and I hope the honourable Dr. Ambedkar, even if he has not listened so far, will listen to my concluding remarks that this is an infructuous brain-wave resulting probably from the heavy work that the Drafting Committee members are required to do. I think this slip is due to their being over-burdened, being overwhelmed, and over-strained energies and I hope it will be corrected in time. There is no justification for this entry, and it is not going to help anybody; it is going to irritate the University bodies if we are going to have recourse to legislation to determine their standards. In view of these considerations and in view of what has been already urged by my friend Mr. Sarwate I hope that the entry will be withdrawn and not pressed.

Mr. Nazirudding Ahmad: Mr. Vice-President, Sir, I have a few short comments to make. I submit that the amendment of Mr. Sarwate will really make Central interference a bearable and an agreeable one. The amendment of Dr. Ambedkar seeks power in the Centre to meddle with educational affairs. but unless it takes the shape of monetary help, such meddling with educational

affairs would amount to advice *gratis* under the high sounding name of "co-ordination and maintenance of standards". The entry proposed is of the vaguest character. I submit that Mr. Sarwate's amendment discloses a considerable sense of humour. He says that the Centre shou'd interfere by promotion of education only by financial assistance. Finance is the essence of the matter. In fact if the Centre should interfere in education, which is essentially provincial, it should be by financial assistance, not merely by advice *gratis* or by criticism or comments. I think Dr. Ambedkar should accept the humour of the situation and accept the amendment which would reduce interference to financial assistance to the Provinces which would really be a desirable interference.

Shri Basanta Kumar Das (West Bengal: General): I have an amendment—No. 29.

Mr. Vice-President: I thought they were new articles. Dr. Ambedkar, would you prefer that to be moved before you speak?

The Honourable Dr. B. R. Ambedkar: Yes.

Mr. Vice-President: Mr. Das, you may move No. 29.

Shri Basanta Kumar Das: Sir, I move:

"That with reference to amendments Nos. 3544 and 3545 of the List of Amendments, after entry 57 in List I, the following new entries be inserted :—

'57A. Promotion of scientific researches and of higher technical and technological education.

57B Co-ordination of educational activities of the States for the purpose of maintaining a uniform national educational policy.

57C Provision of adequate financial assistance to the States for proper development of education and maintenance of uniform standard of education throughout the Union'"

The amendment of Dr. Ambedkar states that co-ordination is required only in a limited sphere viz, the sphere of higher education but the object of my amendment is that education should be taken as an integrated whole and it should not be viewed piece-meal. Therefore I want that there should be co-ordination in the activities of the States to maintain a uniform national educational policy. The State should have a uniform national policy. This House accepted article 36 which states—

"The State shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years"

Again in 31 (vi) it is said—

"That childhood and youth are protected against exploitation and against moral and material abandonment"

In order to fulfil these provisions I think there should be a uniform national policy of education and that policy is to be implemented by co-ordination by the Centre. If there be no adequate financial provision the States will not be able to maintain a uniform standard of education throughout the Union. Education is a subject which must be given priority even after food. We should take care that all the States reach a certain standard within a limited time otherwise the provisions already accepted by the House cannot be implemented There is a tendency in every State to go their own way. I do not deny that they have a right to do so. Education being a provincial subject there ought to be varieties according to the varying needs of provinces, but still there must be a national policy and that national policy must be implemented with the help of the Centre. My first point has been to a certain extent covered by

[Shri Basanta Kumar Das]

entry 57 just now accepted but in 57 (b) and (c) I want to make out that the Centre should have enough power to go with a uniform policy of education and to give financial assistance to the States so that a uniform standard may be reached within a specified period.

Shrimati Renuka Ray (West Bengal: General): Mr. Vice-President, Sir, I should like to support the amendment that has been moved by Mr. Basanta Kumar Das. It is a very wholesome amendment. As he has pointed out the first part of his amendment has already been accepted but 57 (b) and (c) are also extremely important. The co-ordination of educational policy and, in particular, the maintaining of a uniform national minimum standard of education throughout the country is essential. Education is the very basis of our progress and advancement; and unless the Centre is able to co-ordinate education and to see that no part of the country falls behind a minimum standard of education, it is really impossible for us to advance. Any State or any area in this country which remains behind a minimum standard will be a drag on the rest of the country. Therefore I feel that this is extremely essential. At the same time it is not possible to provinces or States to maintain a minimum standard of education unless they have sufficient finances to do so.

At the present moment perhaps due to the many transitional difficulties we have faced and may be for other reasons upto now we have not been able to focus sufficient attention on these very essential nation-building services. Those services that were neglected and treated in a step-motherly manner in the past, under the old regime, have yet to get that help that they need in order that the country may progress. I would say that at least 25 to 30 per cent. of our national income should be set aside immediately for the nation-building services. I do claim that in every province at least 15 if not 20 per cent. of our national income should be set aside immediately for the nation-building ser- a vicious circle in this country that unless we can produce more we cannot increase our national income. It has been pointed out that unless we increase our national income how is it possible to find the money for these essential services? We have to break that vicious circle somewhere. It is not possible for our country to progress or produce more unless the efficiency of the worker is increased. Unless the worker is given the basic opportunities, how can efficiency be increased. This implies that there must be minimum standards for education and health. Unless the men and women who are the builders of society have a minimum standard of education and of health, it is not possible for us really to have any increase in efficiency, and unless we have increase in efficiency it is no use talking about producing more. I think it is at this end that we must tackle this problem.

If we are to do so, this particular amendment of Mr. Das will help towards this end. Both the points that he raised that the Centre must have power to co-ordinate and be able to see that no State remains behind a minimum standard, and the fact that the States must be given sufficient financial assistance to be able to develop education are most important. I do not say that the Centre should have any power to interfere with any State going ahead of the minimum standard. That is not a power that is implied in this resolution. The power that is implied in this is that no state should remain behind the minimum standard and I do hope that Dr. Ambedkar and the Drafting Committee will consider this and will accept this amendment.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. Vice-President, I disagree with the new amendment that has been moved here because, education

*[ ]Translation of Hindustani speech.

being a State or Provincial subject, it would not be proper to give such extensive powers to the Centre in regards to it. It should at least, be kept in the Concurrent List. Moreover, another. article lays down that: "Parliament has exclusive power to make laws with respect to any of the matter enumerated in List 1 of the Seventh Schedule". It would not be proper in view of this that we should take away the powers of Parliament. My contention is that, education having been accepted a State subject, Universities should have all powers in regard to this subject, and the Centre should have no power. Unless Universities have full freedom in this respect, education cannot be imparted to the people properly. I may point out that of all the Universities in India, the Calcutta University enjoyed the highest autonomy. Even at present it functions more freely than other Universities and we find that because of the freedom it enjoys its products have been very useful to the Nation. I oppose the amendment because it seeks to curtail the powers of the Universities. I would like to point out one thing more in this connection and it is that we must be told as to what is meant by higher education. We do not know if the term "higher education" stands for university education or for Secondary education. The term "higher education" should be clearly defined. If this term refers to college education, the Centre should give all possible aid to the Universities. But if this term is meant for Secondary education, well it is extremely lamentable. I want that every province must have complete freedom in regard to Secondary education and the Central Government should have no power in this matter. We have seen that during the British regime, when the Central Government was all powerful, education was a centrally controlled subject and any one who wanted education to be imparted on a new line was not able to work on his lines. Even at present people hold different views about education and some want it to be imparted on one line and others on some other line. But unless this autonomy is provided to the provinces and so long as we continue to control educational activities from the Centre we shall be producing persons without any initiative. I, therefore, submit that Universities should have complete freedom in regard to education and Centre should provide all possible financial help to them. With these words I oppose the amendment.]

Prof. Shibban Lal Saksena (United Provinces: General): Sir, shall I move my amendment 256?

[*At this stage Mr. President resumed the Chair.*]

Mr. President: That is an addition of a new entry.

Prof. Shibban Lal Saksena: Sir, just now you allowed 259.

Mr. President: Do you want to move it as an amendment to this?

Prof Shibban Lal Saksena: They are connected subjects.

Mr. President: That is a new entry you want. Mr. Phool Singh.

Shri Phool Singh: Mr. President, Sir, while I rise to support amendment 57(b) I am afraid it is not possible for me to agree to amendment 57(c). A uniform national educational policy is necessary because some of the Universities have made their degrees so cheap that those passing out of those Universities are looked down upon by the authorities entitled to make appointments. Some of the Universities have made their degrees so cheap that the boys who could not otherwise have passed have been able to pass through very easily in those Universities. This has created a lot of confusion and a uniform national policy therefore is necessary. But while I agree with this, I am afraid it may be putting too great a strain upon the Centre to ask the Centre to give adequate financial assistance to the States, because unless we increase the income of the Centre it may not be possible for the Centre to finance all these activities. Therefore I support 57(b) and oppose 57(c).

The Honourable Dr. B. R. Ambedkar: Mr. President Sir, I think there is a certain amount of admixture made by my Friends who have spoken on this entry 57A. So far as I have been able to gather, their contention is that this entry 57A should be allowed only if there was some grant made by the Central Government to the Provinces. It seems to me quite unnecessary to mix up the two matters. The question of grants from the Centre to the Provinces has been dealt with in two separate articles—255 and 262. Article 255 provides for grants to be made by the Centre to the Provinces for assistance—

"Such sums, as Parliament may by law provide, shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the Consolidated Fund of such States as Parliament may determine to be in need of assistance....."

Therefore, the provision for supporting the States by way of financial help is already there in article 255. I should also like to draw the attention of the Members of the House to another important article, which is article 262, which is much wider in scope. It says—

"The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws."

As the House will see, it has a much wider scope. It says that although a subject may not be within List I, nonetheless, Parliament would be free to make a grant. Therefore, this question having been dealt with separately, I think there is no necessity to mix it up with entry 57A.

Entry 57A merely deals with the maintenance of certain standards in certain classes of institutions, namely, institutions imparting higher education, scientific and technical institutions, institutions for research, etc. You may ask, "Why this entry?" I shall show why it is necessary. Take for instance the B.A. Degree examination which is conducted by the different universities in India. Now, most Provinces and the Centre, when advertising for candidates, merely say that the candidate should be a graduate of a university. Now, suppose the Madras University says that a candidate at the B.A. Examination, if he obtained 15 per cent. of the total marks shall be deemed to have passed that examination; and suppose the Bihar University says that a candidate who has obtained 20 per cent. of marks shall be deemed to have passed the B.A. Degree examination; and some other university fixes some other standard, then it would be quite a chaotic condition, and the expression that is usually used, that the candidate should be a graduate, I think, would be meaningless. Similarly, there are certain research institutes, on the results of which so many activities of the Central and Provincial Governments depend. Obviously you cannot permit the results of these technical and scientific institutes to deteriorate from the normal standard and yet allow them to be recognised either for the Central purposes, for all-India purposes or the purposes of the State.

Consequently, apart from the question of financial aid, it is absolutely essential, both in the interest of the Centre as well as in the interests of the Provinces that the standards ought to be maintained on an all-India basis. That is the purpose of this entry, and in my judgment it is a very important and salutary provision, in view of the fact that there are many provinces who are in a hurry to establish research institutes or establish universities or lightly to lower their standards in order to give the impression to the world at large that they are producing much better results than they did before.

Dr. P. S. Deshmukh: Is it the Government intention to fix the percentages and marks for passes?

The Honourable Dr. B. R. Ambedkar: They may do so. It is up to Government to maintain the standard by any means which they think proper. I cannot say what a Government may do.

Mr. President: I will now put the amendments to the vote. The first set are the three new entries proposed by Shri Basanta Kumar Das, namely, 57A, 57B and 57C.

Shri Basanta Kumar Das: I beg leave of the House to withdraw them.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is :

"That in amendment No. 23 of List I (Sixth Week), in the proposed new entry 57A of List I, for the words 'Co-ordination and maintenance' the words 'Promotion by financial assistance or otherwise' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That after entry 57 of List I, the following new entry be inserted :—

'57A. Co-ordination and determination of standards in institutions for higher education scientific and technical institutions and institutions for research'."

The motion was adopted.

Entry 57-A was added to the Union List.

Mr. President: There is a new entry proposed by Prof. Shibban Lal Saksena is amendment No. 256. After all this discussion, which we have had about university education and the power of provinces with regard to education, does the honourable Member think it worth while moving this amendment?

Prof. Shibban Lal Saksena: If you suggest, I will not.

Mr. President: Very well. We will drop it.

Entry 58

The Honourable Dr. B. R. Amedkar: Sir, I move :

"That for entry 58 of List I, the following entry be substituted :—

'58. Union Public Services, All-India Services : Union Public Service Commission.'"

(Amendment No. 169 was not moved.)

Dr. P. S. Deshmukh: Sir, I move :

"That in amendment No. 30 of List I (Sixth Week), in the proposed entry 58 of List I, the words 'All-India Services :' be deleted."

The wording of the entry now proposed will stand as :

"Union Public Services All India Services, Union Public Commission."

I fail to understand why the wording "All India Services" is necessary. 'Union Public Service', in my opinion includes the all India Services, because the Union covers the whole of India and is "All India", and I do not think the word "public" is going to make any difference. I, therefore, think that the addition of the words 'All India Services' is superfluous. But if there is any specific purpose to be served, I would not press the amendment. If the wording "Union Public Services" is restricted to particular services and All-India services are not included in it, then the name of the Commission will also have to be altered so as to cover the All-India Services also because the services are called Union Public Services, if the All-India Services will not be referable to that Commission, at any rate ordinarily, since the Services Commission is called the Union Public Services Commission. So the All-India Services will have no place so far as this Commission is concerned. This is an unnecessary addition. But all that I seek is more information.

Shri H. V. Kamath: Sir, I move:

"That in amendment No. 30 of List I (Sixth Week), in the proposed entry 58 of List I, the words 'and Joint Commission' be added at the end."

The entry then would read as follows:

"Entry 58. Union Public Services, All-India Services, Union Public Services Commission and Joint Commission."

The House will recollect that a few days ago we adopted articles 284, 285, 285A, 285B, 285C, 286, 287, etc., etc., providing for the creation of Public Services Commissions which were in three different classes: firstly, the Union Commission: secondly, the State Commission: and thirdly, the Joint Commission for two or more States who have agreed to set up such a Commission for the purposes of those two or more States. Unfortunately this matter of the Joint Commission has been overlooked by the Drafting Committee because the House will see that article 284 invests Parliament with the power to provide by law for the appointment of a Joint Public Services Commission to serve the needs of two or more States who have agreed to set up a Joint Commission as among themselves. Article 285 also vests power in the President to appoint the Chairman and other Members of a Joint Commission, and this and succeeding articles also confer power on the President or the Parliament in regard to the Constitution and organization of the Joint Commission. In any case, I do not find that this matter of the Joint Commission has been provided for in other Lists—Lists 2 and 3—and even if they are provided for I do not think they fall within the purview of these two lists. The right place for the Joint Commission is in List I, within the jurisdiction and purview of the Union authorities. Accordingly I suggest that this addition be made by accepting my amendment seeking to include the Joint Commission in this proposed entry 58. I move amendment No. 204 and commend it to the House for its consideration and acceptance.

The Honourable Dr. B. R. Ambedkar: With regard to the amendment of my Friend Dr. Punjabrao Deshmukh requiring the deletion of all-India services, it is not possible to accept that for the simple reason that heretofore the all-India services and the regulation thereof did not figure in the Government of India Act because that was a matter which was kept exclusively in the hands of the Secretary of State. The Secretary of State having disappeared, it is necessary to provide for the regulation of the all-India services, somewhere by some agency in the Constitution and the most appropriate agency therefor is the Centre. List I deals with matters which are within the purview of the Centre. The natural place for all-India services is therefore in List I. That is one argument.

The second argument is this that there are already two sorts of all-India services at present in existence. There are the remnants of the old I.C.S. still continuing to serve the Government of India. Secondly, there have been instituted during the course of the last two years what are called the All-India Administrative Service and the All-India Police service. Whether the Centre continue to recruit civil servants on the basis of the All-India Administrative Service or the All-India Police Service is a matter which has to be determined in the course of a subsequent article with which we will be concerned. But there is no doubt about it that these services have been brought into existence with the consent of the Provinces. Secondly, they being there it is necessary to make provision for their regulation. And I submit that the Union List is the proper list where this provision can be made.

With regard to my Friend Mr. Kamath's suggestion that the Joint Commission should be mentioned in this entry, my submission is that on a deeper consideration that would create complications. The Joint Commission, so far as

its constitution, the appointment of its members and their removal are concerned—and only in these three respects—is an all-India subject, and provision for these three matters is already made in article 284. In all other respects it is really a State Public Service Commission : say, for instance, for the purpose of excluding certain services or consulting them in certain matters, it will still be a State Public Service Commission. And it is not desirable to oust the jurisdiction of the States in these matters as would be the consequence if the Joint Commission was also mentioned in entry 58. It is for that purpose that I object to Mr. Kamath's proposal.

Shri H. V. Kamath : May I know if this will go to the Concurrent List ?

The Honourable Dr. B. R. Ambedkar : No.

Shri H. V. Kamath : Where will it go ?

The Honourable Dr. B. R. Ambedkar : It can be the Centre only in certain respects : for instance, if the States jointly say that a Joint Public Service Commission should be constituted, then as a result of the resolution the Centre gets jurisdiction and not otherwise. In all fundamental matters, it is distributively, if I may say so, a State Public Service Commission.

Dr P. S. Deshmukh : I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : I shall put Mr. Kamath's amendment to vote. The question is :

"That in amendment No. 30 of List I (Sixth Week), in the proposed entry 58 of List I, the words 'and Joint Commission' be added at the end."

The amendment was negatived.

Mr. President : The question is :

"That for entry 58 of List I, the following entry be substituted :—

'58. Union Public Services, All-India Services; Union Public Service Commission."

The amendment was adopted.

Entry 58, as amended, was added to the Union List.

Entry 58A

The Honourable Dr. B. R. Ambedkar : I move :

"That after entry 58 of List I, the following entry be inserted :

'58A. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India'."

This entry did not exist in the draft. We felt it necessary to have such an entry as a measure of caution.

(Amendment No. 170 was not moved.)

Dr. P. S. Deshmuck : Sir, I move :

"That in amendment No. 31 of List I (Sixth Week), for the proposed new entry 58A of List I, the following be substituted :—

'58-A. Pensions payable out of the Consolidated Fund of India or otherwise by the Government of India.' "

My amendment seeks to omit the word "Union" and for this important reason, namely, so long as the pensions are payable or made payable out of the Consolidated Fund of India, I am sure no other pension except those with which

[Dr. P. S. Deshmukh]

the Union is concerned would be included in that. I have not been able to understand if there are any pensions which can be paid out of something which is not part of the Consolidated Fund of India. I thought the total revenues of India were going to be designated as the Consolidated Fund of India. Therefore I am unable to understand where the other source of payment of these pensions can be sought out. But I have not altered even this, I have merely put it in a more appropriate form, according to me at any rate, and I think the wording that I have suggested should be acceptable, that is, without any reference to the Union. So long as they are payable out of the Consolidated Fund of India, they will be only Union pensions and the word is therefore superfluous.

The Honourable Dr. B. R. Ambedkar: I do not think that the amendment suggested by my Friend Dr. Deshmukh is any improvement or has any substantial difference from the amendment as I have moved. The difference that is sought to be made is this that there may be certain pensions which may be payable out of the Consolidated Fund of India, which means out of the proceeds of taxes. It may be perfectly possible for the Government of India to institute pensions which are of a contributory character in which case the burden may not be on the Consolidated Fund but on the person who has already contributed to a Fund. That is the distinction. And that is why the entry has been worded in the way I have worded it.

Dr. P. S. Deshmukh: I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That after entry 58 of List I, the following entry be inserted:—

'58A. Union pensions, that is to say pensions payable by the Government of India or out of the Consolidated Fund of India.'"

The motion was adopted.

Entry 58A was added to the Union List.

Entry 59

Entry 59 was added to the Union List.

Entry 60

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 60 of List I, the following entry be substituted:—

'60. Ancient and Historical Monuments and Records declared by Parliament by law to be of national importance'."

The rest of the entry as it originally stood, namely, "archaeological sites and remains" is proposed to be transferred to the Concurrent List.

Shri H. V. Kamath: Mr. President, I move, Sir, amendment No. 206 of List III (Sixth Week). It runs as follows:—

"That in amendment No. 32 of List I (Sixth Week), in the proposed entry 60 of List I, for the words 'Ancient and Historical Monuments and Records' the words 'Monuments, places and objects of artistic or historic interest' be substituted."

Let me at the outset make it clear that I am not excessively fastidious about the wording or the phraseology of any entry or article so long as it brings out the meaning of the article completely. I am not also opposed to anybody changing

his view or the language he might have used on a previous occasion, nor am I opposed to any inconsistencies on anybody's part, so long as any valid, cogent reason is shown for a change of view or a change of language and so long as it appears at least plausible. Even Mahatma Gandhi used to say that he was always prepared to change his view so long as he was convinced of the need for the change, so long as he had valid reasons for doing so.

I would invite the attention of the House to article 39, Part IV, Directive Principles of State Policy Article 39 which this House adopted many months ago reads as follows :—

"It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoilation, destruction, removal etc. etc."

Now, in the Union list, so far as I can understand, we have included the subject-matter of article 39 and I see no reason why we should change the language in which we clothed article 39. Here the proposed entry is as regards ancient and historical monuments and records. *Records*—I do not know how that word has crept in. In addition to monuments if we mention places and objects of historic interests, it is enough; records are of course one of the objects which you can protect from spoliation, destruction, etc. Why not therefore say, the other "objects" of historic interests besides monuments? Why not places, not merely of historic but of artistic interest, to which this House after mature deliberation provided for in article 39 in one of the Directive Principles of State Policy? I think Dr. Ambedkar has advanced no cogent reasons for changing the language of article 39 which is sought to be embodied now in this entry. I therefore move amendment No. 206 and commend it to the House for its acceptance.

(Amendments Nos. 207 and 208 were not moved.)

Mr. President: Would you like to say anything on amendment No. 206?

The Honourable Dr. B. R. Ambedkar: No. Sir, it is quite unnecesary to say anything on this subject.

Mr. President: Then I will put the amendment moved by Mr. Kamath to vote. The question is :

"That in amendment No. 32 of List I (Sixth Week), in the proposed entry 60 of List I for the words 'Ancient and Historical Monuments and Records' the words 'Monuments, places and objects of artistic or historic interest' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That proposed entry 60 stand part of List I."

The motion was adopted.

Entry 60, as amended, was added to the Union List.

Prof. Shibban Lal Saksena: Sir, may I be permitted to move my amendments?

Mr. President: You were not here when I called them out. I am sorry it is too late now.

Prof. Shibban Lal Saksena: They are very important amendments, Sir, and I think they are independent also.

The Honourable Dr. B. R. Ambedkar: You have no equity in your favour.

Entry 61

Mr. President: Let me finish the List and then we shall see. Now, entry No. 61. There is an amendment in the Printed List, of which notice is given by Dr. Ambedkar. No. 3548.

The Honourable Dr. B. R. Ambedkar: Sir, I am not moving that.

Mr. President: Then there are two amendments in the name of Mr. Santhanam.

The Honourable Shri K. Santhanam: I am not moving them.

Mr. President: Then I put entry No. 61 to vote.

Entry 61 was added to the Union List.

Entry 61-*A*

The Honourable Dr. B. R. Ambedkar: I move:

"That after entry 61 of List I, the following entry be inserted :—

'61-A. Establishment of standards of quality for goods to be exported across customs, frontier or transported from one State to another'."

We have already got entry 61 which deals with standard of weights and measures and it is felt that there ought to be a provision for establishment of standards of quality for goods.

Mr. President: There are two amendments to this. Amendment No. 209, Dr. Deshmukh.

Dr. P. S. Deshmukh: Mr. President, I welcome the proposed addition of entry 61A, but I think it is not comprehensive enough and I therefore move these two amendments of mine so as to make it fully comprehensive and cover all sides of the question. My amendment No. 209 reads as follows :—

"That in amendment No. 33 of List I (Sixth Week), for the proposed new entry 61A of List I, the following be substituted :—

'61A. Grading and standardization of quality of agricultural produce or goods intended to be consumed in the country or exported outside India or transported from one State to another'."

The next amendment, No. 210, is :—

"That after the proposed new entry 61A of List I, the following new entry be added :—

"61B Prevention of adulteration of articles of food, whether imported, proposed to be exported or otherwise, arrangements for analysis, control and regulation of all such articles'."

Sir, the amendment is in fact clear enough. I seek to add the grading of agricultural produce. Anybody who is familiar with the importance of our export trade as well as the fact that there is a very real absence of grading would find that it causes much loss to the agriculturist. This is one of the things with which the Ministry of Agriculture is also seriously concerned. I have no doubt that all the Provinces will agree that some Central legislation is necessary as well as the determination of a definite policy so that the standards of production will rise, there would be proper grading of all articles that are produced and our export market will also improve. So, this is a highly important thing which was probably not pressed upon the attention of any of the Members of the Drafting Committee, and as none of them was probably so familiar with the Ministry of Agriculture or the difficulties of agriculturists or their needs, this omission has occurred. I therefore propose that this wording which covers all that is proposed by the learned Doctor to be included in 61A adds to it certain

things which are also absolutely essential and it does not necessarily limit it only to the exported goods or to goods transported from one State to another only; it also refers to agricultural produce as well as goods intended to be consumed in the country. So far as the second suggestion, with regard to the addition of 61B is concerned, I shall particularly refer to the vicious habits of our merchants of adulterating food-stuffs and food-grains. This generally occurs not at the stage at which the agriculturists produce and sell the articles but at the stage at which they are offered for sale by the merchants and traders. This evil has been so rampant that I make bold to say that it is very difficult to get anything in a pure form from any shopkeeper. Their greed for lucre is so great that they are not content with their legitimate profit and they very freely adulterate sugar, flour, oil, etc., with all the unimaginable things. Sometimes they mix even cement with flour and this is consumed by our unfortunate brethren. I have also suggested a consequential provision for analysis, control and regulation of such articles. I think both these amendments are very necessary. I hope Dr. Ambedkar will agree that it is necessary that the Union should have this power.

Sir, it may be said that this matter may be left to the provinces. I think it will not be proper to do so, because it would really be funny that we should legislate and decide upon the quality of the articles for maintaining standards for the markets etc., and not take the other necessary step of maintaining the same standard throughout the Union. I trust that my amendments will be accepted.

Mr. President: Amendment No. 260 in terms refers to entry 61, but it is covered by the amendment moved by Dr. Deshmukh. So it is not necessary to move it.

The Honourable Dr. B. R. Ambedkar: Sir, the point raised by my Friend Dr. Deshmukh might well be raised when we discuss the entries in List II. They are matters within the jurisdiction of the States. We are dealing here only with List I, which is intended to circumscribe the power of the Centre so as not to interfere with the internal affairs of the States. Consequently the entry has been worded in a very cautious manner. As my Friend will see, the entry speaks of standards of goods to be transported from one State to another. In regard to these it is not intended to give the Centre power to interfere with the administration of the States. If he wants to raise this question he may do so when we discuss the State List.

Dr. P S. Deshmukh: May I suggest that this entry might be held over and the Agricultural Ministry consulted before we finalise this List?

The Honourable Dr. B. R. Ambedkar: When we come to List II, we can discuss the matter.

Mr. President: I will put the amendments to vote. The question is:

"That in amendment No. 33 of List I (Sixth Week), for the proposed new entry 61A of List I, the following be substituted .—

'61A. Grading and standardisation of quality of agricultural produce or goods intended to be consumed in the country or exported outside India or transported from one State to another'."

The amendment was negatived.

Mr. President: The question is:

"That after the proposed new entry 61A of List I, the following new entry be added :—

'61B. Prevention of adulteration of articles of food, whether imported, proposed to be exported or otherwise, arrangement for analysis, control and regulation of all such articles'."

The amendment was negatived.

Mr. President: I shall now put the new entry 61A to vote. The question is :

"That after entry 61 of List I, the following new entry be inserted :—

'61A. Establishment of standards of quality for goods to be exported across customs frontier or transported from one State to another'."

Shri V. S. Sarwate: I would like to know from Dr. Ambedkar what the meaning of the term 'exported across customs frontier' is ?

Mr. President: I am afraid the questions comes too late, after the voting has taken place.

The Honourable Dr. B. R. Ambedkar: I will explain it to the Honourable Member if he will come to me afterwards.

Mr. President: The question has been put.

The motion was adopted.

Entry 61A was added to the Union List.

Entry 62

Mr. President: Entry 62. Does Sardar Hukam Singh move his amendment to this entry ?

Sardar Hukam Singh (East Punjab : Sikh) : I am not moving it.

Entry 62 was added to the Union List.

Mr. President: I may just point out to Members that the progress today is rather slow. I want to finish consideration of the three Lists tomorrow. So I suggest that we should proceed a little faster.

Dr. P. S. Deshmukh: We are going sufficiently fast, I think.

Entry 63

Mr. President: Not today. We may now take up entry 63.

The Honourable Dr. B. R. Ambedkar: Mr. President, I am not moving amendment No. 3551 to the original entry. In regard to amendment 34 which I am moving I shall in doing so incorporate in it amendment No. 212 also. Sir, I move :

"That for entry 63 of List I, the following entry be substituted :—

'63. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable'."

Prof. Shibban Lal Saksena: Sir, I move :

"That in amendment No. 34 of List I (Sixth Week), in the proposed entry 63 of List I, the words 'Prospecting for and' be inserted in the beginning."

Then, Sir, the entry would read thus :—

"Prospecting for and regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."

The entry as it stands provides for regulation and development of oilfields and mineral oil resources. Prospecting for oilfields and oil resources is not provided for. My amendment therefore says, "Prospecting for and regulation and

development, etc." It means that the amendment will give the Central Government power to prospect for oil. You know, Sir, that prospecting in rocks and mountains has to be done in order to find oil resources. Huge sums of money have to be spent on geological surveys of sites which are supposed to be rich in oil. The latest inventions of science are taken advantage of in the discovery of oilfields. I therefore think that general regulation and development of existing oilfields will not do. We must have power to prospect for the discovery of oilfields and oil resources. My amendment only completes the amendment which has been moved by the Drafting Committee. Surely they do not want to confine India to the resources of a few oilfields in Assam. They would certainly want that we must find out oilfields in other parts of India, and it will not be possible to do this under the entry as it is, since it does not give power for prospecting. The States cannot do it for want of the required funds, and therefore the prospecting for oil should be the function of the Central Government. I hope Dr. Ambedkar will accept this amendment.

Shri Raj Bahadur: Mr. President, Sir, I move:

"That in amendment No. 34 of List I (Sixth Week), in the proposed entry 63 of List I, after the words 'dangerously inflammable' the words 'corrosive or explosive' be inserted."

Sir, my purpose in moving this amendment is to include acids also within the purview and ambit of this entry. I hope, Sir, that I can say without fear of contradiction that it is positively necessary to legislate in respect of the possession, storage, transport and sale of acids. We have seen how acids have been misused in even ordinary petty disputes and quarrels. We have also seen of late the growth of the cult of the acid bulbs in the field and arena of political controversy. It is therefore necessary that we should control the storage, possession etc., of acids and see that no mischief is made or created with the help of such liquids. We should hence, include acids also within the purview of this entry. The entry as moved by the Drafting Committee deals firstly with oilfields and mineral oil resources. Secondly it deals with petroleum and petroleum products and lastly it deals with substances declared by Parliament by law to be dangerously inflammable. I would submit that in the last category we should include acids also. It may be useful to point out that acids by themselves could be and are being used as weapons and acids are also used in the manufacture of explosives. So, it is necessary that the Union should control such articles as acids also. Sir, I move.

The Honourable Dr. B. R. Ambedkar: I do not think that either of these two amendments is necessary. The purpose which my Friend, Professor Shibban Lal Saksena has in view, *viz.*, that entry 63 should also permit the Centre to regulate prospecting for oil, etc., would be served by the words we have used "Regulation and development". With regard to the addition of the word "corrosive", I think it is not necessary to have any such power at all.

Mr. President: The question is:

"That in amendment No. 34 of List I (Sixth Week), in the proposed entry 63 of List I, the words "Prospecting for and" be inserted in the beginning."

The amendment was negatived.

Mr. President: Then amendment No. 262.

Shri Raj Bahadur: I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That for entry 63 of List I, the following entry be substituted:—

[Mr. President]

'63. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable' "

The amendment was adopted.

Entry 63, as amended, was added to the Union List.

Entry 64

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 64 of List I, the following entry be substituted :—

'64. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest'."

Kaka Bhagwant Roy: *[Mr. President, my amendment is as follows :—

"That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the word 'Industries' the words 'development of Industries' be substituted."

It appears from the amendment which the Honourable Doctor has introduced in the original entry that he wants to hand over all the powers regarding industries to the Centre. It is very good; the Centre ought to be strong, and during transition, the Centre should be vested with such powers as are essential for the Industrial development of the country. But in normal times, the Centre should not be vested with such authority. India is a very big country. She has many provinces. These Provinces have their own difficulties and can understand their problem much better than the Centre.

The problem of Industries is very complicated. Therefore so far this question is concerned, every province should be given facilities to solve its own problems. If you make the Provinces responsible for industrial development and do not give them powers to deal with the situation, then the problem of Provinces cannot be solved and it will retard the industrial progress of the country. Although I am somewhat deviating from the point, yet I must say that the present Industrial policy of the Centre will prove a stumbling-block in the path of the Country's progress.]

Mr. President: *[You are not only speaking on your amendment, but you are opposing it.]

Kaka Bhagwant Roy: *[I bow down to your ruling. But I would like to say that so far industries are concerned, the Provinces should be entrusted with necessary powers; for they can understand the problem of their industries better. With these words I would request the Honourable Doctor to accept the amendment.]

Shri H. V. Kamath: Mr. President, I move amendment No. 214 of Third List (Sixth Week) which reads as follows:—

"That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the words 'the control' the words 'the development and control' be substituted."

This amendment includes or embraces the amendment just now moved by my honourable Friend, Kaka Bhagwant Roy. The original entry as it stood in the Draft Constitution refered to the development of industries. I wonder why the Drafting Committee has suddenly developed an antipathy to the word "development" in this entry. My amendment is on the lines of a legislative

*[ ] Translation of Hindustani speech.

measure which was introduced in the Assembly during the last Budget Session and which has been referred to a Select Committee. That Bill provided for governmental action in industries, the development and control of which was to be regulated by the Centre and the title of the Bill was "Industries (Development and Control) Bill", that is to say, the subject-matter of this entry has been already taken cognizance by the Central Government in a Bill, the title of which includes not merely control but the development of industries which are deemed necessary or expedient in the public interest. I realize it is quite possible the Drafting Committee owing to the excessive strain under which it has laboured during the last two years and especially during the last few weeks or months, is liable to commit slips here and there, but I hope that the Drafting Committee has not developed a closed or a calcified mind, which is not receptive to any change whatsoever. I think that the meaning of this entry will be more adequately and more fully conveyed by amending this word "control" on the lines I have suggested and seeking to incorporate in this entry not merely control but also the development of industries, which means, industries the development and control of which by the Union is declared by Parliament, by law, to be expedient in the public interests. I move amendment No. 214 of List III (Sixth Week) and commend it to the House for its earnest consideration.

Mr. President: There are two other amendments which are in the printed book of amendments, No. 3552 in the name of the Honourable Dr. Syama Prasad Mookerjee and No. 3553 in the name of Honourable Shri K. Santhanam I take it that they are not moved.

The Honourable Dr. B. R. Ambedkar: Sir, the entry as it stands is perfectly all right and carries out the intention that the Drafting Committee has in mind. My submission is that once the Centre obtained jurisdiction over any particular industry as provided for in this entry, that industry becomes subject to the jurisdiction of Parliament in all its aspects, not merely development but it may be in other aspects. Consequently, we have thought that the best thing is to put the industries first so as to give undoubted jurisdiction to Parliament to deal with it in any manner it likes, not necessarily development. Therefore, the entry is far wider than Mr. Kamath intends it to be.

Mr. President: The question is:

"That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the word 'Industries' the words 'Development of Industries' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the word 'the control' the words 'the development and control' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That for entry 64 of List I, the following entry be substituted :—

'64. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest' "

The amendment was adopted.

Entry 64, as amended, was added to the Union List.

New Entry 64-A

Prof. Shibban Lal Saksena: Mr. President, Sir, I beg to move:

"That after entry 64 of List I, the following new entry be added :—

[Prof. Shibban Lal Saksena]

'64-A. Co-ordination of the development of agriculture including animal husbandry, forestry and fisheries and the supply and distribution of food.' "

Sir, I wish to point out to the Drafting Committee and its Chairman that this entry which I have suggested is in accordance with the recommendation made by the Ministry of Agriculture of the Government of India. In fact in the letter which the Honourable Shri Jairamdas Daulatram wrote to the Honourable Dr. Ambedkar in January 1948, he had used the same words. I would only quote the last two paragraphs of that letter. He says:

"The difficulties of feeding the ever-increasing population of India and the experience of the last war have made it abundantly clear that the national interest demands that the Centre should play a more active role in the sphere of Agricultural Development and in January 1946 a statement of Agriculture and Food Policy in India was issued by Government from which it will be seen that the Centre assumed to itself specific responsibilities for the development of agriculture and the supply and distribution of food and to co-ordinate an All-India policy of Agricultural development, food production and distribution... ..

We have given the matter very careful consideration and we think that there will be no adequate answer to the challenge of the Ministry of Finance that the agricultural development is a provincial responsibility until there is some specific suitable provision in the Constitution Act itself. I am inclined to think that the time has come when the Centre ought to take up the entire responsibility in regard to food. But the minimum that is essential in national interest is that the Centre must have an active hand in co-ordinating and guiding agricultural development all over the country. I would, therefore, suggest for your consideration that, besides the existing item No. 12 in the Federal Legislative List, the following item should also be included in that List, namely, "Co-ordination of the development of agriculture including animal husbandry, forestry and fisheries and the supply and distribution of food."

What I have done is only to point out the omission of the Drafting Committee. In fact it is well-known today that the food problem is the most difficult problem which the country has to solve. The amount of imports which we have to make is really depriving us of all our resources and we cannot develop our industrial resources and other things.

So I think if we want that we should be self-sufficient in food within a few years—one or two years as has been proposed,—then it is necessary that there should be a drive from the Centre. I am glad for what the Government is doing today. I do not think that even this much power has been provided for the Union Government in this Constitution. The present controls and other regulations will not be possible unless some such entry is included in the Union List. I really wonder whether the recommendations of the Agriculture Ministry contained in the letter of Shri Jairamdas Daulatram, dated 5th July 1948 which they have published in this booklet known as *'Comments on the Provisions contained in the Draft Constitution of India'* have been altogether forgotten. In fact I am personally in full agreement with his suggestions that it should be the responsibility of the Centre alone to see that India gets food in proper measure. Besides, what he suggests is not even that —he only wants co-ordination of the development of agriculture including animal husbandry and fishery. He says the additional powers asked for relate to the inclusion of reclamation of waste lands on a large scale requiring the use of plant and machinery, forest laws and inland fisheries and fishery laws He thinks all these are necessary if India is to be made self-sufficient in food.

Shri Mahavir Tyagi (United Provinces: General): What do the Provincial Governments say?

Prof. Shibban Lal Saksena: Food problem can only be solved if we tackle it on an all-India basis. We have seen Bengal famine and the province of Bengal could not help it. Unless the Centre has powers to export food from certain provinces to meet famine in other provinces it will be difficult to solve

the problem. It is not a question of taking away the powers of the provinces but of meeting emergencies. I therefore think this power is necessary after seeing the history of the last five or six years regarding famines and controls. Government have been compelled to take powers in their hands which were necessary for them and I only want that we must provide for these powers in the Constitution; otherwise it will handicap us in solving the food problem. I personally feel that the reclamation of lands etc. cannot be taken up by small provinces and States and that will require the help from the Centre. The Centre must be able to devote attention to this exclusively. This is most important.

Shri Kishorimohan Tripathi (C.P. & Berar States) : Mr. President, Sir, I beg to draw your attention to two amendments in the printed list—Nos. 74A and 74B to be introduced as two new entries—which I proposed to move, but I do not propose to move them, and have come to support the amendment moved by Shri Saksena. As has been pointed out by Shri Saksena, this amendment has been proposed also to be incorporated in the Constitution of India, by the Ministry of Agriculture. Shri Saksena has already made a reference to it. Food is the most important problem in India and it is a very serious problem, and the Government of India have committed themselves to solve this problem as early as possible. In fact, we have made up our minds, that after the year 1951, no food imports should be allowed, because food imports have been eating a vital part of our exchanges, and by selling imported food at rates available in the Indian markets, we have been incurring expenditure in giving subsidies to the provinces. During the last two years we have already spent in this way somewhere about Rs. 40 crores. The problem of food cannot be solved unless the problem of agricultural development is taken in hand on an all-India basis. And unless this entry finds a place in the Union List, it will not be possible for the Government of India to prepare and execute all-India plans of agricultural development.

Apart from this aspect, the question, in relation to the food problem, has another bearing. India is primarily an agricultural country, and if we want to raise the standard of life of our people, we must see that the standard of life of the agriculturists—and by the agriculturists, I mean the agricultural labourer and the peasants—is improved. The structure of Indian economy cannot be reformed if agricultural economy in India is not reformed, and agricultural economy can only be reformed by all-India plans which must be planned by the Centre and executed by the Centre and the Provinces acting in co-ordination. We have seen that the Government of India, with a view to increasing the production in the field of manufacture, have given incentives by way of exemption of various taxes. Similarly, in order to improve agricultural production also, it will be necessary for the Government of India to legislate and give incentive to the agriculturists. In America such legislation has been undertaken. There, the minimum fair price for the producer has been assured. Here also we must have the minimum fair price legislation so as to bring home to the agriculturists and the peasants that they will be able to sell whatever they produce at a minimum fair price and thus get an adequate return for their efforts.

On these grounds, Sir, I support the amendment moved by Shri Saksena and I commend it for the acceptance of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: Sir, with regard to the amendment to have a new entry 64A, I may say that this matter was placed before the Premiers' Conference and the Premiers' Conference did not agree to the proposal.

[The Honourable Dr. B. R. Ambedkar]

With regard to the question of distribution of food, we have provided in article 306, that for a period of five years, the Centre may have control over the distribution of food.

With regard to the second amendment, namely, the introduction of the new entry 64B.....

Mr. President: That has not been moved.

The Honourable Dr. B. R. Ambedkar: Sir, I cannot accept the amendment moved.

Mr. President: I shall put the amendment to vote. The question is :

"That after entry 64 of List I, the following new entry be added :—

'64-A. Co-ordination of the development of agriculture including animal husbandry, forestry and fisheries and the supply and distribution of food.' "

The amendment was negatived.

Mr. President: Amendment No. 264, Mr. Saksena.

Prof. Shibban Lal Saksena: Sir, I beg to move :

"That after entry 64-A of List I, the following new entry be added :—

'64-B. Regulation of trade and commerce in and of the production, supply, price and distribution—

(a) of goods which are the products of industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest;

(b) of any other goods whose regulation similarly is declared by Parliament by law to be necessary or expedient in the public interest.' "

Here, I would like to draw the attention of the Drafting Committee to the fact that a similar suggestion is contained in the recommendations of the Ministry of Industry and Supply, where they have suggested that in the Seventh Schedule in the Union List, such an entry as I have suggested should be provided for. In fact, I may refer the very page—page 14 of this booklet containing the comments of the various Ministries on the Draft Constitution. There the Ministry states—

"For effective implementation by the Union Government of the industrial policy announced by the Government of India on the 6th April, 1948, and for other reasons, it is necessary to invest the Union Government with certain powers over trade and commerce in respect of and the production, supply, price and distribution of the goods produced by the industries to be brought under Central regulation and certain other goods such as wholly imported articles or agricultural products. The following additional item is, therefore, suggested :

'Regulation of trade and commerce in and of the production, supply, price and distribution—

(a) of goods which are the products of the industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest;

(b) of any other goods whose regulation similarly is declared by Parliament by law to be necessary or expedient in the public interest."

Sir, apart from the fact that this amendment has the support of the Ministry of Industry and Supply, it should also be obvious to anybody that within the last four or five years our experience has shown us that unless there is this power to regulate trade and commerce and also production and distribution, there will be chaos in the country. Even the most important

questions of the supply of food and clothing and other necessaries of life, cannot be tackled on a mere provincial basis, and they must be tackled on an all-India scale. So I say this power should be given to the Union by means of an adequate provision here in the Union List. Otherwise the Centre will not have the necessary power. I think it is a most important power which should be given to the Centre. Besides.....

Mr. President: Will it suffice if I point out that there is a proposal for a new entry—entry 35A in the Concurrent List? That covers this point, I think.

Prof. Shibban Lal Saksena: Is it an amendment, Sir?

Mr. President: Yes, amendment No. 142.

Shri T. T. Krishnamachari (Madras: General): That amendment covers the first part of the honourable Member's amendment.

Prof. Shibban Lal Saksena: It is in the Concurrent List, of course, but it is not as wide as the one that I have suggested. I personally prefer this power to be taken by the Centre alone.

Mr. President: Very well.

Prof. Shibban Lal Saksena: Besides, the words that I have suggested give much larger powers to the Centre than it is proposed by the amendment in the Concurrent List. I suggest the experience of the past four or five years is sufficient reason for taking this thing in the hands of the Centre. Sir, I do not think that we should be afraid of investing the Centre with power in regard to these vital things, like food and clothing. Otherwise, I do not think we will be able to meet the needs of the country in the manner we desire. At present also the Central Government has got the power to lay down uniform policies in regard to these matters. But the Centre should also have the power to make all parts of the country to fall in line with the Central policy so as to meet all the needs of the country.

The Honourable Dr. B. R. Ambedkar: With regard to the first part of the amendment, there is the proposal of the Drafting Committee to put this matter in the Concurrent List, and if my Friend Prof. Saksena were to examine the Concurrent List, he will find that there is an entry corresponding to entry 64B, (a) in entry 35A of the Concurrent List.

With regard to (b), it is a matter of controversy and the Drafting Committee has not yet come to any conclusion on the question. The Drafting Committee feels that (a) is a perfectly logical consequence of the power which we have already given to Parliament to declare certain industries of national importance. If Parliament has the power to declare certain industries to be of national importance, then Parliament should also have the power to regulate the goods and the products of such industries. But, (b) is about goods of industries other than those declared by Parliament to be of national importance. As I said, that is a matter of some controversy and the Drafting Committee has not come to any conclusion. I suggest Prof. Saksena may allow the matter to stand over till we reach entry 35 in the Concurrent List.

Prof. Shibban Lal Saksena: I have no objection to waiting.

Mr. President: Then it is held over.

Entry 65

Mr. President: There is an amendment, No. 265, of Prof. Saksena.

Prof. Shibban Lal Saksena: Entry 65 is in relation to regulations for labour and safety in mines and oilfields. Sir, I move:

[Prof. Shibban Lal Saksena]

"That in entry 65 of List I, after the word 'Regulation' the words 'and welfare' be inserted."

The entry will now read :

"Regulation and welfare of labour and safety in mines and oilfields....."

Shri T. T. Krishnamachari : If it would help my Friend I would draw his attention to entry 26 in the Concurrent List which seems to meet his requirements. It reads : "Welfare of labour : conditions of labour : etc. etc.".

Mr. President : It is an amended form of 26 of which notice has been given by Dr. Ambedkar.

Shri T. T. Krishnamachari : It fits in with his requirements.

Prof. Shibban Lal Saksena : But mines and oilfields are Central subjects, and if you want that labour welfare should be in the Concurrent List, I have one objection to it. I was not in the House at the time, but I wanted that labour legislation, labour laws, etc. should also be Central subjects. From my experience of labour work, I can say that Labour legislation is almost in a chaotic condition all over the country and in the various provinces. In some provinces we have some labour laws, in others there are very different laws. In the same industry, like the sugar industry in Bihar, the U.P. and Bombay there were different labour laws in different provinces. Even in the textile industry in Bombay there are certain laws but there are different laws for this industry in the U.P. and other places. Even the Industrial Dispute Act has been modified by laws made by the U.P. and other Provincial Governments.

This leads to chaotic conditions. Therefore labour Legislation should come into the Central List. I do not want them in the Provincial List. Labour should be a Central subject and the Central Government should be able to deal with it; otherwise there will not be similar treatment of labour in the different provinces.

Shri H. V. Kamath : Sir, with regard to amendment No. 215, (List III—Sixth Week) it was intended to apply also to entry 65. It is likely that the copy I sent to the office mentioned entry 66 only. I had intended that it should apply to both entries 65 and 66.

Mr. President : You want to move it ?

Shri H. V. Kamath : Yes—for 35 also.

Mr. President : Very, well : you may do so. But I do not know how it fits in.

Shri H. V. Kamath : Sir, I move (with reference to entry 65 as well with your kind permission) :

"That with reference to amendment No. 37....."

Mr. President : It has nothing to do with 65. It applies only to 66. There is no amendment to entry 65.

Shri H. V. Kamath : It is with your kind permission that I am now moving this amendment to entry 65. Sir, I move :

"That with reference to amendment No. 37 of List I (Sixth Week), in entry 66 of List I and entry 65 of List I, for the words 'and oilfields' the words 'oilfields, and submarine regions' be substituted."

I do not know why "submarine regions" have been excluded from the scope of this entry. Only the other day we adopted an article whereby all lands and all minerals underlying the ocean were vested in the Centre. I am

told on reliable authority that the Pearl Industry, to mention only one instance, could be very usefully developed in the Cutch region, and I am sure that in many other parts of our oceanic areas the pearl industry stands a good chance of development in the future. Japan has developed this industry very considerably, and some Japanese scientists or experts have observed that India also can produce pearls of a very high quality. This will be a submarine industry and it will be as hazardous an occupation as labour is in mines and oilfields. I therefore feel that when you are regulating for labour and for their safety in mines and oilfields, it is equally necessary and essential in the public interest to regulate for labour and its safety in those industries which we might develop in submarine regions. As I have already said, that is an equally dangerous occupation and the House might consider whether it is not desirable that an amendment to this effect should be incorporated in entry 65. I move, Sir, this amendment, seeking to incorporate submarine regions in entry 65 and commend it to the House for its consideration.

The Honourable Dr. B. R. Ambedkar: With regard to Mr. Kamath's amendment, it seems to me to be quite unnecessary because the word "oilfields" is used in general terms. Wherever it occurs, the Centre shall have jurisdiction. If an oilfield can occur below water.....

Mr. President: He says "and submarine regions"

Shri H. V. Kamath: I say "mines, oilfields and submarine regions".

The Honourable Dr. B. R. Ambedkar: What my friend has in mind is diving operations

Shri H. V. Kamath: No, the Pearl industry.

The Honourable Dr. B. R. Ambedkar: All I can say is that I shall consider that matter.

Mr. President: Then I will first put the amendment moved by Prof. Saksena. The question is:

"That in entry 65 of List I, after the word 'Regulation' the words 'and welfare' be inserted"

The amendment was negatived.

Shri H. V. Kamath: In view of Dr. Ambedkar's assurance, I do not press my amendment now. It may be considered by the Drafting Committee.

Mr. President: The question is:

"That entry 65 stand part of List I."

The motion was adopted.

Entry 65 was added to the Union List.

Entry 66

The Honourable Dr B. R. Ambedkar: Sir, I move:

"That in entry 66 of List I, the words 'and oilfields' be deleted."

It has already been transferred to entry 63.

Shri H. V. Kamath: Mr. President, I move, Sir:

"That with reference to amendment No 37 of List I (Sixth Week), in entry 66 of List I, for the words 'and oilfields' the words 'oilfields, and submarine regions' be substituted."

[Shri H. V. Kamath]

The effect of it will be not only to include submarine regions in this entry but also to oppose the amendment of Dr. Ambedkar seeking to delete the word "oilfields". The point of my amendment is this. Dr. Ambedkar rightly pointed out that this matter of oilfields has been comprised in entry 63. But as the House will see, entry 63 which we have adopted a few minutes ago is to regulate and develop oilfields and mineral oil resources. Entry 65 which we have already passed refers to regulation of labour and safety in mines and oilfields. This is a matter different from the matter included in 63. So also I feel that this 66 refers to a subject which is not comprised in 63, because the qualifying clause is to the effect "to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". I do not know whether the retention of the words "mineral development" and omission of the word "oilfields" would be in consonance with entry 63 which the House has adopted. That entry refers to mineral oil resources. And here we have got mineral development. "Mineral development" refers to mineral resources in general. If there are adequate, valid and cogent reasons for retaining the words "mineral development" in entry 66 I see no reason why the word "oilfields" also should not be retained, because the particular term "oils" is only a part of the general term "minerals", scientifically speaking.

Shri T. T. Krishnamachari: It is there in 63.

Shri H. V. Kamath: I know that. My Friend would, I am sure, have made a different remark if he had closely followed what I was pointing out. I was pointing out that when we have mentioned oil resources in 63 and when we have also mentioned mineral development as a general matter there will be no harm in retaining the word "oilfields" also just to make it absolutely clear. I see no absolute necessity for it, but there will be no harm in retaining the word "oilfields".

Shri Brajeshwar Prasad (Bihar: General): Sir, I beg to move:

"That in amendment No. 3555 of the List of Amendments, for the proposed entry 66 of List I, the following be substituted:—

'66. Superintendence, direction, control, regulation, development and preservation of mines, oilfields and mineral resources including such questions as—

(a) the regulation and safety of mining employees,

(b) proprietory rights in or over lands where mines and mineral resources are found to exist,

(c) power to frame rules regarding terms and conditions for grant of prospecting licenses and mining leases,

(d) power to modify conditions and terms of existing leases,

(e) power to make rules for proper working of mines with due regard to the health and welfare of workmen employed in mines,

(f) power to establish Inspectorate of Mines to enforce these rules,

(g) power to enforce improved mining methods to ensure conservation of minerals and mineral products,

(h) power to control production, supply and movement of minerals and mineral products, and

(i) any other matter connected with mines, oilfields and mineral resources which may be declared by Parliament to be necessary or expedient in the public interest.'"

My whole aim in moving this amendment is to make redundant entry 28 of List II. I am clear in my own mind that Mines constitute a vital subject as important as Defence, Foreign Affairs and Communications. I am of

opinion that if the system of defence is going to be organised on sound lines then Mines must remain a Central subject. I do not want to give the Provinces the power even to "regulate mines and oilfields and mineral development subject to the provisions of List I" as has been provided for in entry 28 of List II.

A question has been raised in another connection on the floor of the House as to what will become of Provincial Autonomy. It is a matter of no concern to me. We have not come here to safeguard the interests of Provincial Governments. We have come here to include those subjects in List I which we consider to be necessary and vital—subjects which are in consonance with the needs of the modern age. I am of opinion that Mines should be nationalised, but at this stage I am only saying that the power of legislation should remain exclusively vested in the Central Government.

(Amendment No. 3555 was not moved.)

Shri Lakshminarayan Sahu: *[Mr. President, I wish to move the amendment which reads :

"That for entry 66 in List I, the following be substituted :—

'66. Power to frame rules regarding terms and conditions for grant of prospecting licences and mining leases, power to modify conditions and terms of existing leases, power to make rules for proper working of mines with due regard to physical safety of workmen employed in mines, their health and welfare, power to establish inspectorate of mines to enforce these rules, power to enforce improved mining methods to ensure conservation of minerals and mineral products, power to control productions, supply and movement of minerals and mineral products.'"

I have included everything in this amendment. The amendment just moved by Shri Brajeshwar Prasad contains all my points. But he wants to give so much power to the Centre, which I do not want to give. I, therefore, come to the State List, where I have suggested:—

Entry 28.

"That for entry 28 in List II the following be substituted :—

'28 Grant of prospecting licences and mining leases in accordance with the rules framed by the Union Government as provided in entry 66 of List I and collection and appropriation of all revenue therefrom.'"

I do not want to say much regarding this, I would only say that in India, 'mining' should be included in the central subjects. There is no doubt, that the Centre should be given power to unify the rules regarding the prospecting licences. I wish to say this emphatically, that the Centre should enact such rules as may be applicable to all the provinces uniformly. Till the Centre is empowered to do so, there will be a lot of difficulty in obtaining the prospecting licences, and there would be differences in the conditions in various provinces in this respect. Hence I wish that this amendment of mine and my other amendment on State List II, should both be read together and considered in this connection.]

Shri Kuladhar Chaliha (Assam: General): Mr. President, Sir, it is really very difficult to agree with Mr. Brajeshwar Prasad, but in this particular case I seem entirely to agree with him and I think his amendment is a great improvement on the provisions adumbrated by Dr. Ambedkar—it is rather all-embracing and seems to cover all that is necessary for a provision on mines and oilfields.

We know in our part of the country some of the owners of coalmines have started producing less and less and we do not know the reason. The quality is also getting worse and worse. If you order any coal from them you get the

*[ ] Translation of Hindustani speech.

[Shri Kuladhar Chaliha]

worst quality. Therefore it is necessary that they should have a standard of the quality of coal they should supply to the clients. Similarly, in the oilfields also they are producing less and less. It is said that in Digboi they are not working to full capacity and that they are doing it with a purpose. It is said that unless sooner or later we have a target that so much should be produced in a certain time we will get probably much less than what we used to. Even now we know that we are getting from Digboi much less than what we used to a few years ago; we do not get even 30 per cent. of our Indian supply from Digboi, whereas formerly we used to get more. It is said that the British owned wells are intentionally doing it and they are trying to transfer their plants to Pakistan and other places.

Therefore, this amendment of Mr. Brajeshwar Prasad will give us ample power to control them and see that they produce properly and they produce the quantity we want and not the quantity they allege that they can produce. As such, for the first time in the history of this Constituent Assembly I have been able to agree with Mr. Brajeshwar Prasad who, of course, generally holds views contrary to those of the majority. Sir, I support his amendment.

Shri H. V. Kamath: I hope, Sir, that the Drafting Committee will bear in its sub-conscious mind that part of my amendment referring to submarine regions.

Mr. President: It is expected that the Members of the Drafting Committee have heard what the honourable Member has said.

Shri Jagat Narain Lal (Bihar: General): Mr. President, I do not want to take much of the time of the House over this matter. I simply wanted to oppose the amendment—I am sorry—moved by Mr. Brajeshwar Prasad. The amendment that he has moved chooses on the one hand to give very wide powers to the Centre, on the other hand his amendment is in the shape of rules or bye-laws which can be framed after an Act is passed. I do not see why such detailed clauses and sub-clauses should be added to the Constitution. I support what Dr. Ambedkar has moved for the reason that that divides the powers between the Centre and the Provinces. The Centre has such powers as are necessary or as will appear necessary for the purpose of regulating the easy working of mines and mineral resources, and the Provinces will also have power which they ought to exercise for the purpose of regulating and developing mines and mineral resources in their territories. Therefore, I support the amendment moved by Dr. Ambedkar and oppose the amendments moved to them.

Shri Brajeshwar Prasad: Dr. Ambedkar's amendment deletes the word "oilfields".

Shri Jagat Narain Lal: The words "the oilfields" have to be deleted as those words have come earlier.

Mr. President: Would you like to say anything?

The Honourable Dr. B. R. Ambedkar: No, Sir, I would not like to accept any amendment.

Mr. President: We will take the amendment by Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad: Sir, I beg to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then amendment No. 3556 on the Printed List, moved by Mr. Sahu.

The question is:

"That for entry 66 in List I, the following be substituted :—

'66. Power to frame rules regarding terms and conditions for grant of prospecting licences and mining leases, power to modify conditions and terms of existing leases, power to make rules for proper working of mines with due regard to physical safety of workmen employed in mines, their health and welfare, power to establish inspectorate of mines to enforce these rules, power to enforce improved mining methods to ensure conservation of minerals and mineral products, power to control productions, supply and movement of minerals and mineral products.'"

The amendment was negatived.

Mr. President: Then amendment No. 215.

Shri H. V. Kamath: I leave it to the wisdom of the Drafting Committee.

Mr. President: Very well, then; that is not put to vote. He leaves it to the Drafting Committee.

Then the amendment moved by Dr. Ambedkar. The question is:

"That in entry 66 of List I, the words 'and oilfields' be deleted."

The amendment was adopted.

Mr. President: The question is:

"That entry 66, as amended stand part of List I."

The motion was adopted.

Entry 66, as amended, was added to the Union List.

Entry 67

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 67 of List I, the following entry be substituted :—

'67. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area not within such State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area not within that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.'"

Mr. President: There is an amendment by Sardar Hukum Singh for deletion. That need not be moved. Dr. Deshmukh has an amendment to this entry which I understand he is not moving. So I will put the motion to vote.

The question is:

"That for entry 67 of List I, the following entry be substituted :—

'67. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area not within such State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area not within that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.'"

The amendment was adopted.

Entry 67, as amended, was added to the Union List.

Entry 68

The Honourable Dr. B. R. Ambedkar: I move:

"That for entry 68 of List I, the following entry be substituted —

'Elections to Parliament and to Legislatures of States and of the President and Vice-President; and Election Commission to superintendent, direct and control such elections.'"

Shri H. V. Kamath: Mr. President, I move:

"That in amendment No. 38 of List I (Sixth Week), in the proposed entry 68 of List I, for the words 'Election Commission' the words 'Election Commission and Regional Commissioners' be substituted."

This amendment becomes necessary in view of the change which has been made in entry 68. The entry as it originally stood in the Draft Constitution ran thus:

"Elections to Parliament and of the President and Deputy President; and Election Commission to superintend, direct and control such elections"

The new entry reads as follows :—

"Elections to Parliament and to Legislatures of States and of the President and Vice-President; and Election Commission to superintend....."

That is to say, we have incorporated the elections to Legislatures of States in the proposed new entry 68.

The House will recollect that a few weeks ago we adopted articles 289, 289A, 289B etc. If my honourable colleagues will take the trouble of turning to article 289, they will find that it provides, firstly, for the appointment of an Election Commission without mentioning Regional Commissioners. Regional Commissioners came into the picture in clause (3) of article 289. That clause lays down that, before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election, and thereafter before the biennial election to the State Council, the President shall also appoint, after consultation with the election commission, such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions enjoined on it by clause (2) of that article. Clause (4) vests certain powers in Parliament as regards the condition of service and tenure of office not merely of the Election Commissioners but also of Regional Commissioners. The Regional Commissioners are not a part of the Election Commission. They come into the picture only when the elections to the State Assembly and Council are about to commence. I, therefore, feel that this point must be made absolutely clear in the new draft of entry 68 which replaces the old one. It includes elections to Parliament as well as to State Legislatures for which purpose we have got Regional Commissioners. There is, therefore, this lacuna in entry 68. I hope the House will see its way to accept my amendment.

Mr. President: There is an amendment to this standing in the name of Mr. Santhanam. I think it does not arise in view of the decision we have taken with regard to some other articles.

The Honourable Dr. B. R. Ambedkar: It is unnecessary to accept this amendment, because the Election Commission will include Regional Commissioners also.

Mr. President: The question is:

"That in amendment No. 38 of List I (Sixth Week), in the proposed entry 68 of List I, for the words 'Election Commission' the words 'Election Commission and Regional Commissioners' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That for entry 68 of List I, the following entry be substituted —

'Elections to Parliament and to Legislatures of States and of the President and Vice-President; and Election Commission to superintendent direct and control such elections' "

The amendment was adopted.

Entry 68, as amended, was added to the Union List

Entry 69

The Honourable Dr. B. R. Ambedkar : Sir, I move :

' That for entry 69 of List I, the following entries be substituted :—

'69. The emoluments and allowances and rights in respect of leave of absence of the President and Governors; the salaries and allowances of the Ministers of the Union and of the Chairman and Deputy Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People, the salaries and allowances of the members of Parliament; the salaries, allowances and the conditions of service of the Comptroller and Auditor-General of India.

69A. The privileges, immunities and powers of each House of Parliament and of the members and the Committees of each House.' "

Mr. President : There is an amendment to this, No. 219 standing in the name of Mr. Kamath.

Shri H. V. Kamath : I do not want to move my amendment, but I would ask how Dr. Ambedkar has forgotten or lost sight of the Supreme Court Judges.

The Honourable Dr. B. R. Ambedkar : Their salaries etc., are provided for in the Schedule. We have said that their salaries shall be such as are specified in the Schedule.

Mr. President : Then amendment No. 220 by Dr. Deshmukh. Does it not go more appropriately to the State List ?

Dr. P. S. Deshmukh : No, Sir. I move :

"That in amendment No. 39 of List I (Sixth Week), after the proposed entry 69 of List I, the following new entry be added :—

'69A. Privileges, immunities and powers of the members of the State Legislatures and their Committees' "

Sir, this is consequential upon the amendment that I proposed when the article was being discussed. I had urged then that it would not be proper to leave the privileges, immunities and powers of the members of the State Legislatures to the individual State Legislatures. It would be better if Parliament decides on it, so that there could be common privileges, immunities and powers for the members of all the State Legislatures. That point of view was urged by me. I think that Dr. Ambedkar had not sufficient time to consider it and therefore he declined to accept it. I am now trying to urge this for his consideration and the consideration of the Drafting Committee. This is eminently reasonable and proper, and I hope they will accept this as an addition to this entry and also keep this in mind when they modify the provisions already accepted by the House also. I think it is very necessary that the privileges should be uniform and that they should not differ from State to State.

Shri Brajeshwar Prasad : Hear, Hear.

The Honourable Dr. B. R. Ambedkar : It is only proper that each Legislature should have the authority to define its own privileges, immunities and powers, and it is for that reason that we have provided that Parliament should

[The Honourable Dr. B. R. Ambedkar]

have power to specify the privileges, immunities and powers of its own members, and the State Legislatures should have similar power with regard to their own members. I do not think that the whole power should be concentrated in the Centre. I should have thought that if Parliament passes an Act defining the privileges, immunities and powers of its members, the State Legislatures will probably follow suit and copy the thing *verbatim* with such minor amendments as they think desirable.

Mr. President: The question is:

"That in amendment No. 39 of List I (Sixth Week), after the proposed entry 69 of List I, the following new entry be added:—

'69A. Privileges, immunities and powers of the members of the State Legislatures and their Committees.'"

The amendment was negatived.

Mr. President: The question is:

"That for entry 69 of List I, the following entries be substituted:—

'69. The emoluments and allowances and rights in respect of leave of absence of the President and Governors; the salaries and allowances of the Ministers for the Union and of the Chairman and Deputy Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries, allowances and the conditions of service of the Comptroller and Auditor-General of India.

69A. The privileges, immunities and powers of each House of Parliament and of the members and the Committees of each House.'"

The amendment was adopted.

Mr. President: The question is:

"That entry 69, as amended, stand part of List I."

The motion was adopted.

Mr. President: The question is:

"That entry 69A stand part of List I."

The motion was adopted.

Entry 69 and 69A, as amended, were added to the Union List.

Entry 70

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That at the end of entry 70 of List I, the words 'or Commissions appointed by Parliament' be added."

As it stands, the entry refers only to Committees.

Mr. President: I do not think that there is any other amendment to this. The question is:

"That at the end of entry 70 of List I, the words 'or Commissions appointed by Parliament' be added."

The amendment was adopted.

Mr. President: The question is:

"That entry 70, as amended, stand part of List I."

The motion was adopted.

Entry 70, as amended, was added to the Union List.

Entry 70A

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That after entry 70 of List I, the following entry be inserted .—

'70A. The sanctioning of cinematograph films for exhibition.'"

This entry was originally placed in the Concurrent List. It is now proposed to put it in List I.

Mr. President: There are several amendments to this. Amendment No. 221 by Mr. Kamath wants the deletion of this entry. So it cannot be moved

Shri H. V. Kamath: May I speak on that?

Mr. President: Later.

Dr. P. S. Deshmukh: Sir, I move :

"That in amendment No. 41 of List I (Sixth Week), for the proposed new entry 70A of List I, the following be substituted :—

'70A. Regulation and control of the exhibition of cinema films.'"

All that I propose is to change the wording. I am unable to understand how the sanctioning of cinematograph films is a subject for legislation. If there is to be legislation, it would not be on sanctioning. Sanctioning of cinematograph films for exhibition is not a happy expression. We should also have power to control the exhibition and from that point of view I would recommend the wording I have suggested, *viz.* "Regulation and control of the exhibition of cinema films." Sir, I move.

Mr. President: There is notice of an amendment which I received this morning, by Kaka Bhagwant Roy.

Kaka Bhagwant Roy: Sir, I do not want to move it.

Shri Raj Bahadur: Mr. President, Sir, I move :

"That in amendment No. 41 of List I (Sixth Week), in the proposed new entry 70A of List I, the words 'The sanctioning of' and 'for exhibition' be deleted."

I move this amendment in order to widen the scope of the entry. If my amendment is accepted, the words that would remain would be only "cinematograph films". It is obvious that the power of merely sanctioning of cinematograph films is not enough for the Union Parliament. As a matter of fact, the functions of the Union Parliament in the case of cinema films must be widened considerably. We know that the cinema-films have proved to be a powerful medium of instruction and national education. We know that they also play an important part in the formation and moulding of national character. It is therefore necessary, not only from the point of view of art and artists, but also from the point of view of national education that we should widen the power vested in the Union Parliament in this matter. In modern times, the cinema films have replaced the drama and the theatre. They have come to constitute the medium of expression of the genius of our people. Therefore it is highly necessary that, in the interest of the art, the Union Parliament should be enabled to take an active interest in the improvement and progress of cinematograph films. As such in my humble opinion the entry should not be restricted simply and barely to the sanctioning of the films, it should cover a wider field. I submit, therefore, that my amendment should be accepted.

May I also express my doubt about the suitability of placing this entry after entry 70 which relates to the enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament. It

[Shri Raj Bahadur]

should have been better placed elsewhere. In my humble opinion it could very well come after entry 28 which relates to Telephones, Wireless, Broadcasting etc. It should have been better there instead of here. With these words I commend my amendment for acceptance.

Shrimati G. Durgabai: (Madras : General) : Mr. President, Sir, while supporting the new entry 70A moved by Dr. B. R. Ambedkar, I wish to make a few observations.

This new entry 70A seeks to give power to the Centre to administer on the exhibition of films and the object of the Centre taking over this power to itself is to lay down certain uniform standards in the films that are exhibited all over this country and also outside this country. Of course, we think whether such a power is necessarily to be given to the Centre to take over this administration. We feel that many films that are dumped on the public today have either very little or no educational value. Nauseating songs and very cheap themes are highly detrimental to our culture. Therefore, it is highly necessary to raise the standards of these films and thus help the producers to exhibit better films which reflect the civilization of this country. That is the primary object, and also they should promote international understanding between the citizens of this country and also of the outside world.

Sir, the position today as it stands is that the Provincial Governments have got their censorship boards, and to my knowledge and information the censorship starts only after the film is completed and some lakhs of rupees have been wasted on them and the Centre acts only in an advisory capacity and whatever the Centre does in that capacity will have only a post-mortem effect. Therefore, Sir, keeping this object in view, we have got to introduce uniformity in the standards of the films that are to be exhibited in this country and also outside this country which would help promoting good harmony and reflect our culture and the civilization of this country.

Sir, while supporting this amendment, I should like to say that the provincial interests or the provincial censorship boards that are today functioning in this matter should be consulted and their interests should be taken into consideration and in every matter their advice and co-operation ought to be sought in censoring these films. Sir, a point may be raised against this power being given to the Centre whether the Centre would be able to deal with this matter, because there are different languages and different types of dialects in which these films are exhibited, whether the Centre could cope up with this power and deal with this matter effectively. There is some justification in this argument but anyhow I would like to say that the Centre should act so carefully in administering on this subject that while the provinces could produce and contribute to the international or national unity they could also preserve the type of culture peculiar to themselves.

Sir, in this matter we have got to know that the first step has already been taken. We have amended the Government of India Act to give power to the Centre; also we have passed a Bill in the Legislative session by classifying the films by introducing the system of A and U class service. Therefore this entry in this list is only a corollary to what we have done. Some objections have been raised, I think my honourable Friend. Mr. Raj Bahadur raised a point, that the powers ought to be widened and he suggested the deletion of the words "The sanctioning of" and "for exhibition" and thereby enlarging the power. I should like to say we have got already the licensing authority today under which this could be done. I understand that his object is to see that the Centre could insist on the provinces to produce such films and also exhibit such

films which have got an educative value along with the films that are exhibited today. This we could do under the power that we have got already and even the provinces are exercising it under their licensing power. The Centre has already passed a Bill to classify the films. Therefore, it is not quite necessary. So I feel that this entry might find favour with the House.

Shri Raj Bahadur: Do not these words essentially restrict and limit the meaning of the whole thing?

Shrimati G. Durgabai: No, Sir, because the other powers which you have asked are already being exercised under the powers of both the provinces and the Centre.

Dr. P. S. Deshmukh: What about the words I suggested "Regulation and control of the exhibition of cinema films?"

Shrimati G. Durgabai: Even that would be exercised under the powers that we have got under our licensing authority; and the other matter about the protection of children and other things, that is a matter for the Labour Department to deal with and not a subject-matter in this connection.

Shri H. V. Kamath: Mr. President, Sir, in pursuance of the spirit of my amendment which of course I could not move because it is a negative amendment, I wish to say that there is no adequate ground for shifting this entry from the Concurrent List to the Union List.

Shri T. T. Krishnamachari: It has already been shifted in the Government of India Act.

Shri H. V. Kamath: It is unfortunate that Dr. Ambedkar made a bald statement moving his amendment and did not advance any cogent reasons for the transfer of this entry from the Concurrent to the Union List. I am wholeheartedly in agreement with my honourable Friend Shrimati Durgabai that our films ought to reflect the genius and the culture of our nation. There can be no two opinions about that. There are however, certain points which deserve some attention at the hands of this House while considering this matter of cinematograph films. These days the films produced are not mere silent films but they are, more often than not, talkies. Silent films have gone out of fashion, and talkies mean not merely moving pictures but also a lot of language and songs, conversations, monologues and dialogues and what not. Everyone is aware that when a particular film is exhibited in particular province the songs, monologue or dialogue or whatever else it may be, is translated into the language of the particular province in which it is sought to be exhibited. The question arises as regards the nuances and shades of meaning in every language. It is not possible for every person to be conversant with all the languages of the Union and every language has as I have said, got its own nuances, peculiar idioms and expressions. At present every province has its Provincial Board of Film Censors and the provincial people are more conversant with the languages of that province than members of a Central Board can possibly be, unless of course the Central Board included a member of every province or members who are well versed in the various languages of the Indian Union. That means it will be a very big Board.

My Friend Shrimati Durgabai referred to a Bill we passed in the last Budget Session of the Legislature. That Bill sought to categorise films into two classes—one for Universal exhibition, and the other for exhibition to adults only and not suited for children and adolescents. But the point which she sought to make out would be completely served if this matter of cinema films is included in the Concurrent List which seeks to give power to the States and the Centre and not merely exclusive power to the Union alone.

[Shri H. V. Kamath]

There is another aspect of the matter which might commend itself to the House. Customs, though our culture and civilisation are the same, vary from province to province and from State to State. My Friend Pandit Bhargava—I hope my memory serves me right—in the last Session of the Legislative Assembly speaking on the Hindu Code Bill referred to certain practices prevailing in different parts of the Union. In the South, marriages between the children of brother and sister are permissible. That is to say a man can marry his own uncle's daughter. But in the Punjab, Pandit Bhargava said, if such a thing happened the man will be cut to pieces. Suppose there is a film depicting or showing a marriage between a person and his uncle's daughter, it might be quite normal in a province like Madras or Bombay, but if it is exhibited in the Punjab people will be scandalised and shocked.

Dr. P. S. Deshmukh : Those instances seldom occur.

Shri H. V. Kamath : It is not beyond the bounds of probability. Films may show the important social ceremony of marriage, and therefore it is necessary in my judgment that powers should be given not merely to the Union but also to States in this regard so as to sit in judgment over cinema films. I, therefore, seek the deletion of this entry from this list and its transfer back to the Concurrent List; I feel that is the right place for this entry. On a suitable occasion, I will move an amendment in that connection when the Concurrent List comes up for consideration in the House.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, the object of bringing this entry which was originally in the Concurrent List to the Union List is two-fold, firstly to prescribe as far as possible a uniform standard for sanction of films; and secondly, to prevent an injury being done to any producer of a film whose film may not be sanctioned by any particular province by reason of some idiosyncracy or by reason of some standards which are of an extraordinary character and do not conform to general standards which ought to be prevalent in a matter of sanctioning of Cinematograph. Therefore I think it is very necessary that this matter of sanctioning instead of being distributed between the Centre and provinces so that each province may go on prescribing its own standard and the Centre be required to pursuade each province to examine its standard and point out whether the standards are good or bad, it is much better to bring it over to the Union List. So far as the rest of the matter is concerned it is proposed to leave the entry 43 in List II as it is so that the provinces will retain all the control they have over theatres, dramatic performances and cinemas *minus* the question of sanctioning. I do not think that any injury will be caused to any particular interest by the proposal I have made. On the other hand, as I have stated there would be distinct advantages in concentrating the power of sanctioning in a single body like the Centre.

Shri Raj Bahadur : Only sanctioning ?

The Honourable Dr. B. R. Ambedkar : Once the Centre has sanctioned that the film is a good film and conforms to moral standards, I do not see any reason why there should be any further provision for the exhibition at all. The matter ends.

Mr. President : I put the amendment No. 222 to vote.

Dr. P. S. Deshmukh : I would like to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Shri Raj Bahadur : I would like to withdraw my amendment No. 266.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That entry No. 70A stand part of List I."

The motion was adopted.

Entry 70A was added to the Union List.

Mr. President: There are certain new entries which are sought to be brought in here by Dr. Deshmukh. We may take them up at the end.

Dr. P S. Deshmukh: They are more or less independent. I have no objection to their being taken up at the end.

Entry 71

Mr. President: There is no amendment to this. There is only notice of deletion by Sardar Hukam Singh.

Entry was added to the Union List.

Entry 72

Mr. President: Then we come to entry 72. There is no amendment to that either.

Entry 72 was added to the Union List.

Entry 73

Mr. President: Then comes entry 73. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir I move:

"That for entry 73 of List I, the following entry be substituted:—

'73. Inter-State trade and Commerce.'"

The words that follow these words in entry 73 are unnecessary, because there is a proposal to drop entry 33 of List II.

Mr. President: There is an amendment to this, amendment No. 226 of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I am not moving it.

Mr. President: Then there is no amendment to this entry. I put the entry as moved by Dr. Ambedkar, to the House. The question is:

"That for entry 73 of List I, the following entry be substituted:—

'73. Inter-State trade and Commerce.'"

The amendment was adopted.

Entry 73, as amended, was added to the Union List.

Entry 73-A

Mr. President: Then we come to entry 73A, and the amendment in the name of Dr. Diwakar. I take it that it is not moved. Then there is entry 73-A of Mr. Kamath—Inter-planetary travel.

Shri T. T. Krishnamachari: Sir, may I point out that if we talk about a provision for inter-planetary travel, it would be reducing the proceedings of the House to absurdity.

Shri H. V. Kamath : Sir, I am sure if my Friend Mr. Krishnamachari had kept himself abreast of the advance of science, and not busied himself only with trade and commerce, he would not have made such a remark.

Mr. President : Have we reached a stage when the control of inter-planetary travel is necessary ?

Shri H. V. Kamath : Yes, Sir, as I will try to show, in a few minutes. Sir, I move that.....

Shri T. T. Krishnamachari : Sir, I rise to a point of order. It is an impracticable proposition that my Friend is suggesting, and therefore it should not be moved.

Shri H. V. Kamath : After you have heard me, Sir, you may decide.

Mr. President : I will hear him first.

Shri H. V. Kamath : Sir, I beg to move :

"That with reference to amendment No 42 of List I (Sixth Week), after entry 73 of List I, the following new entry be added :—

'73-A. Inter-planetary travel.'"

(*Laughter*)

Sir, Members of the House are welcome to laugh. But fifty years ago, if anybody, had talked of radios and wireless sets, he would have been held up to derision and mocked at, and perhaps stoned. But today radios and wireless sets have become a matter of course, and of every day occurrence. I am sure Mr. Krishnamachari has got a wireless set of his own in his house. And it is even supposed to be a mark of culture today to have a radio set in every house. Take television. Twenty years ago perhaps television would have been looked upon as an impossibility. But today in America television has become so very common that important meetings and lectures are televised and shown all over the country. With the rapid advance of science for which this century is famous—I am sure within the last fifty years there has been more advance in the various fields of science than in the previous five hundred years—what with researches in X-rays, medicine, jet-propelled planes of which we hear so much today, we can expect many big changes in the near future. The advance has been remarkable, phenomenal, if I may use such a word. It was only the other day I read in an American paper—it was I think the *New York Times*—there was a news item that a Company had been established, or floated in the United States where applications for journeys to the moon had been invited. It was in dead earnest,—I am not referring to it as a jest. They hope to do the journey probably by rockets. Till a few years ago.....

Shri R. K. Sidhva : (C. P. & Berar) : Can you show me the paper ?

Shri H. V. Kamath : Yes, if you will kindly come to my place.

Mr. President : I thought people go to the Chandralok after death.

Shri H. V. Kamath : Yes, Sir, I was having it in mind. The Gita itself does say.....

तत्र चांद्रमसं ज्योतिर्योगी प्राप्य निवर्तते

Tatra Chándramasam jyotiryogi prápya nivartate.

I do not dispute the possibility of a Yogi going even bodily to the moon by the power to his *Siddhis* and coming back too. But apart from that, Sir, this has come within the range of possibility, and in a few years time, it is quite possible that there may be journeys to the moon, and the phrase "man in the moon" will lose all its significance. I dare say, when the earth becomes more and more populated and congested, and when science makes further advance, people may start colonising the moon or some of the other thinly populated planets of the solar system. If we keep our minds open to the possibilities of science, and if we do not shut our minds in the mists of prejudice and misapprehension to the phenomenal progress of science, I am sure the House will not take this matter as lightly as it is inclined to do today. I do not want to be a prophet, but I may venture to suggest that within the next twenty-five years, perhaps sooner, such things will not be derided at or mocked at, as some of the friends here are inclined to today.

Shri B. L. Sondhi: (East Punjab: General) : In the time of our successors, perhaps.

Shri H. V. Kamath: No, even in the life-time of Mr. Sondhi and myself.

I therefore suggest that this matter should not be included in the Concurrent List or in the State List, but it should be the exclusive jurisdiction of the Union, so that when the time comes, the Union will have the power to exercise complete control. Of course, Dr. Ambedkar, may say that this is covered by the entry regarding passports and *visas*, but I do not think so. These passports and *visas* deal only with travel on this, our planet—the Earth. But inter-planetary travel will become more and more important in the near future, and therefore it should find a place in the Union List, and I therefore commend my amendment for the earnest and dispassionate consideration of the House.

Mr. President: There is an amendment of Mr. Naziruddin Ahmad about travels to the planets and the satellites. He is not content merely with this amendment. Do you want to move it?

Mr. Naziruddin Ahmad: Yes, Sir, because if this amendment which was just now moved, is accepted, it will be incomplete without my amendment. I shall take only one minute. I beg to move:

"That in List III (Sixth Week), with reference to amendment No. 227 in the proposed new entry 73A the following be added at the end :—

'travel between the planets and the satellites and between the satellites.' "

Mr. President: You have given notice of it only this morning.

Mr. Naziruddin Ahmad: Yes, Sir, the difficulty was that I brought the amendment yesterday afternoon ready in my pocket, but forgot to deliver it to the office.

Mr. President: I am not objecting. Go on.

Mr. Naziruddin Ahmad: I submit that, though a dream of the future, inter-planetary travel is coming on very soon. We had a long time ago a very good novel by Jules Verne, "*From the Earth to the Moon and a Trip round it,*" and his numerous novels on scientific subjects. His dream has come true in a large measure and modern scientists believe that inter-planetary travel is a practical proposition and will soon be a reality and could be undertaken on a commercial scale. Mr. Kamath's amendment has a loop-hole and a defect. His amendment provides for travel only from one planet to another and not from a planet

[Mr. Naziruddin Ahmad]

to its satellites and between the satellites. So if inter-planetary travel is to be included in the list as it must, this amendment will also have to be accepted. A journey from the Earth to the Moon and back is likely to be the earliest achievement. But Mr. Kamath's amendment will not make it possible. My amendment should be accepted to make the original amendment complete. I hope, Sir, if the amendment is to be rejected, it is rejected in a more satisfactory way by vote.

Mr. President: I do not suppose any further speech is necessary!

The Honourable Dr. B. R. Ambedkar: I do not quite understand whether the proposals of my Friend relate to matters which are unknowable or which relate to matters which are unknown. If they are unknown, then we have wasted our time. But if they are unknown and not unknowable, then we have enough powers to deal with them. Why bother with any entry at all?

Mr. President: I will put Mr. Naziruddin Ahmad's amendment to the vote. The question is :

"That in List III (Sixth Week), with reference to amendment No. 227 in the proposed new entry 73-A the following be added at the end :—

'travel between the planets and the satellites and between the satellites.' "

The amendment was negatived.

Mr. President: The question is :

"That with reference to amendment No. 42 of List I (Sixth Week), after entry 73 of List I, the following new entry be added :—

'73A. Inter-planetary travel.' "

The motion was negatived.

The Assembly then adjourned till Nine of the Clock on Thursday, the 1st September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 1st September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

STATEMENT *RE* VINDHYA PRADESH REPRESENTATION IN THE ASSEMBLY

Mr. President: Before starting the proceedings for the consideration of the remaining entries, I desire to make one short statement. Notice of a motion was given by Mr. Kamath to the effect that steps should be taken by the Secretariat of the Assembly to get the Vindhya Pradesh representative into the Assembly. It is a fact—and a regrettable fact—that Vindhya Pradesh has not yet been represented in this Assembly. But all steps that could be taken by our Secretariat have been taken and as a matter of fact. I understand the States Ministry also have been taking interest in the matter. So it is unnecessary to have a motion of that sort and it was decided by the Steering Committee that in view of the fact that steps have already been taken, Mr. Kamath may be asked not to move the motion. So I think Mr. Kamath will agree that no further steps are necessary in this matter.

Shri H. V. Kamath: (C.P. & Berar : General) : I had given notice also of a motion requesting you to take steps regarding the representation of Hyderabad.

Mr. President: That stands on a separate footing. I do not know what the position of the Hyderabad State in regard to the Union is at the present moment.

Shri R. K. Sidhva: (C.P. & Berar : General) : What are the reasons for the representative of Vindhya Pradesh not being returned to the Assembly?

Mr. President: I am not sure, but I think the reason is that there is no proper electorate which could elect the representatives as there is no legislature and the Rajpramukh has been asked to create a college of electors which has not been done yet. That is the reason for their non-representation at the present moment, but I think they will now take steps to do that.

Seth Govind Das: (C.P. & Berar : General) : May I take it that the constituencies have now been fixed and the Rajpramukh informed of it?

Mr. President: We cannot fix the electorate. It is left to the Rajpramukh to fix the electorate. We have asked them to send representatives and they have promised also that they would do it now.

Shri H. V. Kamath: Will you kindly permit me to say just one word? I had asked not the Secretariat, but I had requested you, Sir, as President.

Mr. President: But whatever was done by the Secretariat was done under my orders.

Shri H. V. Kamath: But I request only you.

Mr. President: But what action can I take personally? The thing has to go through the Secretariat.

Shri H. V. Kamath: My point was that the notice of my motion was to the President and not to the Secretariat.

Mr. President: The action has been taken under my instructions by the Secretariat.

We shall now take up entry 74. There are certain amendments to this. Dr. Ambedkar may move his first.

DRAFT CONSTITUTION—(*Contd.*)

Seventh Schedule—(*Contd.*)

List I : Entry 74

The Honourable Dr. B. R. Ambedkar: (Bombay : General) : Sir, I move :

"That for entry 74 of List I, the following entry be substituted :—

'74. The regulation and development of inter-State rivers and river-valleys to the extent to which such regulation or development under the control of the Union is declared by Parliament by law to be expedient in the public interest'."

Shri Brajeshwar Prasad: (Bihar : General) : Mr. President, may I with your permission, say one word before I move my amendment? Somehow, due to my fault perhaps, one word is missing from this amendment. I want the inclusion of the word "regulation". Sir, I beg to move :

That in amendment 3562 of the List of Amendments, for the proposed entry 74 of List I, the following be substituted :—

"74. The regulation and development of inter-State rivers and inter-State waterways, including flood control, irrigation, navigation and hydro-electric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest."

Sir, I have only one comment to offer, that this amendment of mine is more comprehensive than the amendment moved by Dr. Ambedkar.

Mr. President: There is an amendment of which notice has been given by Shri Kala Venkata Rao that this entry should be dropped altogether. It is only a motion for deletion and he need not move it as an amendment.

The Honourable Dr. B. R. Ambedkar: Sir, all that I would like to say is that whatever Shri Brajeshwar Prasad wants is included in my amendment and it is therefore unnecessary to accept it.

Shri Brajeshwar Prasad: I beg leave to withdraw my amendment. The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I put the amendment in the form in which it has been moved by Dr. Ambedkar.

The question is :

"That for entry 74 of List I, the following entry be substituted :—

'74. The regulation and development of inter-State rivers and river-valleys to the extent to which such regulation or development under the control of the Union is declared by Parliament by law to be expedient in the public interest'."

The amendment was adopted.

Entry 74, as amended, was added to the Union List.

Entry 75

Mr. President: Then there are two additional entries 74-A and 74-B. These, I think, were covered by amendments which were moved yesterday and which were rejected. So they do not arise now. Then I come to entry 75.

Mr. Naziruddin Ahmad: (West Bengal: Muslim): Mr President, Sir, I beg to move:

"That in entry 75 of List I, the words 'beyond territorial waters' be deleted."

Item No. 75 runs thus, "fishing and fisheries beyond territorial waters". Sometime ago this House accepted an article—I cannot put my finger immediately on it—but it is a well-known article, that the Centre will have fishing or some other right on the seas. A question was raised in the House at that time as to whether the Centre should have any right over the territorial waters. The implication of that article was that the Centre would have fishing and other rights in all seas, whether high seas or in territorial waters.

Mr. President: It is article 271-A.

Mr. Naziruddin Ahmad: Then, entry 75 as it stands now will curtail the right of the Centre purported to be given to it by article 271-A. I feel that entry 75 has not been revised to bring it into conformity with article 271-A. I wanted only to have a clarification, and if it is necessary to bring it up-to-date I think the amendment should be accepted.

The Honourable Dr. B. R. Ambedkar: No, Sir, I cannot accept the amendment.

Mr. President: Then, we will have to put the amendment to vote. The question is:

"That in entry 75 of List I, the words 'beyond territorial waters' be deleted."

The amendment was negatived.

Mr. President: Then I put the entry as moved in the original form. The question is:

"That the proposed entry No. 75 stand part of List I."

The motion was adopted.

Entry No. 75, as amended, was added to the Union List.

Entry 76

The Honourable Dr. B. R. Ambedkar: Sir, I move.

"That for entry 76 of List I, the following entry be substituted:—

'76. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies'."

Mr. President: There is no amendment to this; so I put this entry to vote. The question is:

"That for entry 76 of List I, the following be substituted:—

'76. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies'."

The amendment was adopted.

Entry 76, as amended, was added to the Union List.

Shri Mahavir Tyagi: (United Provinces: General): Sir, when you put the question to vote, Dr. Ambedkar says "Ayes" beyond the mike; with the result that the Ayes have an undue volume of their voice.

Mr. President: Unforunately Dr. Ambedkar is unwell today; that is why he is having the mike before him. But I hope the mike will not be used for voting purposes.

Entry 77

Shri Brajeshwar Prasad: Sir, entry 77 vests in the Union Government, the power to deal with grave emergencies in any part of the territory of India. These powers are not restricted to the provisions made in the Constitution. My interpretation is that over and above the powers granted to the Centre by the articles of this Constitution, this entry vests the Union Legislature with additional powers to deal with grave emergencies affecting any part of the country. If we delete this entry it will mean that the powers of the Union Government will be restricted by the articles of the Constitution. This is a mighty power which is rightly being conferred. Therefore I strongly oppose the motion to delete this entry from List I.

Mr. President: The question is:

"That entry 77 of List I be omitted."

The motion was adopted.

Entry 77 was deleted from List I.

Entry 78

Entry 78 was added to the Union List.

Entry 79

The Honourable Dr. B. R. Ambedkar: Sir, with regard to entry 79, I have to make one observation. Some Members of the House are under the impression that if entry 79 remained in List I it would be opened also to the Centre to appropriate the proceeds of any taxes that may be levied on the Stock Exchanges and futures market and taxes other than stamp duties on transactions therein. I would like to make it clear that in putting Stock Exchanges and futures market in List I, there is no intention on the part of the Drafting Committee that the Centre should have any right to appropriate the proceed of any taxes that might be levied under this entry. Consequently, the Drafting Committee proposes, in order to remove all sorts of doubts, to amend article 250 which requires the proceeds of certain taxes to be distributed among the provinces. What we propose to do is, as a consequential provision, to add to article 250 which contains clauses (a) to (d) enumerating the taxes to be distributed, 'proceeds of any taxes on Stock Exchanges and futures market', so that they too will be subject to distribution among the provinces. That would, I am sure, remove all doubts that certain Members have that this entry if it remains in List I would give power to the Centre to appropriate the taxes. That is not the intention. The entry there is purely legislative. It would have no financial implications at all.

Pandit Hirday Nath Kunzru: (United Provinces: General): May I ask Dr. Ambedkar whether he intends also to bring in a modification of article 277 in this connection?

The Honourable Dr. B. R. Ambedkar: Well, I shall consider any consequential provision necessary to bring in to make the matter consistent.

Mr. President: Sardar Hukam Singh and Shri Brajeshwar Prasad are not moving their amendments.

Mr. Naziruddin Ahmad: Sir, the original item 79 deals with stock exchanges and futures market and taxes other than stamp duties on transactions therein. Stamp duties are leviable by the Province on sales within their jurisdiction. The shares and stocks and securities are also liable to the payment of stamp duties on their sale price. As all stamp duties on sales are realised by the Provinces, any sales effected in the Stock Exchanges should also be levied directly by the States. The result of removing that condition from this entry will be to allow the Centre to levy this stamp duty although it would be credited to a certain fund. This will also enable the Central Government to distribute it to any State they think fit and not to the State in which the sale was effected and the stamp duty levied. I submit that the stamp duties should be exempted from the purview of the Centre.

Mr. President: Is not that the effect of the provision as it is ?

Mr. Naziruddin Ahmad: I believe there was an amendment moved.

Mr. President: That amendment was not moved by Sardar Hukam Singh.

Mr. Naziruddin Ahmad: In that case I am sorry. I need not have made these observations. But, Sir, things are proceeding so fast that I was not able to fully follow the debate. I regret my mistake.

Mr. President: Now I will put entry 79 to vote. Mr. Naziruddin Ahmed made certain remarks under a misapprehension. He has withdrawn them. The question is :

"That entry 79 be added to List I."

The motion was adopted.

Entry 79 was added to the Union List.

Entry 80

Mr. President: There are no amendments to entry 80.

Entry 80 was added to the Union List.

Entry 81

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move :

"That for amendment No. 3572 of the List of amendments, the following be substituted:—

"That for entry 81 of List I, the following be substituted :—

"81. Duties in respect of succession to property including agricultural land."

The amendment that I have moved is with the view that there should be no financial autonomy in the hands of the provinces. While discussing the financial provisions of the Constitution, I had already referred to the fact that I was only in favour of a limited character of provincial autonomy being conferred upon the provinces. I think that most of us seem to ignore the realities of our political life. Provincial autonomy has led to inequality between man and man, between one province and another. I think, Sir, that an equitable system of financial distribution can only be achieved if the Centre is vested with all powers in this matter. It is not only dangerous but it is almost tragic that we should go on extending the powers of the provinces. I was under the impression that a proper lesson would be drawn from the experiences of the past. The

[Shri Brajeshwar Prasad]

effect of partition and uprooting of millions of homes compels us to draw a proper conclusion. We must make the Centre strong. We are centuries behind the advanced nations of the world. Various forces are menacing us from many sides and in order to meet those forces, it is necessary to make an all-out effort. Provincial autonomy comes as a stumbling block and we must uproot it. We have got centuries of development to accomplish. Centuries will have to be compressed into moments. It is only under the leadership of one government in India that we can do this. Sir, powers must be vested in the hands of those who desire to serve the people. Powers must be vested in the hands of those who have got the ability to serve. If it is the desire of the provincial governments to serve the people, they must seek the co-operation of the Central Government in this matter. If they want to help the people in the provinces, they must welcome the co-operation of the Centre. If they oppose this, then it gives rise to suspicion. It raises some doubt in our minds. Sir, there is a talk that over-Centralisation will lead to dominance. I do not understand, what people mean by dominance. Is it the contention that the Government of India will exploit the people living in the provinces? The point has been made that it is not possible for the Government of India to govern the whole country from Delhi, so far away and so remote from the other parts of the country. I am definitely of opinion that the developments of science, the developments in the means of communication have annihilated distance, time and space. After all, India is not so big as it was before. Partition has made the country smaller. The development of science has made even the world very small. The world has become a small place now, and I feel that the whole world can be governed by one Government. We all owe allegiance to the ideal of a world State. So, I do not see how the Government at the Centre cannot function efficiently. I am not opposed to delegation of powers I am only opposed to the distribution of powers, to the division of powers to the extent.....

Shri R. K. Sidhva: How is all this relevant to the entry under consideration, Sir?

Mr. President: We have heard these arguments before from the honourable Member. He has used the same arguments all along the line, in connection with so many amendments. Therefore it is not necessary to repeat the same arguments.

Dr. P. S. Deshmukh: (C.P. & Berar: General): We can take his arguments for granted.

Mr. President: We cannot go back on all the decisions taken so far, by altering one entry in this List.

Shri Brajeshwar Prasad: I do not want to reopen the provisions on which agreement has been reached in the House. I am only asking that this particular entry should be amended on the lines suggested by me. If it is your ruling that I should not continue my speech, I am quite willing to abide by your decision, Sir.

(Prof. Shibban Lal Saksena rose to speak.)

Mr. President: I hope it is not just for contradicting what Mr. Brajeshwar Prasad said.

Prof. Shibban Lal Saksena: (United Provinces: General): No, Sir, I am supporting him. Mr. Brajeshwar Prasad has given his reasons. I personally feel that there is some substance in his amendment from another point of view. I want that there should be uniformity of taxation in this matter also. Let the duties be collected by the Centre and distributed to the provinces, so that

the duties can be on a uniform scale. The duties should not vary from province to province. I am therefore glad that the amendment of Mr. Brajeshwar Prasad seeks to vest this power in the Centre. The Centre can make the laws and collect the duties and then whatever is obtained may be handed over to the provinces.

The Honourable Dr. B. R. Ambedkar. I may mention, Sir, that this matter was considered at the conference with the Provincial Premiers. They were of opinion that, although the principle might be sound, they were at the present moment not prepared to make this radical change.

Mr. President: I will put amendment No. 49 to the vote.

Shri Brajeshwar Prasad: I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That entry 81 stand part of List I"

The motion was adopted.

Entry 81 was added to the Union List

Entry 82

Mr. President: There is a similar amendment by Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad: I will not deliver any speech. I would only move the amendment.

Shri R. K. Sidhva: There is no difference between this amendment and the previous amendment except that it reads "Estate duty in respect of" instead of "Duties in respect of succession to".

Shri Brajeshwar Prasad: Sir, I move.

"That for amendment No 3574 of the List of Amendments, the following be substituted:—

"That for entry 82 of List I, the following be substituted:—

"82. Estate Duty in respect of property including agricultural land."

If you will permit, Sir, I would advance different arguments as to why provincial autonomy should be modified. If you do not want me to proceed, Sir, I will go back to my seat.

Mr. President: It is not necessary to discuss provincial autonomy any further. I will put the amendment to the vote.

Shri Brajeshwar Prasad: I withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That entry 82 stand part of List I."

The motion was adopted.

Entry 82 was added to the Union List.

Entry 83

Mr. President: There are two amendments to this.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in entry 83 of List I, after the word 'railway' a comma and the word 'sea' be inserted."

The intention is to complete the entry by the addition of the word "sea" which was inadvertently omitted.

(Amendment No. 51 was not moved.)

Mr. President: There are certain other amendments to this. No. 228 by Dr. Deshmukh.

Dr. P. S. Deshmukh: Mr. President, Sir, I do not propose to move item No. 228 but I beg to move item No. 230 which is the proper amendment to item 52.

"That with reference to amendment No. 52 of List I (Sixth Week) in entry 83 of List I, for the word 'railway' the words 'land, sea' be substituted."

I believe that yesterday I was not properly understood when I said passengers and goods traffic on the roads, especially those between more than one. State, should be within the cognizance and jurisdiction of the Union. I have no intention of taking away the right of the States so far as their jurisdiction is confined to the territories under those States, but what will happen so far as traffic from one State to another is concerned and wherever more than one State comes into play? I have not been able to see any objection, if "sea and air" are to be included, why inasmuch as we are going to have national highways the word "land" also should not be included. I, therefore, move that the words "land, sea" may be added, unless Dr. Ambedkar has any special reason or there is any other ground on which this would be not proper.

Shri H. V. Kamath: My amendment No. 229 is a merely verbal amendment and I leave it to the Drafting Committee.

Shri R. K. Sidhva: Mr. President, Sir, my amendment No. 3576 on page 387 of Second Volume of printed amendments reads as under:

"That in entry 83 in List I, the following words be deleted :—

'Terminal Tax on goods or passengers carried by rail or air'."

Just now you called upon the Honourable Pandit Pant to move the amendment which he has sent in. But he is not in the House. That amendment of his is identical to mine. From this you can realize what great importance he attaches to this entry being deleted from here and put in the Provincial List. I have always said that Terminal Tax is a Provincial subject and that Terminal Tax is levied by the local bodies. We have passed the other day that the Terminal Tax should be collected by the Centre and the proceeds distributed to the provinces. I quite appreciate that. But despite that I say that if this is passed a consequential change can be made in that article. I strongly feel that the Terminal Tax is entirely in the region of the Provincial Government and the Local Bodies and they have been levying it throughout the century and it will be wrong for the Centre to take away this item. Pandit Pant feels very strongly about it, but unfortunately he is not present. I am sure he would have moved and the amendment would have been carried. I, therefore, request that the Drafting Committee will kindly consider about this entry and see that it is removed from here and taken to the Provincial List. It may be said that in view of the article that we have passed, it may not be possible to accept my amendment, but I will remind the House that Dr. Ambedkar had said: "If you pass anything here, a consequential change may be made in the article which we have already passed". Under these circumstances, I hope the Drafting Committee will have no objection.

The Honourable Dr. B. R. Ambedkar: Sir, I cannot accept Dr. Deshmukh's amendment because the inclusion of the word "land" would also permit the Centre to levy Terminal Tax on goods and passengers carried by "road". Under our scheme Terminal Taxes on goods and passengers carried by road will be a matter which will be exclusively within the jurisdiction of the different States. That is the principal objection why I cannot accept his amendment. You will remember, Sir, that he tried to move a similar amendment on another occasion which had been rejected by the House.

Now with regard to Mr. Sidhva, this matter again was debated last time and I said that although these taxes were leviable by the Centre, the proceeds of all of them would be distributable among the different Provinces. The Centre would not claim any interest. If the Provinces after getting the proceeds want to pass on any part of those proceeds to the local bodies they are free to do so. It is not possible in this Constitution to make a provision for any matter of taxation that may be available to a local authority. That is a matter *inter se* between the State and the local authority and therefore it is not possible now to alter this entry either by way of amending it or by way of transferring it to List No. II.

Shri R. K. Sidhva: Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Dr. P. S. Deshmukh: I also withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is :

"That in entry 83 of List I, after the word 'railway' a comma and the word 'sea' be inserted."

The amendment was adopted.

Entry No 83, as amended, was added to the Union List.

Entry 84

Mr. President: Item 53 stands in the name of Mr. Brajeshwar Prasad. Is it worth while to move that amendment?

Shri Brajeshwar Prasad: As you permit me, Sir. I would like to move this amendment without delivering any speech.

Mr. President: I take it that you have moved it.

Shri Brajeshwar Prasad: All right, Sir.

(Amendments Nos. 3577, 3578 and 3579 were not moved.)

Mr. President: The question is :

"That entry 84 stand part of List I."

The motion was adopted.

Entry 84 was added to the Union List.

Entry 85

Entry No. 85 was added to the Union List.

Entry 86

(Amendment No. 54 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in entry 86 of List I, the words 'non-narcotic drugs' be deleted"

The proposed list put non-narcotic drugs in the Concurrent List.

Mr. President: There is one other amendment of which we have notice from the honourable Shri K. Santhanam, but I take it that it is not moved.

Mr. Naziruddin Ahmad: Mr. President, Sir, the deletion of the words non-alcoholic drugs.....

Mr. President: Non-narcotic drugs.

Mr. Naziruddin Ahmad: Non-narcotic drugs would entirely change the meaning of entry 86. The entry is to this effect: "Duties of excise on tobacco and other goods manufactured or produced in India except certain things including non-narcotic drugs".

Now, Sir, Dr. Ambedkar wants to delete the words 'non-narcotic drugs'. The effect of this will be not as simple as it looks. Non-narcotic drugs were excepted from the central subject in the original entry. They were therefore Provincial subjects under the original article. If we delete these words, we delete these words from the exception. By this deletion of non-narcotic drugs from the exception, they will automatically be included within the body of the entry. By a simple deletion of these words, the effect would be that instead of this being a States subject, it will at once become a Central subject. I submit that these entries were accepted by the House after considerable deliberation. The removal of these words would rob the Provinces of a subject and unnecessarily burden the already overloaded duties of the Centre. I think this matter should be pointed out and though I know that my opposition will have no effect in this House, still I deem it necessary to voice my protest If the Provinces are to be robbed one by one of their powers, political, financial and others, it would be far better for us to say here and now that Provincial Autonomy must go and there must be Unitary Government. I would rather welcome the attempt of Mr. Brajeshwar Prasad to scrap Provincial Autonomy at once. The effect of the present arrangement as we are changing from day to day is to kill Provincial Autonomy altogether. I can well understand that Provincial Autonomy should be abolished at once. This is a thing which I can understand. Rather than reducing the Provinces to a state of importance —a state resembling the District Boards and Municipalities, I think it would be far better to abolish the provinces altogether, and.....

Shri R. K. Sidhva: It is a larger issue, Sir, to suggest that Provincial Autonomy should be abolished.

Mr. Naziruddin Ahmad: That is what we are doing. I merely say that instead of doing it bit by bit and taking away from the powers of the Provinces in slices indirectly, it would have been far better to do so directly and say that there shall be no Provincial Autonomy except to the extent the Centre pleases. That would have been better. This removal of the words 'non-narcotic drugs is a dangerous chance as many other dangerous changes have been made.

The Honourable Dr. B. R. Ambedkar: It is quite true, Sir, that at present this entry is in the provincial list. But, there are two facts to be recognised. One is that no province has at any time so far levied any tax on these items. Therefore, it has not been exploited by the provinces for their financial purposes. Secondly, even when the matter becomes concurrent, and any legislation is made by the Centre, which has a revenue aspect, the revenue will be liable to be distributable under the provisions of clause (2) of article 253. Consequently, so far as finances are concerned, there is really no loss to the provinces at all. Then, it is necessary that we should have an All-India Drug Act operating throughout the area. That cannot happen unless non-narcotic drugs are put in the Concurrent List. That also saves the power of the Provinces to make such local legislation as they may like with regard to these drugs.

Mr. President: I put the amendment moved by Dr. Ambedkar. The question is :

"That in entry 86 of List I, the words 'non-narcotic drugs' be deleted."

The amendment was adopted.

Mr. President: The question is :

"That entry 86, as amended, stand part of List I."

The motion was adopted.

Entry 86, as amended, was added to the Union List.

Entry 86-A

Mr. President: There is an amendment by Mr. Kamath for adding entry 86-A.

Shri H. V. Kamath: Mr. President, Sir, I move :

"That with reference to amendment No. 55 of List I (Sixth Week), after entry 86 of List I, the following new entry be added :—

'86-A. Prescription and maintenance of standards for drugs, medicines and other pharmaceutical products'."

It is a notorious fact that in this country, as perhaps in some other countries of the world, all sorts of cheap drugs and quack medicines are put for sale on the market without any effective control by Central or Provincial Governments. It is a very serious matter inasmuch as it imperils the health of the nation which is already at a somewhat low ebb. It has been held by many medical authorities in this country that if some effective control is not exercised by Government in this regard, it would be difficult to raise the standard of health of the people, when they are exposed to all sorts of dangerous quack remedies in the market. I do not find in Lists I, II or III any specific provision in this regard. There is entry 40 in List II which refers only to intoxicating liquors, and narcotic drugs. There is entry 20 in the Concurrent List. 'Poisons and dangerous drugs'. I do not think that these two entries cover the subject-matter of my amendment. There is of course the omnibus entry in List II, No. 15, Public Health and Sanitation. But, I feel that this matter is far too important to be relegated to a general entry, Public Health. We are talking so much about raising the standard of health of the nation and this is one of the important matters with which the State will have to deal. In the last Budget session, the Health Minister, in reply to one of the questions, said that the whole matter of drug standards was under the active consideration of Government.

Mr. President: Will you refer to entry No. 20 of List III as amended by amendment No. 129 ?

"20. Drugs and poisons, subject to the provisions in entry 62 of List I with respect to opium."

Shri H. V. Kamath: Perhaps, it provides to some extent, but my amendment is specifically with regard to the maintenance of standards which is not mentioned in the entry which you have just quoted. I would therefore suggest, having regard to the vital question of the health of the nation and bearing in mind the reply given by the Health Minister in the last budget session that this whole matter of drugs and similar provisions regarding the prescription of standards were under the active consideration of Government, that the Centre and not the provinces must have exclusive legislative power in this regard, because it is such a vital matter. I move amendment 231 of List III (VI Week) and commend it to the House for acceptance.

Shri Mahavir Tyagi: Why you want to perscribe the medicine?

Shri H. V. Kamath: It is prescribing of standard.

Mr. Naziruddin Ahmad: Very ambiguous!

Shri H. V. Kamath: I do not know if the medical and scientific terminology used in my amendment has been misunderstood. This terminology will be found in any standard book on Pharmacology.

The Honourable Dr. B. R. Ambedkar: We have got the power. It is covered by entry 20 which we are going to put in the Concurrent List.

Mr. President: The question is:

'That with reference to amendment No. 55 of List I (Sixth Week), after entry 86 of List I, the following new entry be added:—

86-A, Prescription and maintenance of standards for drugs, medicines and other pharmaceutical products'"

The amendment was negatived.

Entry 87

Mr. President: Entry No. 87. There is no amendment.

Entry No. 87 was added to the Union List.

Entry 88

Mr. President: Entry 88.

Shri Brajeshwar Prasad: Sir, I move:

"That for amendment No. 3583 of the List of Amendments, the following be substituted:—

"That for entry 88 of List I the following substituted:—

'88 Taxes on the capital value of the assets, inclusive of agricultural land, of individuals and companies; taxes on the capital of companies'."

Dr. P. S. Deshmukh: I beg to move:

"That is amendment No. 56 of List I (Sixth Week), in the proposed entry 88 of List I, for the word 'inclusive' the word 'exclusive' be substituted."

My amendment is an amendment to that of Mr. Brajeshwar Prasad. Actually it is negation of the proposed entry 88. Otherwise I am content with the entry as it stands.

Mr. President: The question is:

"That Entry 88 stand part of List I."

The motion was adopted.

Entry 88 was added to the Union List.

Entry 88-A

Mr. President: I have notice from a large number of members for addition of an entry 88A. Shri Goenka.

Shri Ram Nath Goenka: (Madras: General): Mr. President, I beg to move

Shri Deshbandhu Gupta: (Delhi): I rise on a point of Order, Sir. The amendment which stands in the name of Mr. Goenka offends against the Fundamental Right guaranteed in clause 13-A which refers to freedom of speech and expression and as such cannot be considered. In this connection I wish to refer to the Supreme Court Judgment of the United States which was given recently in the famous Louisiana case. The facts of the case are that a 2 per cent. licensing tax was levied on the newspapers in that State Nine publishers opposed that and questioned the validity of the tax on the ground.....

The Honourable Dr. B. R. Ambedkar: I hope my friend is not going to read that 4-pages printed judgment of the Supreme Court of the United States. It has been circulated to everybody.

Shri Deshbandhu Gupta: It is wrong for my friend to presume that the whole judgment will be read. Of course, if it is necessary to read some extracts I will do so. I am only referring to the parts which are relevant to point raised by me. I wish to point out that exception was taken by those publishers on the ground that the tax violated the Federal Constitution in two particulars (1) that it abridges the freedom of the press in contravention of the due process clause contained in Section 1 of the Fourteenth Amendment (2) that it denies appellees the equal protection of the laws in contravention of the same amendment.

The Honourable Dr. B. R. Ambedkar: I am also rising on a point of order.

Mr. Nazirnddin Ahmad: There could not be two points of order at the same time.

The Honourable Dr. B. R. Ambedkar: My point of order is an elementary one whether my friend who is a signatory to this amendment—his name is mentioned here after Shri Sitaram Jajoo—having already given notice of this amendment can he now say that this is not in order?

Shri Deshbandhu Gupta: My friend has amended his own amendments hundred times.

The Honourable Dr. B. R. Ambedkar: If he was to propose an amendment to his amendment, that would be in order.

Shri Deshbandhu Gupta: I have every right to change my opinion just as my friend has done very often.

Shri Deshbandhu Gupta: I am glad that you have held that I am perfectly in order in raising this point of order. I was pointing out that the ground for appeal was that it violated the Federal Constitution in two respects, *viz.*, freedom of press and expression. The Honourable Justice Sutherland of the Supreme Court accepted the point of appeal and held that the measure which was in question did offend against the liberty of the press granted by the U.S. Constitution. They traced the history of this tax and the struggle that has been going on in England for over a century on this point. The important observation they made was :

> "That conclusion there stated is that the object of the constitutional provision was to prevent previous restraints on publication, and the Court was careful not to limit the protection of the right to any particular way of abridging it. Liberty of the Press within the meaning of the constitutional provision, it was broadly said, meant principally although not exclusively, immunity from previous restraints or (from) censorship."

Justice Cooley said :

> "The evils to be prevented were not the censorship of the press merely but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens."

In the light of this test the Supreme Court held :

> "The predominant purpose of the grant of immunity here invoked was to preserve an untrammelled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern."

And at the end, they say :

> "The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees. A free press stands as one of the grant interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."

Sir.....

Shri S. Nagappa: (Madras : General) : Sir, on a point of order. Is the honourable Member raising a point of order or making a speech? He has already taken some fifteen minutes.

Mr. President: He has mentioned his point of order and he is now arguing the point.

Shri Deshbandhu Gupta: My point is this. In the light of this important judgment of the Supreme Court of U.S.A. the amendment which my Friend Shri Goenka seeks to move offends against the fundamental right guaranteed in article 13A and as such is *ultra vires*. I therefore suggest that this matter may be held over and referred back to the Drafting Committee to be examined in the light of the judgment of the Supreme Court of the U.S.A., and also in the light of the point of order that I have raised. I do not want to obstruct the proceedings of the House and only urge that this matter being an important matter, and concerns the fourth estate, it is a very vital question, and therefore, nothing would be lost if the Drafting Committee is asked to re-examine the whole question from this point of view. I hope the House will agree with me and that this matter will be held over.

Shri R. K. Sidhva: May I know whether a judgment of the Supreme Court of the U.S.A. is binding upon us? What is the point of order raised please?

Mr. President: The point of order is that the amendment proposed offends against article 13 which we have already passed.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, the point of order which has been raised and in respect of which certain extracts have been read out to the House from the decision of the Supreme Court of the United States of America, is further strengthened by a reference to article 13 we have already passed. In article 13, we have already said:

"All citizens shall have the right to freedom of speech and expression."

and this right is only circumscribed by clause (2) of the same article, which says:

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of or tends to overthrow, the State."

This provision is only a safeguard in the hands of the Government against the unrestricted use of the right of freedom of expression. Now, when a State seeks to tax the press, as such, it certainly seeks to tamper with the right of the freedom of speech. It is, of course, an accepted principle of law that what cannot be done directly by the law cannot be done indirectly by it. When we are incompetent to pass any law to restrict the freedom of speech unless it comes within clause (2) of article 13, it stands to reason that we cannot indirectly take away the right of freedom of speech.

Then again, Sir, if you will kindly refer to article 8, you will see that it lays down that:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency be void."

And further:

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

Sir, my contention is that any law which restricts the freedom of speech of an individual, or freedom of expression of the Press—because the freedom of the Press is only an extension of the principle of the freedom of speech of an individual—any law that abridges that right, is inconsistent with article 8, and is void. As it is, we by one provision in the Constitution guarantee the right of freedom of speech, and by another take away the same provision by another subterfuge. I do not want at this stage, to stress the point whether this is a tax on knowledge, whether it is opposed to the fundamental law as in America or England. But so far as our own Constitution is concerned, my contention is that this provision is opposed to the spirit and the letter of article 13. Therefore, this amendment is out of order.

Mr. President: I should like to hear the Members on the main question. But before I do that, I would like to know whether the Drafting Committee would re-consider this item. In that case I shall be saved the trouble of going into the question. In any case I shall not be able to give a decision just now; I have to take some time to consider it.

The Honourable Dr. B. R. Ambedkar: We should like to hear the various points of view as expressed in this House, and then if the House or you, Sir, find that it is not possible to come to any definite conclusion right now, then the matter may be remitted to the Drafting Committee so that the Committee, in view of the various expressions of opinion, might find out some formula

[The Honourable Dr. B. R. Ambedkar]

acceptable to the House. But I do not think, as it is, it is any use trying to recast it. We have got here very definite amendments. One is by my friend here and there is another by my friend Mr. Jhunjhunwala—quite definite amendments.

Mr. President: There are really two point to be considered. One is whether the amendment which is proposed to be moved by Mr. Goenka is in order, in view of the previous article which we have already passed. And the second is.....

The Honourable Dr. B. R. Ambedkar: Sir, If I may say so, this matter cannot be decided on the basis of whether something will be *ultra vires* or whether something will not be *ultra vires*. This House is not competent to decide that. That is a judicial matter. All that the House must decide is whether we want to give protection to the newspapers from the various entries which are included, either in List I, List II or List III; and if we want to give them any exemption from these entries, then to what extent we should give this exemption. What the court will decide is a matter of which we cannot be sure about. We cannot give any assurance to any newspaperman here and now that we have made a case which is fool-proof and knave-proof. We cannot give that assurance. So we had better decide the particular question, whether we do want to give protection to newspapers from the operation of the various entries. That is the main question.

(Shri R. K. Sidhva, Pandit Thakur Das Bhargava, Shri Mahavir Tyagi and other Members began talking all together.)

Mr. President: One at a time please.

Shri R. K. Sidhva: If I have understood Mr. Gupta.....

Mr. President: Are you going to argue the point?

Shri R. K. Sidhva: Yes, Sir.

Mr. President: Please wait. There are two points involved. One is the point of order which has been raised, whether the amendment which is sought to be moved by Mr. Goenka is in order or not, in view of the article which we have already passed. And the second point is whether on the merits, the amendment of Mr. Goenka should be accepted in its present form or in any other form.

Shri Alladi Krishnaswami Ayyar (Madras: General): On the first point, I should like to say a few words.

Mr. President: I was just asking if there was any chance of deciding the question on its merits, then the question of point of order might be done away with, and I would not be required to go into the question. If I am required to go into that question, I shall in any case take a little time to consider it and I will not be able to give my decision right away just now. Therefore, I am asking if it is to be held over, whether the Drafting Committee might consider it and then let us know what the position is, and if they think that this must remain there, then in that case, I would have to give my decision, of my ruling.

Shri T. T. Krishnamachari (Madras: General): Sir, it is for you to decide. If you remit anything to the Drafting Committee, the Committee has got to consider it. If that is your decision, then the Drafting Committee has nothing more to do, except to reconsider the matter and submit its report to you.

Mr. President: If that is so, I would rather suggest that in order to save time the Drafting Committee reconsider this matter and if they think.....

Shri Alladi Krishnaswami Ayyar: In the view, at any rate, of some of the members of the Drafting Committee, there is no substance in this point of odrer. They are quite clear and they are able to convince you. If even then you feel any doubt, by all means refer it to the Drafting Committee. We will be prepared to reconsider the whole situation. I do think that what exactly are the points of view must be presented to the House and to you, Sir, because ultimately the duty falls on you to decide whether there is any substance in this point of order or not. All that the Drafting Committee or any individual Members can do is to assist you in arriving at a conclusion with regard to the point of order. It is not a matter of voting. Therefore, all that we can do is to assist you to come to a conclusion whether there is any substance in this point of order or not. So far as I am concerned, it may be that I may be open to conviction and if really you think also that there is some doubt over the matter, we will consider it when it is referred to the Drafting Committee; but so far as this point of order is concerned, I have very, very clear and defininte views. If you will permit me to say a few words on this point of order at any stage you think fit, I can convince you. A point of order simply because it is raised by any Honourable Member, cannot at once be referred to the Drafting Committee. It is not as if there is substance in every point of order. But this one is of very great and fundamental importance. Therefore, I would ask you to consider it and then rule on the question whether it is a matter worth or fit for consideration.

Shri Jagat Narain Lal (Bihar: General): Sir, all the while, the point of order is being discussed. As I understood you to say was this: that if the matter is such as could, on merits, be considered by the Drafting Committee, the point of order may not arise and it may not be discussed. But I find that that matter has not received consideration. I suggest that the point of order may be held in abevance and the views of the House on the merits of the question, if necessary, may be taken.

Mr. President: That is the difficulty. If it is not out of order, then in that case the views of the House will have to be taken, but if it is out of order, then.....

Shri Alladi Krishnaswami Ayyar: The Drafting Committee considered the question as to whether it can be transferred to the Central List. My friend the honourable Dr. Ambedkar, President, will bear out that we came to the conclusion that we can support the transfer to the Central list. We have given our best consideration and we have come to the conclusion that having regard to the wide circulation of newspapers, having regard to the fact that newspapers are inter-provincial in their character, we can agree to the matter being put on the Central list. So far as that point is concerned, we have decided and clearly.

Mr. President: You should also consider the question whether it does not offend against article 13.

The Honourable Dr. B. R. Ambedkar: On that we have some views and if you are prepared to hear, I will submit them.

Shri Jagat Narain Lal: Before Dr. Ambedkar is called upon to submit his point of view, we should be allowed to support the point of order raised by Mr. Deshbandhu Gupta.

Shri R. K. Sidhva: Not necessarily the views in support! There may be opposition also.

Mr. President: That is the whole point—whether we should have a full-dress debate on this question or whether one or two speeches should be allowed. Messrs. Deshbandhu Gupta and Bhargava have put their point of view before us. I would like to hear the other point of view.

Shri R. K. Sidhva: The point of order raised by Messrs. Deshbandhu Gupta and Bhargava is that this offends against article 13 and therefore is out of order. They have quoted 13(a) relating to freedom of speech and expression. Now the amendment says "taxes on newspapers". Surely, newspapers pay tax on income. It does not mean that because the expression "freedom of speech and expression" is there, they are not going to pay any taxes or anything of that kind. With due deference to my friends, there are taxes on newspapers. They have to pay income-tax on the profit they make. If there are any further taxes to be levied, surely this article does not offend article 13. If you go to that extent in interpreting freedom of speech and expression, there will be a chaos. It does not mean that we are going to tax the articles or editorials appearing in a newspaper. That is a very narrow conception of that interpretation. I do not know where that will lead us. If there is any exemption from any tax today on the proprietors of newspapers, I can understand it; but may I know whether newspaper proprietors pay taxes today or not? They do pay taxes. Therefore, I contend that the objection does not stand for one moment.

Shri Jagat Narain Lal: As representing the Press, some of us claim to be heard by this House. Sir, freedom of speech and expression are terms which we have imported from the English and American Constitutions and we are trying to forge a Constitution at present which shall be ahead of these Constitutions. If we are forging a constitution which instead of being ahead of these constitutions goes backward, I should say that we cannot be proud of such a constitution. I have heard Mr. Sidhva. His interpretation seems to be too narrow. Dr. Ambedkar shuddered at the idea of the whole judgment of the Supreme Court being read. I do not propose to read the entire judgment. I will confine myself only to a few passages. I would like him as an eminent jurist to go through them. It is not simply a judgment to be merely casually read but it embodies the public opinion both from England and American constitutions; and I should say that at this stage and in this century it is becoming for us, as an advanced country, to guarantee full freedom of speech and expression. I will read only a few passages :

> "In 1712 in response to a message from Queen Anne (Hansard's Parliamentary History of England Vol. 6, p. 1063) Parliament imposed a tax upon all newspapers and upon advertisements. Collect, Vol. I, pp. 8-10. That the main purpose of these taxes was to suppress the publication of comments and criticisms objectionable to the Crown does not admit of doubt. Stewart, Lennox and the Taxes on Knowledge, 15 Scottish Historical Review, 322-327. There followed more than a century of resistance to, and evasion of, the taxes, and of agitation for their repeal. In the article last referred to (p. 326), which was written in 1918, it was pointed out that these taxes constituted one of the factors that aroused the American Colonists to protest against taxation for the purposes of the home government; and that the Revolution really began when, in 1765, that government sent stamps for newspaper duties to the American Colonists."

Then I will read the rest of the portion. It says :

> "It is idle to suppose that so many of the best men of England would for a century of time have waged, as they did, stubborn and often precarious warfare against these taxes if a mere matter of taxation had been involved."

The aim of this struggle was not simply to relieve the Press of the burden of taxation but to establish and preserve the right of the English people to full information in respect of the doings or misdoings of their Government. If words so telling as this could be interpreted as an intention to evade taxation it is very unfortunate indeed.

I do not want to read more of this passage. What I want to say is this that if it is the intention to create unnecessary commotion in this country, it is very unnecessary and undesirable indeed. Therefore, Sir, I think that the point of order raised by Shri Deshbandhu Gupta is very timely.

Mr. Naziruddin Ahmad: Mr. President, Sir, this point of order, I submit, raises an important constitutional question. The point sought to be made is that under article 13 we have guaranteed freedom of opinion and freedom of expression to all people and also to newspapers. Under clause (2) of article 13, there are certain powers given to curtail this right.

The question really turns upon whether the imposition of a tax on newspapers is really an attempt to affect the freedom of opinion and freedom of expression of a newspaper. It may be argued that the tax does not affect the freedom of expression and freedom of opinion, but is merely a realisation of some taxes from the press. This was, as I find, the exact situation which arose before the United States Court and the opinion expressed by the United States Court in this respect, so far as it is relevant, consists of two or three sentences. There the question was raised that it was merely a tax and did not directly affect the expression of opinion and therefore, did not go against the constitutional guarantee. But the reply of the United States Supreme Court was to the effect that the tax would curtail the right of freedom of opinion and expression. I shall just read only two or three sentences from the judgment:

"The tax is a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the Constitutional guarantee."

Mr. President: Do you read that in favour of the view that it is *ultra vires*?

Mr. Naziruddin Ahmad: I submit that the judgment has pronounced against the validity of the tax

Mr. President: If the motive is to curtail circulation.

Mr. Naziruddin Ahmad: The verdict of the Supreme Court was that it was really in the guise of a tax to control and stop circulation and expression of opinion.

Mr. President: But supposing there is no intention to control or curtail the expression of opinion. Then that would not be *ultra vires.*

Mr. Naziruddin Ahmad: The matter would really depend not upon the intention, because that is a matter which cannot be understood, ascertained or measured except from the words of the statute. It can only be judged by the terms of the Act and by the effect that it may produce. The main argument of the American Court was to the effect that though it is a mere tax and apparently not in derogation of freedom of opinion and freedom of expression, still it will have the effect of reducing the circulation of many newspapers. We cannot, therefore, go into the intention, whether it is good or whether it is bad, because that is a matter which cannot be ascertained otherwise than through the wording. We are to consider the tax mainly by its effect. There is no doubt that the tax will have the effect of suppressing many newspapers; in that way it will curtail freedom of expression and of opinion if the tax has the effect of reducing the circulation however slightly. It is well known, Sir, that a free press stands as an interpreter between the Government and the people. To allow it to be fettered is to fetter ourselves.

Then, if course, there is the question of merit; but that is a different, matter. But as we have guaranteed the freedom of expression and opinion by article 13, clause (1), and also taken some power to curtail the right under clause (2) in specified directions, there should be no further attempt to curtail these rights. I submit that this is a matter which has to be carefully considered.

[Mr. Naziruddin Ahmad]

I readily admit the fact that there is no question of intention involved. We cannot attribute any bad intention to the legislature at all. But under the guise of a tax freedom of opinion will be curtailed consciously or unconsciously.

Sir, one of the elements which ensure freedom in a democratic country is the Press. It is called the Fourth Estate of the Realm, the other three being the Legislature, the Judiciary and the Executive. Any attempt in any way to curtail the liberty of the press should, therefore, be carefully considered by us.

Mr. President: I would like to hear Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar on this point of order. I do not think it is necessary to have any more speeches in favour of the point of order.

The Honourable Dr. B. R. Ambedkar: Sir, I should like at the outset to state what the point of order is, or how I have understood it, because I should like to be corrected at the outset, if I am wrong. The point of order seems to be this that in view of the fact that this Assembly has passed article 13 which is a part of the Fundamental Rights and which says that all citizens shall have the right to freedom of speech or expression,—in view of this, is it open to this House to pass an article which would curtail the fundamental right given by article 13? I take it that is the point that we have now to consider.

In support of the proposition that this House is now debarred from considering any proposal which would have the effect of limiting freedom of speech, there has been cited a judgment of the Supreme Court of the United States in which—I have not read the whole thing, but only parts—it has been said that any tax levied on the press is *ultra vires,* in view of the fact—I am using the language of the United States—that it abridges the freedom of the press.

Shri Deshbandhu Gupta: Barring income-tax. It is stated in the judgment itself.

The Honourable Dr. B. R. Ambedkar: Now, Sir, it is not clear from the statement of fact of that particular case what the nature of the particular tax was which was called in question, nor is it clear as to the severity of that particular tax which was called in question. In my judgment, apart from the levy of the tax, the severity of the tax also would be an element in considering whether the tax was *ultra vires* or not. As I said, there is no reference to this important fact in this judgment. I am therefore not prepared to go by that judgment.

I am proceeding along other lines of arguments which I think are substantial and are not open to any criticism. The first point I want to submit is this: that, notwithstanding the fact that the constitutional guarantees which were given in the Constitution of the United States, the United States Supreme Court itself has held that these fundamental rights guaranteed by the Constitution are not absolute and that the Congress of the United States has, notwithstanding the language used in the Constitution, the right to impose reasonable restrictions on those fundamental rights. In fact I may remind the House that, in the opening speech which I made in support of the motion that this House do proceed to take into consideration the draft Constitution, I devoted a considerable part to the consideration of this matter, because I had noticed some criticisms in papers and by others, to whom I was bound to pay a certain amount of respect and attention, that our fundamental rights were of no value at all, as they were subjected to various limitations which were enumerated in propositions that follow article 13, namely clauses (2), (3), (4) and (5).

In order to meet those criticisms, I took some trouble to examine the decisions of the Supreme Court on this matter. I did so because at one time I felt that in view of the fact that the constitutional guarantees which were called fundamental rights were enunciated in the Constitution of the United States in absolute terms without any qualifications, it may not have been open to the Supreme Court of the United States to limit those provisions. But to my great surprise I found that the United States Supreme Court had taken the very same attitude that we have taken in the framing of the Constitution, namely that fundamental rights, however fundamental they may be, could not be absolute rights. They must be subject to certain limitations.

Now, if the House will permit me I shall quote only one passage from my speech. This is what I said.

> In Gitlow vs New York, in which the issue was the constitutionality of a New York, 'criminal anarchy' law which purported to punish utterances calculated to bring about violent change, the Supreme Court said:
>
> 'It is a fundamental principle, long established that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom'."

And I quoted many other cases. My whole point is this: that even in the United States itself, it is an acknowledged proposition that there must be some limitations upon the fundamental rights. On that there can be no question at all, in my judgment. Therefore, in so far as our entry—I am not going into the amendments for the moment—deals with tax on advertisements, my submission is that that entry could not be questioned as an entry which is *ultra vires* of this House, because it is going to put some kind of limitation upon the freedom of the press if it is acted upon by the provincial Governmens. I entirely refuse to accept that interpretation that any tax levied under the head 'Advertisements' would be *ultra vires* because it would infringe article 13.

The proposition which I submit could be enunciated and which is plausible and which may be accepted is this: that any imposition upon a newspaper of a tax of a severe nature which will result in wiping it out altogether, such an exercise of the taxation power, would be *ultra vires,* because it would completely wipe out the freedom of speech which has been guaranteed by article 13. In so far as the taxation imposed upon advertisements is not of a reasonable nature and is discriminatory, that is to say, it is merely confined to newspapers and all other forms of advertisements are exempted, then I can understand that that would violate article 15 under which we propose to give equal protection to all. Therefore my submission is that any argument which goes to the length of saying that anything which affects newspapers and the freedom of speech or writing in a newspaper would be *ultra vires,* I take the liberty to say, is not an argument which I am prepared to accept and which, I hope, this House will not accept.

Now I come to the other question. It is quite true that, in view of certain circumstances which have come to the surface in certain provinces, it may be necessary to transfer this particular entry regarding newspapers from List I to List II or place it in List III. That is a matter not of constitutional law. That is a matter of policy and a matter of confidence; whether you are prepared to put more confidence in the Centre or whether you are prepared to put more confidence in the provinces or whether you are prepared to put confidence in the provinces but would like to reserve to the Centre a certain amount of liberty and power to correct any wrong that a province might do is a matter which of course is open for discussion. That is what we have been discussing; whether any particular entry should remain in List I or part in List I and part in List II or in List III.

[The Honourable Dr. B. R. Ambedkar]

On that the House has got perfect liberty to decide, because it is a matter on which the House has got complete freedom, and nobody is going to suggest that the House has its hands tied down by reason of article 13 and that it cannot do anything to impose any kind of limitation upon the newspapers. I repudiate that argument absolutely.

Now, Sir, I should like to deal with the various amendments. If you will permit me, I would like to deal with them because those who may follow me may criticise what I am saying. It seems to me that the friends who are interested in newspapers are really trying to get complete immunity, so to say, from any kind of taxation that may be levied by the provinces. The first amendment moved by my friend, Mr. Goenka, and several others—there are some fifty or sixty names—is that it should be transferred to the Union List, List I. In doing that, they have done something which we ourselves had not done. Our newspaper entry is not connected with taxation. Those members who have closely watched the arrangement in List I and List II will realise that we have separated the entries into two parts, entries which are purely legislative and entries which are taxational. You will remember that newspapers, although they are mentioned in List III, they are mentioned only among the legislative entries. Now, the amendment moved by my friend, Mr. Goenka, has done the worst from his point of view, *viz.*, he has put the newspapers in that part of List I which deals with taxation. It means that it would be open now for the Centre to levy a tax on newspapers. (*Hear, hear.*) I do not like newspapers and I am not interested in either injuring them or in protecting them. I am prepared to place the whole matter in the hands of the House to do what it likes.

The second amendment moved by my friend, Mr. Jhunjhunwala, does what? He thinks that, although newspapers may be transferred to List I, newspapers as goods open to sale, will still remain in List II because the entry in that list is a very broad entry and would cover newspapers as goods and therefore he feels that there is no purpose served by merely accepting the amendment of Mr. Goenka because they would be liable to be taxed by the provinces under the entry relating to taxes on sale of goods. Therefore he has moved his amendment to get the newspapers out of the Sales Tax Act.

Now, the question to be considered is whether the provinces would agree that so important a part of what I may call the base of their taxation as constituted by the newspapers should be altogether eliminated from the field of provincial taxation. It is a matter which has to be considered. Sir, being a financial matter, I do not think that the Drafting Committee would be prepared to take the responsibility on its own shoulders without consultation either with the Finance Ministry or with the Finance Ministers of the Provinces. We have been taking a great deal of responsibility so far as purely legislative entries are concerned. When the question of finance is concerned, we have a sort of standing convention that we should always consult the Central Finance Ministry as well as the Finance Ministers of the various provinces.

Therefore these are the difficulties that are involved in these amendments. Now I do not know if you transfer the entry on newspapers to the Union List, the Centre may levy a tax on newspapers as manufacturers, because the Centre is entitled to put an excise duty on any goods manufactured in any part of India. It seems to me therefore that it would be difficult for the newspapers to escape taxation. All these things have to be taken into consideration. That is to say, these are extraneous matters to which I have given expression at this stage because I think that every Member who wants to take part in the debate, ought to know what the difficulties are. All that I am interested in at the moment is this that there is no bar to the House considering any kind of

limitation, notwithstanding that we have passed article 13. The proposition which is being sought to be placed before the House for its acceptance is in my judgment a very dangerous proposition. It would eliminate even taxation absolutely. Even article 24 could not be there. Many other complications would arise. If you say that because fundamental rights are guaranteed therefore the taxation power should also not be exercised because that would result in the limitation or the destruction of the fundamental rights, it is too large a proposition and I do not think that anybody will ever accept this.

Shri Alladi Krishnaswami Ayyar: Mr. President, Sir, I do not want to travel the same ground so ably covered by my friend, the Honourable Dr. Ambedkar, but I should like to add a few words in regard to certain points which were not touched by him. Reliance has been placed on article 13. If as a result of the interpretation of article 13 none of the subjects referred to in that article ought to be the subject of any taxation, what we are leading up to, the House may realise. Freedom of the press may be taken as included in freedom of speech and expression, though as in other Constitutions, there is no special clause relating to the freedom of the press. If you refer to 13(f) ("to acquire, hold and dispose of property",) a man has got a right to hold property. Therefore if this argument were sound no succession duty can be levied; his heir is entitled to hold the property; no estate duty can be levied. No kind of tax including capital levy will operate on that property, because you have guaranteed in the Constitution the right to acquire, hold and dispose of property. This will be a most dangerous doctrine to lay down, and I do not think that any court will be so foolish as to put that meaning on the expression "to acquire, hold and dispose of property". Proposals are on the anvil for the abolition of zamindari property. A zamindar has got the right to acquire, hold and dispose of property. Therefore you cannot have any kind of legislation with regard to the abolition of zamindari property. Then again take the right to practise any profession the lawyer's profession or any other profession. That right is there and therefore a professional tax cannot be levied according to the argument of the other side. We have already passed an article to the effect that professional taxes can be levied. Then take the expression "carry on any occupation, trade or business." The right is there and therefore you cannot levy any tax on any trade; you cannot levy any tax on any business or on any occupation. The result of this doctrine, of this mixing up a taxation provision with the provisions guaranteeing fundamental rights under article 13 would be to tie the hands of the State in such a way that no progress can be made. No State can function on that basis. It will be impossible to subscribe to a proposition of that description. It is unnecessary for me to go over other clauses, similarly in the chapter on Fundamental Rights, because I am not arguing before a Court of Law to reinforce this particular point.

Then reference has been made to the United States Supreme Court. I hope I will not be guilty of advertising myself if I refer to the fact that it was I that gave a reference to this case to the gentleman who was sponsoring the cause of newspapers of this country and my honourable Friend, Mr. Goenka will bear me out.....

Shri Deshbandhu Gupta: We are thankful to you.

Shri Alladi Krishnaswami Ayyar: Having regard to the infancy of newspaper industry or whatever you call it in this country, the need for inter-provincial circulation, the possibility and the hardship of differential and different taxes being levied by different provinces, I felt the justice of the particular claim, namely, that it is much better whatever might be the form the tax may ultimately take, that power should adhere in the Centre. I was of that opinion and I still adhere to that opinion and I am not holding any view against that, but to hold

[Shri Alladi Krishnaswami Ayyar]

that opinion is not to give a *carte blanche* to newspapers or to say that every profession in India, every kind, of income, every kind of industry, every kind of business can be taxed, but not newspapers or advertisements in newspapers. We have to some extent to count upon the wisdom of Parliament. It may be that under certain circumstances no tax ought to be levied at all and under other circumstances a tax may be levied at a low rate.

I should like to say a few words about advertizing. A cinema girl is advertized in a newspaper and the newspaper is making plenty of money out of it. The marriage proposal between two parties is advertized or sometimes referred to in a newspaper. Let us realize the gravity of the step which you want to take. Under these circumstances to say that because it is a newspaper it is to be exempted from taxes, I submit is not a proposition which will either commend itself to this House from a Constitutional point of view or from what may be called a public point of view. At this stage of the discussion I am purely on the Constitutional point of view. Some reference has been made to the American Constitution. It was unfortunate that instead of taking all the articles into consideration one should take hold of a judgment, read a passage here or read a passage there, take hold of some rules in a text book and then to lead or mislead the House and sometimes the public.

An honourable Member: That is what the lawyers always do.

Shri Alladi Krishnaswami Ayyar: There are two articles in the American Constitution, articles 5 and 14 referring to due process of law. The House may remember that at a particular stage in the proceedings of this House, I took strong exception to that expression 'due process' being borrowed into our Constitution. Yesterday in some other meeting somebody said that I was in favour of imprisoning all people. I do not favour such a preposterous proposition. I cannot bear a prison and I can sympathize with people who are sent to prison. The only question is whether in the larger interests of the State what exactly are the limitations to be put on the rights guaranteed under the constitution including the right to property.

I will give you one instance. There is a provision in the United States Constitution to the effect that judges shall get a fixed salary and their salary shall not be diminished during the term of office. In the very early stages of the history of the United States Supreme Court the view was taken by the judges themselves that their salaries were exempt from taxation. Fortunately in the later years the United States Supreme Court has gone back upon that view and the Court itself has said that a fixed salary does not mean that the judges are immune from the ordinary liabilities incidental to citizenship. Therefore you will have to take in all these cases. Supposing you put in a licence fee in respect of certain kinds of meetings, then you are interfering with the freedom of speech. If the tax is so oppressive as to strike at the very foundation of the right, it may be that the Court may well say that that law is invalid. That is what the honourable Dr. B. R. Ambedkar was alluding to. In the case of every written Constitution, when you are dealing with the question whether the Legislature is acting within the terms of its power under a particular provision or not, the Courts are called upon to decide whether the legislature is keeping to the terms and spirit of the particular provision which clothes the Legislature with that particular power. If in acting under one provision the legislature misuses or abuses the power contained in the provision or invades the field entrusted to another legislature the Court may very well come to the conclusion that that provision is invalid. For example relying upon the maxim of Chief Justice Marshal that the power to tax is the power to destroy, you so tax as to practically destroy the freedom of the Press, certainly the arm of the Court will be long enough to protect that.

Under those circumstances the House will be taking a dangerous step and a step which is fraught with serious evil to this country if it is said that particular people are exempt from taxation. It is another thing whether that power is within the term and within the spirit of the Constitution. In regard to other matters I have nothing to add to what the Honourable Dr. Ambedkar has said, but I venture to state, Sir, in all humility that there is absolutely no substance in the points of law raised, whatever might be the amendments that may be brought in order to see that newspapers do not suffer, that there is free circulation, that there is freedom of the press, that the power to tax is not so used as to destroy the foundation of free speech and opportunity of expression.

Pandit Thakur Das Bhargava: Supposing there is not complete desrtuction of this right, but there is material curtailment or abridgement, will it not be covered by this?

The Honourable Dr. B. R. Ambedkar: What is reasonable the Court will decide.

Shri Alladi Krishnaswami Ayyar: I have nothing to add to my speech.

(At this stage Shri Deshbandhu Gupta rose to speak)

Mr. President: I do not think there is any right of reply in a matter like this.

Shri Deshbandhu Gupta: On a point of order, I want to clear one or two points which seems to have created confusion.

Mr. President: No. It is a question whether you have the right to reply or not.

An honourable Member: The President has already said that the honourable Member has no right of reply.

Shri Deshbandhu Gupta: Sir, as some points have been raised and I would request you to explain these points particularly as no speaker from this side has spoken after Shri Alladi Krishnaswami Ayyar raised the points.

Mr. President: I think a larger number of people spoke from your side and from your point of view

I have understood the point of order that has been raised. I shall have to consider it and I will give my ruling later, but in the meantime I would ask Dr. Ambedkar to consider the other point which he himself has raised, supposing I rule that it is in order, then in that case I would expect him to be ready with the answer on the merits also as to whether you will have it in the form in which it is sought to be moved by Mr. Goenka or sought to be amended by Mr. Jhunjhunwala.

The Honourable Dr. B. R. Ambedkar: In that case, they should withdraw the amendment.

Shri Deshbandhu Gupta: The amendment has not been moved. I took exception to the moving of the amendment.

Mr. President: I shall give my ruling later. We shall take up the other items now. Certain new items have been proposed. Some are in the printed list. Before we go to that, let us go through the other entries

Entry 89

Mr. President: I do not find any amendment to entry 89

Entry 89 was added to the Union List.

[Mr. President]

Entry 90

Entry 90 was added to the Union List.

Entry 91

Mr. Naziruddin Ahmad: I shall not move the amendment; but I shall speak on the entry itself.

The Honourable Dr. B. R. Ambedkar: Why not present the baby with the song? Why the song only? You may move the amendment and make a speech.

Sardar Hukam Singh (East Punjab: Sikh): Mr. President, Sir, I beg to move:

"That in entry 91 of List I, the word 'other' be deleted."

I have another amendment also that was submitted along with this, but that has been numbered and placed at 171 "That entries 1 to 90 of List I be deleted." This has been put separately. I wanted to move them together. That opportunity was not given. My idea is, Sir,.....

Mr. President: You are moving amendment number 234?

Sardar Hukam Singh: Yes, Sir. My only submission is that I put these two things together, amendments 234 and 171; but they have been split from each other and they appear in different places. No. 171 was not called. Perhaps it was considered too late or it may be called at the end, I cannot say. They were complete when read together and I would deal with both of them if I am permitted.

Mr. President: We have already passed all these entries.

Shri T. T. Krishnamachari: How could entries which we have passed be deleted?

Sardar Hukam Singh: This is what I am submitting. This amendment I was not permitted to move then. That has been put separately. I will now deal with amendment No. 234.

My difficulty, Sir, is that after dealing with all these entries from 1 to 90 and after discussing all those details, and even considering inter-planetary travels and those journeys from one satellite to another, from the moon to earth and from earth to moon, we have at last come to the conclusion that they are not complete and there might be others that might be required to be included in this List. The object of this entry 91 is, whatever is not included in Lists II and III must be deemed to have been included in this List. I feel that it could be said in very simple words, if the word 'other' were omitted, and then there would be no need for this list absolutely. Ultimately, it comes to this that whatever is not covered by Lists II and III is all embraced in the Union List. This could be said in very simple words and we need not have taken all this trouble which we have taken.

Shri Mahavir Tyagi: On a point of order, Sir, I beg to submit that the second part of the amendment which my honourable Friend Sardar Hukam Singh has moved, is out of order. It is not an amendment of entry No. 91. It is an amendment to entries from 1 to 90, which we have already passed. If the amendment were to be moved, it could be moved only when entry 1 was under consideration or entry 2 was under consideration.

Mr. President: He is not moving it; he is moving amendment 234,—that in entry 91 of List I, the word "other" be deleted.

Shri Mahavir Tyagi: The second he is not moving?

Mr. President: He is moving only the other one.

Shri Mahavir Tyagi: I beg your pardon, Sir.

Sardar Hukam Singh: My submission was that the omission of the word 'other' from this entry would have served the whole purpose of putting this long list. I fear there might not be some servile mentality exhibited here because the Act of 1935 had about 320 articles and ten schedules, and then the seventh schedule had three lists and that has been followed in this Draft as well. Otherwise, we need not have gone into these details. I am reminded of a short story. A gentleman asked his expert friend, what was the best method of catching a crane. The expert friend replied, 'just go when it is dark, put some wax on the head of the crane, when the Sun would rise afterwords, it would melt the wax which is sure to fall into its eyes. The bird would be blind and you can catch it. The gentleman asked, then why not catch it at the very beginning when you go to put the wax? He replied, if it were done so easily, then where was the master's feat, *i.e., Ustad ki Ustadi* استاد کی استادی I fail to understand, Sir, why all this procedure should have been gone through. When we come to entry 91, we have to put this residuary power. It could have been more easily done by paying more attention to Lists II and III and simply saying any matters not enumerated in Lists II or III including any tax not mentioned in either of those lists. That would give us the same effect without bothering about all these details. With these words, I move my amendment.

Mr. Naziruddin Ahmad: Mr. President, Sir, I do not wish to oppose entry 91. It is too late to do it, but I should submit that the moment we adopted entry 91, it would involve serious redrafting of certain articles and entries. Under article 217 we have stated in substance that entries in List I will belong to Union List II to States and List III common to both. That was the original arrangement under which we started. We took the scheme from the Government of India Act. When an entry like 91 was considered at an earlier stage we agreed that the residuary power should be with the Centre. This was an innovation, as there was nothing like it in the Government of India Act. As soon as we accept entry No. 91, article 217 and a few other articles would require redrafting and entries 1 to 90 would be redundant. In fact all the previous entries—from 1 to 90 would be rendered absolutely unnecessary. I fail to see the point now retaining entries 1 to 90. If every subject which is not mentioned in Lists II and III is to go to the Centre what is the point in enumerating entries 1 to 90 of List I? That would amount to absolutely needless, cumbersome detail. All complications could be avoided and matters simplified by redrafting article 217 to say that all matters enumerated in List II must belong to the States, and all matters enumerated in List III are assigned to the Centre and the States concurrently and that every other conceivable subject must come within the purview of the Centre. There was nothing more simple or logical than that. Instead, a long elaborate List has been needlessly incorporated. This was because List I was prepared in advance and entry No. 91 was inserted by way of after thought. As soon as entry 91 was accepted, the drafting should have been altered accordingly. Article 217 should have been re-written on the above lines and matters would have been simplified. May I suggest even at this late stage that these needless entries be scrapped and article 217 be re-written and things made simple? I had an amendment to that effect but I did not move it because I know that any reasons behind an amendment would not be deemed fit for consideration by the House.

Prof. Shibban Lal Saksena: Sir, to-day is a great day that we are passing this entry almost without discussion. This matter has been the subject of

[Prof. Shibban Lal Saksena]

discussion in this country for several years for about two decades. Today it is being allowed to be passed without any discussion. The point of view of Mr. Naziruddin Ahmad is not correct. In fact Dr. Ambedkar has said that if there is anything left, it will be included in this item 91. I therefore think that it is a very important entry. There should not be any deletion of items 1 to 90. I know this entry will include everything that is already contained in the first 90 entries as well as whatever is left. This entry will strengthen the Centre and weld our nation into one single nation behind a strong Centre. Throughout the last decade the fight was that provincial autonomy should be so complete that the Centre should not be able to interfere with the provinces, but now the times are changed. We are now for a Strong Centre. In fact some friends would like to do away with provincial autonomy and would like a unitary Government. This entry gives power to the Centre to have legislation on any subject which has escaped the scrutiny of the House. I support this entry.

The Honourable Dr. B. R. Ambedkar: My President, I propose to deal with the objection raised by my Friend Sardar Hukam Singh. I do not think he has realised what is the purpose of entry 91 and I should therefore like to state very clearly what the purpose of 91 in List I is. It is really to define a limit or scope of List I and I think we could have dealt with this matter, *viz.*, of the definition of and scope of Lists II and III by adding an entry such as 67 which would read :

"anything not included in List II or III shall be deemed to fall in List I".

That is really the purpose of it. It could have been served in two different ways, either having an entry such as the one 91 included in List I or to have an entry such as the one which I have suggested.—'that anything not included in List II or III shall fall in List I'. That is the purpose of it. But such an entry is necessary and there can be no question about it. Now I come to the other objection which has been repeated if not openly at least whispered as to why we are having these 91 entries in List I when as a matter of fact we have an article such as 223 which is called residuary article which is 'Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List'. Theoretically I quite accept the proposition that when anything which is not included in List II or List III is by a specific article of the Constitution handed over to the Centre, it is unnecessary to enumerate these categories which we have specified in List I. The reason why this is done is this. Many States people, and particularly the Indian States at the beginning of the labours of the Constituent Assembly, were very particular to know what are the legislative powers of the Centre. They wanted to know categorically and particularly; they were not going to be satisfied by saying that the Centre will have only residuary powers. Just to allay the fears of the Provinces and the fears of the Indian States, we had to particularise what is included in the symbolic phrase "residuary powers". That is the reason why we had to undergo this labour, notwithstanding the fact that we had article 223.

I may also say that there is nothing very ridiculous about this, so far as our Constitution is concerned, for the simple reason that it has been the practice of all federal constitutions to enumerate the powers of the Centre, even those federations which have got residuary powers given to the Centre. Take for instance the Canadian constitution. Like the Indian constitution, the Canadian constitution also gives what are called residuary powers to the Canadian Parliament. Certain specified and enumerated powers are given to the Provinces. Notwithstanding this fact, the Canadian constitution. I think in article 99, proceeds to enumerate certain categories and certain entries on which the Parliament of Canada can legislate. That again was done in order

to allay the fears of the French Provinces which were going to be part and parcel of the Canadian Federation. Similarly also in the Government of India Act; the same scheme has been laid down there and section 104 of the Government of India, Act, 1935 is similar to article 223 here. It also lays down the proposition that the Central Government will have residuary powers. Notwithstanding that, it had its List I. Therefore, there is no reason, no ground to be over critical about this matter. In doing this we have only followed as I said, the requirements of the various Provinces to know specifically what these residuary powers are, and also we have followed well-known conventions which have been followed in any other federal constitutions. I hope the House will not accept either the amendment of my Friend Sardar Hukam Singh nor take very seriously the utterings of my Friend Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Never.

Mr. President: I shall put the amendment moved by Sardar Hukam Singh to vote. The question is :

"That in entry 91 of List I, the word "other" be deleted."

The amendment was negatived.

Mr. President: Then I put the entry 91. The question is :

"That entry 91 stand part of List I."

The motion was adopted.

Entry 91 was added to the Union List.

Prof. Shibban Lal Saksena: Sir, I have got three amendments which you said could be taken up at the end.

Mr. President: Yes, I remember.

I will now take up a number of new amendments which are sought to be proposed. I will take the first amendment—in the Printed List. There are three new entries suggested. One is in amendment No. 3586 in the names of Pandit Lakshmi Kanta Maitra, Shri Sures Chandra Majumdar and Shri Mihirlal Chattopadhyay; the next one is in No. 3587 in the name of Shri Arun Chandra Guha. I take it these are not moved. And then there is amendment No. 3588 in the names of Shri M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and Shri Sures Chandra Majumdar. That is also not moved.

Then we come to No. 58 in List I (Sixth Week), the amendment of Shri Brajeshwar Prasad. Do you wish to move it?

Shri Brajeshwar Prasad: Yes, Sir. I beg to move :

"That with reference to amendment No. 3588 of the List of Amendments, the following entries be added to List I :—

1. "Scheduled Areas" and "Tribal Areas".

2. All the entries from 1 to 66 in List II."

Sir, may I move the other amendments also?

Mr. President: No, we had better take them, one by one.

Shri Brajeshwar Prasad: Sir, I hold the view that if we have got the interest of the tribal people to heart, if we want to do justice to them, then the tribal areas and the scheduled areas must come to the Centre. Sir, forests and minerals lie in these zones, and I regard these subjects as vital subjects. And if these two subjects are to be taken up and be in the hands of

[Shri Brajeshwar Prasad]

the Centre, I feel that the tribal areas must also be taken up by the Government of India. While discussing another article I said that by making the tribal areas centrally administered areas, the tribals will develop a sense of unity and oneness among the tribal people. I feel also that the Provincial Governments, due to the lack of economic resources have not been able to pay much attention to the problems that confront them. So the problem of poverty and illiteracy among these tribal people cannot be solved by the Provinces with the limited financial resources that they have. If we, therefore want that the tribal people should be brought to the level of the other non-tribal people living in India, then the Central Government should take charge of these tribal areas.

The point was raised the other day that such a course would prevent the assimilation of the tribal people with the general public of our country. Sir, I think that the ideal of assimilation is merely a distant goal. This is not the immediate issue before us. Let us first try to assimilate ourselves before we try to assimilate the tribal people with ourselves. In spite of the fact that Biharis and Bengalees have lived together for centuries, we have not been able to assimilate ourselves. In spite of the fact that we have had Telugus and Tamils living together for centuries, they have not been able to assimilate themselves. In spite of the fact that there has been a common government at the Centre, the distinctions and the differences between the people of the North and the people of the South have persisted. Let us first solve this problem. It does not indicate a high sense of proportion in us if instead of achieving these goals we talk of assimilating the tribal people.

I also maintain that the question of their assimilation should be decided by the leaders and representatives of the tribal people themselves. Let them decide that question. Our duty is only to provide them with the means of development, to give them the opportunities for their educational, cultural and economic development. If we provide these things for the tribal people, then I would consider that we have done our duty. And then let their own leaders decide whether they should merge with the rest of the population or remain as a separate entity. My own feeling is that this question of assimilation is a very far-fetched question and it has no connection with the problems that confront us today.

As regards the second point, I am not prevented from moving this by any articles of the Constitution that we have already passed. I am suggesting that there should be only two Lists—the Union List and the Concurrent List.

Shri R. K. Sidhva: Is it in order to make this suggestion now?

Shri Brajeshwar Prasad: If it would not have been in order, the motion would not have been allowed to be moved.

Shri R. K. Sidhva: Do you want the provinces to be liquidated?

Shri Brajeshwar Prasad: I do not want the provinces to be liquidated. They should have concurrent powers of legislation. I want provincial governments to exist. I hold the view that the social purposes of the age cannot be fulfilled if we do not, with all possible haste, do whatever lies in our power to develop our agricultural, mineral and industrial resources. These developments require to be scientifically planned within the shortest possible time. We cannot afford to have a house divided into a large number of water-tight compartments. The old concept of division of powers or separation of powers does not fit in with the needs of the present century. It was suited to the needs of a bygone age.

Mr. President: I think you are going over the same ground again that there should be no provinces.

Shri Brajeshwar Prasad: No, Sir. The provinces should exist, but they should enjoy only concurrent powers. I am not against provinces. Whatever my own personal feelings in the matter may be, at the present moment I am not advocating that the provinces should be abolished. What I am saying is that they should have only limited powers—concurrent powers.

I know that you are very keen on time, Sir, so in deference to your wishes I will only urge one point more and conclude my speech. I feel that if we are to play our part in foreign politics, we must not have provincial governments vested with a large number of powers. They must not have autonomous powers. They should have only concurrent powers. What is the game of our opponents? The game of Anglo-American powers in Asia has been to prevent the establishment of a United, strong Centre in India. They want the disruption of India. It was with this end in view that they separated Burma from us. It was with this end in view that they divided this country. It was with this end in view that they gave complete independence to the Indian States. Now, are we going to fall in line with the hopes and aspirations of the Anglo-American powers? (*Interruption.*) If we want to frustrate the aims of our enemies, we must have a strong Centre and provinces vested only with concurrent powers. I would have taken more time, but I feel that the temper of the House is not favourable.

Mr. President: I think it is not necessary to have any further discussion on this point. However, if Dr. Ambedkar has anything to say about it, I would hear him; but otherwise I do not think any discussion is necessary on a point like this.

The Honourable Dr. B. R. Ambedkar: No discussion is necessary. I do not wish to say anything.

Shri Brajeshwar Prasad: I would like to withdraw my amendment.

Mr. President: I take it the House gives him leave to withdraw.

Prof. Shibban Lal Saksena: No.

Mr. President: You do not give him leave to withdraw. Very well, I will put it to vote. The question is :

"That with reference to amendment No. 3588 of the List of Amendments, the following entries be added to List I :—

1. "Scheduled Areas" and "Tribal Areas"

2. All the entries from 1 to 66 in List II."

The amendment was negatived.

Mr. President: There were two amendments of Dr. Deshmukh which I held over yesterday—223 and 224. He may move them.

Dr. P. S. Deshmukh: Sir, I shall move amendment 223. I beg to move:

"That after the proposed new entry 70A the following new entry be added :

"70B. Protection of children....."

'I would beg your pardon and request you to permit me to add the words "and young men" after the word "children")..... and young men....." (*Interruption*)

Mr. President: And not young women?

Dr. P. S. Deshmukh: Man includes woman. It is contained in the article in the Directive Principles. So "protection of children and young men, their exploitation and abandonment," would be the altered form of my amendment.

Sir, if you refer to the proposed entry in List II, No. 5, you will find that for the States we have the entry "Prisons, reformatories, Borstal institutions and other institutions of a like nature and persons detained therein". Then, in the Concurrent List, entry 6, we have "marriage, and divorce, infants and minors; adoption".

Shri H. V. Kamath: May I point out to my friend that the word used in Part IV Directive Principles is not "young men" but "youth"? I refer to article 31.

Dr. P. S. Deshmukh: If that is the word, then I had probably referred to the wording as it stood in the original Draft. I would like to change it to "youth", or whatever there is in article 31 as finally approved. From these two entries I have mentioned, you will find, Sir, that the States have eben given power to deal with child delinquents by giving powers of legislation—with regard to reformatories and Borstal institutions and so that question of child delinquency has been dealt with already or will be dealt with when we discuss List No. II.

So far as entry 6 in List III is concerned, we would be giving concurrent power with regard to marriage and divorce. So far as infants and minors are also mentioned and are to be taken in the same context. It is quite clear that this can refer only to the infants and minors so far as their legal status is concerned and by the above entry it would be possible for the State Governments to make legal provisions in so far as they are concerned. But unfortunately there is nothing so far as the welfare and protection of children and youth is concerned, especially their exploitation and abandonment, which has been one of the articles which we have already passed, *viz.* article 31. By this article we want the Union Government to be responsible for the protection of children and to see that there is no exploitation or abandonment of children and youth. I think it is in the fitness of things that we should have an entry in the Union List so as to empower the Union to legislate in this matter.

I have already answered the view that this entry is unnecessary. If any body were to contend to that effect because there are entries in Lists II and III and therefore say that this entry is not necessary, my submission to the House is that those entries do not cover the case. I have in view. We have very rightly and properly taken pains to have an entry in the article with regard to the exploitation of children and youth in our Directive Principles, and therefore it follows logically that the Union ought to be empowered to pass legislation in this respect. I do not think I need draw the attention of the House as to how children in this country are neglected, how destitute children wander about at the railway junctions and railway stations, near and about the Cinema Theatres and Bus Stands, etc. In our country one easily gets the impression that the children are the Cheapest of articles. If only we analyse our attitude towards them, one gets the impression that even sewage and dirt is more valuable than children. I am glad that we have taken care to include this in our Directive Principles and if we are serious about our Directive Principles, then the Union should have the power to legislate in this matter and to take early steps to remedy the present abominable situation. From this point of view, Sir, I press that this entry be accepted by the House.

So far as the other two entries are concerned, I would beg for your leave to move them when we come to the discussion of the amendment so far as newspapers are concerned.

Mr. President: Has Dr. Ambedkar anything to say on this?

The Honourable Dr. B. R. Ambedkar: No, Sir, I have nothing to say in reply. Young men and young women are capable of taking care of themselves. Why bother about them ?

Mr. President: The question is :

"That after the proposed new entry 70A of List I, the following new entry be added :—
'70B. Protection of children and young men their exploitation and abandonment.' "

The amendment was negatived.

Mr. President: There were three additional entries which stood in the name of Professor Shibban Lal Saksena. Yesterday when I called them he was not in his seat; I took them as not moved. As he said that he wished to move them I said I would consider the matter.

Prof. Shibban Lal Saksena: Sir, I beg to move :

"That after entry 59 of List I, the following new entry be added :—

'59A. Labour Legislation, and Legislation for settlement of Industrial disputes.' "

"That after the entry 59 of List I, the following new entry be added :—

'59B. Co-ordination of machinery for settlement of industrial disputes in States and in the Union and the provision of Supreme Industrial Appellate Tribunals.' "

"That after entry 59B of List I, the following new entry be added :—

'59C. Unemployment Insurance.' "

Sir, I thank you for having given me an opportunity of moving these amendments and I wish to draw your attention to the importance of these entries. I know that in the Concurrent List we have got items

26. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

27. Unemployment and social insurance.

28. Trade Union; industrial and labour disputes.

which means that both the provinces as well as the Centre can pass laws in that connection. In entry No. 59 it is said that industrial disputes concerning Union employees shall be a Central subject, so that even though industrial disputes are in the Concurrent list, so far as Union employees are concerned, legislation to settle these disputes will be the province of the Union Government. What I want is this : that these items in the Concurrent List may remain as they are, but the items which I have proposed may be added to the Union List. The main purpose of this amendment is to bring about uniformity in the matter of labour legislation all over the country. At present the position is this. Although the same industry is dispersed all over the country still labour is governed by different laws in different parts of the country, with the result that there is discontent among labour. That, for instance, is the case with regard to the sugar industry. The industry is situated in the U.P., Bihar, Madras and Bombay; but the labour is governed by different laws in different parts of the country. That is also the case with regard to jute textile and other industries. I therefore, want that labour legislation should be uniform all over the country.

My second amendment relates to the co-ordination of machinery for the settlement of industrial disputes. Machinery for this no doubt exists in every province, but there is no co-ordination of these activities of the various provincial Governments. Again there is no appellate tribunal to which all can go. I consider it a very important thing which must be provided for. I understand that the Central Government is intending to bring in a Bill to establish an appellate tribunal. I therefore want that this power should be given to the Centre. Co-ordination cannot be done by the provinces. Therefore this entry must be in the Union List.

My next amendment runs thus :

"That after entry 59B of List I, the following new entry be added :—
'59C. Unemployment Insurance.' "

[Prof. Shibban Lal Saksena]

It is now in the Concurrent List. The provinces will never be able to enforce this. If you want to make it a reality and to make it uniform throughout India, you must take this on to the Union List. Labour the world over is one and therefore the conditions of labour throughout India must be uniform. There will be discontent and heart burning if in Bombay, for instance, there is the system of doles and elsewhere there is not. In the United Provinces there are labour laws governing the conditions of labour in sugar factories and so on, while in other provinces there are no such laws. This leads to competition among industrialists and the labour suffers. If there are uniform laws labour will be contented.

The Honourable Dr. B. R. Ambedkar: I do not accept any of the amendments.

Mr. President: I will now put the amendments to the vote of the House. The question is :

"That after entry 59 of List I, the following new entry be added :—

59A Labour legislation, and legislation for settlement of industrial disputes.' "

The motion was negatived.

Mr. President: The question is :

"That after entry 59A of List I, the following new entry be added :—

'59B. Co-ordination of machinery for settlement of industrial disputes in States and in the Union and the provision of Supreme Industrial Appellate Tribunals.' "

The motion was negatived.

Mr. President: The question is :

"That after entry 59B of List I, the following new entry be added :—

59C. Unemployment Insurance.' "

The motion was negatived.

Mr. President: Then there are several new items which Shri Raj Bahadur wants to add.

Shri Raj Bahadur (United State of Matsya) : Sir, from among the items included in amendment No. 267 I am moving only one. I beg to move :

"That after entry 90 of List I, the following new entry be added :—

'90A. Control and eradication of beggary.' "

Sir, I believe, it will be admitted on all hands that no other country in the world suffers from the evil of beggary so much as India. In fact in most countries they have legislation prohibiting beggary; but in our country this evil continues as a stigma on our fair name and reputation. By pressing for the inclusion of the aforesaid entry I want to focus the attention of the future Parliaments to this evil, so that, no matter what party is there in power, action may be taken by the Government to check this evil.

We know, that the problem of beggary is closely inter-linked with the problems of poverty and unemployment. We know how the slavery of our country in the past and the callous indifference on the part of foreign rulers for the welfare and progress of the people, has resulted in exploitation and abject poverty of the masses of this country.

Apart from that aspect, however, certain psychological conditions also have accounted for the problem of beggary in our country. We have certain notions of charity. They are laudable but have more often been misdirected. In most cases charity is misconceived and misplaced. Instead of seeing to it that our

charity is directed only to such purposes as deserve it, we give alms to undeserving members of society and thus encourage beggary. We give alms purely guided by faulty notions and sentiments. Moreover, our climatic conditions also result in lethargy and laziness in the habits of our people. This has also accounted for this abnormal number of beggars in the land. Some people turn beggars only because they are too lazy to work. They fill their stomach without earning their livelihood by honest work. They simply live on alms and do not work. They are a burden on Society. This sort of lethargy is increased by the existence of illiteracy.

This is, hence, a multifaced problem and ought to be solved not only on a local or municipal basis but on a national basis. I, therefore, seek by means of this amendment to include the control and eradication of beggary in the Union List. It is high time that we removed this blot and blemish from the fair face of our country. I submit that a scientific and systematic treatment of the problem is indispensable. Today if we go anywhere in our country, in towns or villages or every street-corner or by-lane, on the foot-paths, in front of the cinema houses and bus-stands we find swarms of these miserable wretches stretching out their palms for alms. We have got to realise the seriousness of the problem. As I said, I would not move any of the other amendments, because I feel somewhat discouraged to see that the Honourable Chairman of the Drafting Committee is not even taking the trouble to reply to most of the amendments moved by other members suggesting new entries.

Shri T. T. Krishnamachari: He is engaged in studying the amendment moved by you.

Shri Raj Bahadur: I would be very fortunate if I get a reply to my motion.

The Honourable Dr. B. R. Ambedkar: Sir, as my friend expects a reply from me, I would just say one or two words.

The question of control and eradication of beggary is a matter which has been already provided for in List III in entry 24, 'Vagrancy', which includes beggary. The only point is whether it should remain there or should be brought in List I. I think it will be better to leave it in List III so that both the Provinces and the Centre could operate upon that entry.

Shri Raj Bahadur: Vagrancy and beggary are distinct terms. The term 'Vagrancy' connotes somewhat a bad character and all beggars may not be bad characters. 'Vagrancy' may include beggary, but some beggars may not be vagrants at all.

Mr. President: I will now put Mr. Raj Bahadur's amendment to the vote.

Shri Raj Bahadur: If the Honourable Chairman of the Drafting Committee thinks that vagrancy includes beggary, I am prepared to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: There is one more entry proposed by Dr. Deshmukh, amendment No. 235.

Dr. P. S. Deshmukh: I do not want to move it.

Mr. President: Then there is another entry which was left over, by Pandit Thakur Das Bhargava, amendment No. 192.

Pandit Thakur Das Bhargava: I do not propose to move it at this stage, I will subsequently move the subject-matter of this amendment to be taken to the Concurrent List.

List II—(State List)

Mr. President: We will now take up List II, entry 1. I have got notice of an amendment that entries 1 to 66 be transferred to List III, by Mr. Brajeshwar Prasad. I do not think it is necessary to move it.

Shri Brajeshwar Prasad: It may be taken as moved.

Mr. President: Yes, and withdrawn also.

Shri Brajeshwar Prasad: That will come at a later stage, Sir.

Mr. President: I do not think it is necessary to move it. There is another amendment by Mr. Brajeshwar Prasad that entry 1 of List II be transferred to List I as new entry 2A.

Shri Brajeshwar Prasad: May I request your permission to move that entry.

Mr. President: Yes, you can move it.

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move:

"That entry 1 of List II be transferred to List I as new entry 2A".

Sir, this entry refers to public order.

Dr. P. S. Deshmukh: On a point of order, Sir, we have already disposed of the whole of List I. Any entry which was intended to be added to List I ought to have been moved before. So long as Mr. Brajeshwar Prasad did not say then that he wanted this entry to be added there, I do not think it is proper for him to move the amendment now because we have already finalised List I, except in respect of newspapers.

Shri Brajeshwar Prasad: I would submit that so long as List II and List III have not been finally disposed of, it is within our competence to transfer one entry from one List to another. Of course, if it is your ruling, Sir, that the point which has been raised by Dr. Deshmukh is valid, then I am quite prepared to resume my seat. But hereafter no new entry should be permitted to be added to List I.

Dr. P. S. Deshmukh: But you ought to have moved it at an earlier stage.

Shri Brajeshwar Prasad: I have moved it in the stage which I think is the proper stage.

Shri T. T. Krishnamachari: It would have been perfectly proper for the honourable Member to have moved this amendment when we were considering List I.

Mr. President: The point of order is whether any addition can be proposed to List I now.

Shri T. T. Krishnamachari: We have already finalised List I. Now we can only allow transfer from List II to List III, not to List I.

Mr. President: I think it would be much better if we allow him to move it.

Shri Brajeshwar Prasad: Sir, the administration of public order in the provinces has not been of a satisfactory character. They have not the resources to maintain an efficient system of administration. Seventy-two per cent. of the budget of Assam goes in the form of salary bills. The other twenty-eight per cent. is left for managing a large number of subjects. The result has been deterioration in the efficiency of the administration. There are also some States and provinces on the borders of foreign States. Is it the opinion of the House that it is not risky, it is wise to leave the question of public order entirely in the hands of the provincial governments? In a State like Assam and East Punjab, public order....

Shri B. L. Sondhi (East Punjab : General) : What is wrong with East Punjab ?

Shri Brajeshwar Prasad : There is nothing wrong about East Punjab. I was only saying that these States are on the borders of foreign States. Therefore it is necessary that the power to maintain public order should remain in the hands of the Central Government. With the limited resources at their disposal, it will not be possible for these States to maintain public order.

An Honourable Member : Strengthen them.

Shri Brajeshwar Prasad : The provinces of West Bengal and East Punjab are partitioned provinces. They are suffering from the problem of relief and rehabilitation, from the problem of migration of population, and there has also been infiltration of subversive elements in the services of these two provinces. I do not say that the services of the other provinces are safe; there has been infiltration in the services of the other provinces also; but in the case of these two provinces in particular, there has been considerable infiltration of subversive elements. The result is that the integrity, the efficiency of the provincial administration—my friends from West Bengal will bear me out—has deteriorated. Sir, in other provinces also crimes are on the increase. The machinery of law and order has been considerably weakened. Lawlessness prevails in many provinces. The pursuit of power politics by provincial ministers and the growth of caste feelings have shattered all semblance of civilised administration. I, therefore, strongly feel that public order should become a Central subject. There are dangers within and dangers without, and we cannot depend upon the loyalty of the provincial administration in times of crises. Centrifugal forces have been the bane of our political life since the dawn of history. I therefore urge, Sir, that public order should become a Central subject.

Mr. President : Do you want to say anything, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : I do not want to say anything.

Shri Brajeshwar Prasad : I withdraw my amendment.

Mr. President : The House evidently is not in a mood to give permission for this amendment to be withdrawn. I will put it to the vote. The question is :

"That entry 1 of List II be transferred to List I as new entry 2A."

The amendment was negatived.

Mr. President : There is an amendment by Dr. Ambedkar, amendment No. 63.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in entry 1 of List II, the following words be deleted :

'preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.' "

It is proposed that this entry should be put in List III. That is the reason why I propose that these words be deleted.

Sardar Hukam Singh : Sir, I move :

"That in entry 1 of List II, after the words "naval, military or air forces" the words "or any other armed forces of the Union" be inserted."

My purpose in moving this amendment is that I feel that it is a lacuna, an omission on the part of the Drafting Committee. If I am told that it has been deliberately omitted.....

The Honourable Dr. B. R. Ambedkar : I am prepared to accept this amendment.

Sardar Hukam Singh: Then I need not say anything.

Mr. President: The question is:

"That in entry 1 of List II, after the words "naval, military or air forces" the words "or any other armed forces of the Union" be inserted."

The amendment was adopted.

Mr. President: The question is:

That in entry 1 of List II, the following words be deleted:—

"preventive detention for reasons connected with the maintenance of public order, persons subjected to such detention."

The amendment was adopted.

Mr. President: The question is:

That entry 1 as amended, stand part of List II.

The motion was adopted.

Entry 1, as amended, was added to the State List.

Entry 2

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 2 of List II, the following entry be substituted:—

'2. The administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts; fees taken in all courts except the Supreme Court.'"

The only change made is that the High Courts have been brought in because as I explained yesterday so far as the constitution and organization of High Courts are concerned, they are completely under the control of the Centre.

Mr. President: Then there is amendment No. 236. I do not think it could arise now because we have already passed the entry including the High Courts in the first list. The amendment is to the effect that the High Courts should be deleted. So it is out of order. The next amendment is 237, standing in the name of Dr. P. S. Deshmukh. It is also the same thing.

Dr. P .S. Deshmukh: Sir, I do not move it.

Sardar Hukam Singh: Sir, I beg to move:

"That in amendment No. 64 of List I (Sixth Week), in the proposed entry 2 of List II, after the words 'and the High Courts' the words 'and persons entitled to practise before the Supreme Court or any High Court' be inserted."

My object in moving this is similar to the one that I moved previously.

Mr. President: This was practically passed yesterday in connection with an entry in List No. 1. So this question cannot be moved. We have already passed an entry in List No. 1 which covers this point.

Shri T. T. Krishnamachari: The idea is that he wants the exclusion of those words expressly.

Sardar Hukam Singh: You have included these persons also in List No. 1. When we exclude the Supreme Court, the High Court, then the persons entitled to practise should also be excluded along with this Supreme Court and the High Court.

Shri T. T. Krishnamachari: It is a specific entry.

The Honourable Dr. B. R. Ambedkar: Yesterday's entry was a specific entry and therefore his amendment is unnecessary.

Shri Raj Bahadur : Sir, I move :

"That in amendment No. 64 of List I (Sixth Week), in the proposed entry 2 of List II, after the words 'Supreme Court' where they occur for the second time, the words 'and the High Courts' be inserted."

Sir, as has been observed by the Honourable Dr. Ambedkar, the supervision, control and organization of the High Courts has been made a subject in the Union List. It is but meet and proper that the fees should be uniform in every High Court. Therefore fees taken not only by the Supreme Court but also fees taken in the High Court should be a subject-matter which should be excluded from the purview of this new entry.

Shri T. T. Krishnamachari : The position really is that entry 52 expressly puts the fees, taken by the Supreme Court in List I and if we accept the amendment of Mr. Raj Bahadur, the power to levy fees by the High Court will be left in the air.

Mr. President : The question is :

"That in amendment No 64 of List I (Sixth Week), in the proposed entry 2 of List II, after the words 'Supreme Court' where they occur for the second time, the words 'and the High Courts' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That for entry 2 of List II, the following entry be substituted :—

'2. The administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts; fees taken in all courts except the Supreme Court.' "

The amendment was adopted.

Mr. President : The question is :

That entry 2 as amended, stand part of List II.

The motion was adopted.

Entry 2 as amended, was added to the State List.

Entry 3

Entry 3 was added to List II.

Entry 4

Shri Brajeshwar Prasad : I will move my amendment without offering any comment, *i.e.*, I will not deliver any speech. Sir, I move :

"That for amendment No. 3589 of the List of Amendments, the following be substituted :—

'That entry 4 in List II be omitted from that List and be included in List I.' "

Sir, I may with your permission say that instead of List I the entry should be included in List III. It will meet the objection of Mr. T. T. Krishnamachari. Sir, I regard "Police" as a vital subject and I think it should be included in the concurrent powers and thus brought under the Centre.

Shrimati Purnima Banerji (United Provinces : General) : I want to ask whether you are satisfied that 'Police' includes the Home Guards and the Pranthiya Raksha Dal.

The Honourable Dr. B. R. Ambedkar : That depends upon any legislation made by the province. If under the Police Act they enrol a certain person,

[The Honourable Dr. B. R. Ambedkar]

he is a police for that purpose or if they enrol under some other Act and they are given the powers of the Police, that will also be police.

Shri Mahavir Tyagi: May I ask whether the Home Guards and the Pranthiya Raksha Dal go under the residuary powers of the Government of India or be controlled by the local Government? Where will they go?

The Honourable Dr. B. R. Ambedkar: If it is not Police, then it will go under the Central Government. "Police" is used in contradiction to "Army". Anything which is not "army" is Police.

Shri Mahavir Tyagi: Let that go down as your ruling within quotations.

Pandit Hirday Nath Kunzru: If Dr. Ambedkar's interpretation is correct, then a province can raise an army without calling it by that name.

The Honourable Dr. B. R. Ambedkar: No, I do not think they can do it.

Dr. P. S. Deshmukh: That is what is happening aldeady.

The Honourable Dr. B. R. Ambedkar: An army is enrolled under the Indian Army Act of 1911 and there are stringent conditions laid down as to enrolment in that Act A province has no right to legislate on that entry at all

Pandit Hirday Nath Kunzru: A province will not legislate with regard to the creation of an army at all. But, it can raise a force and give it military training without calling it an army.

Shri T. T. Krishnamachari: I might mention, Sir, that there are special armed police in the provinces. They are recruited under the powers given under the Police Act. They are considered to be a police force even though they are on a *quasi* military basis.

Shri Mahavir Tyagi: Why don't you add the word Home Guard and make it clear?

The Honourable Dr. B. R. Ambedkar: There are armed police; there are unarmed police.

Mr. President: The question put by Pandit Kunzru is whether a province will be able to raise an army, without calling it an army, but calling it police.

The Honourable Dr. B. R. Ambedkar: I am sure if a province is going to play a fraud on the Constitution, the Centre will be strong enough to see that that fraud is not perpetrated.

Mr. President: I will put the amendment of Mr. Brajeshwar Prasad to vote.

Shri Brajeshwar Prasad: I beg leave to withdraw it, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That entry 4 stand part of List II."

The motion was adopted.

Entry 4 was added to the State List.

Entry 5

Entry 5 was added to the State List.

Entry 5-A

Mr. President: Amendment 3590 has not been moved.

Shri Brajeshwar Prasad : You have always given that latitude; without the amendment being moved, I have already moved many amendments to amendments.

Mr. President : The way in which this amendment is worded, it cannot read, "subject to the supervision, direction and control of the Government of India."

Shri Brajeshwar Prasad : I will correct it, Sir, with your permission :

"Provincial Militia subject to the supervision, direction and control of the Government of India."

This is my amendment. Especially in the United Provinces of Agra and Oudh, this is assuming serious proportions. This is a violation of the spirit of the Constitution I am afraid it may take a shape which may not be in consonance . . .

Mr. President : I am afraid this would not do. This additional entry which Mr. Santhanam wanted to move, but which he has not moved, raises a new question altogether, and any amendment to that involves a new question, I do not think I can allow the amendment. Your amendment will have the effect of bringing in a new entry.

Entry 6

Mr. President : We take up entry No. 6. There is no amendment.

Entry 6 was added to the State List

Entry 7

Entry 7 was added to the State List

Entry 7-*A*

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 7 of List II, the following entry be inserted :—

'7-A. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.' "

This is merely a corresponding entry to what we have already done so far as List I is concerned.

(Amendment No. 238 was not moved.)

Mr. President : The question is :

"That after entry 7 of List II, the following entry be inserted :—

'7-A. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.' "

The motion was adopted.

Entry 7-A was added to the State List.

Entry 8

Entry 8 was added to the State List.

Entry 9

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 9 of List II, the following entry be substituted :—

'9. Acquisition or requisitioning of property except for the purposes of the Union, subject to the provisions of entry 35 of List III.' "

[The Honourable Dr. B. R. Ambedkar]

The only change is that the underlined words are now put in the Concurrent List and it is therefore necessary to omit them from this entry. This is also what we have done with regard to a similar entry in List I.

(Amendment 239 was not moved.)

Shri Raj Bahadur: Sir, I move:

"That in amendment No. 69 of List I (Sixth Week), in the proposed entry 9 of List II, the words 'subject to the provisions of entry 35 of List III' be deleted."

My reason for moving this amendment is that this entry corresponds to entry No. 43 in the Union List. After the acceptance of the amendment No. 21 moved by the Drafting Committee, that entry stands in the following form now:

"Acquisition or requisitioning of property for the purposes of the Union."

The words, "subject to the provisions of entry 35 of List III" are conspicuous by their absence in that entry. I see no reason why there should be any difference in the terms or phraseologies of these two similar entries in respect of property acquired by the Union on the one hand and in respect of property acquired by the State on the other hand. These words, 'subject to the provisions of entry 35 of List III' should either be retained in both the places or they should not be kept in either entry. In order to secure consistency, and uniformity in principles therefore, these words should be deleted here.

Apart from that, unless and until we have taken some decision in respect of article 24, we should not accept or take for granted the principle of awarding compensation for property acquired by the Union or by the States in the public interest. On this ground also it is not proper to put these words, 'subject to the provisions of entry 35 of List III' in this entry. With these words, I commend my amendment for the consideration of the Drafting Committee and the House.

The Honourable Dr. B. R. Ambedkar: It is not a proper amendment, I cannot accept that.

Shri Raj Bahadur: May I know the reason for it?

Mr. President: Are you withdrawing the amendment?

Shri Raj Bahadur: I do not withdraw because I have not been given any reasons.

Mr. President: The question is:

"That in amendment No. 69 of List I (Sixth Week), in the proposed entry 9 of List II, the words 'subject to the provisions of entry 35 of List III" be deleted."

The amendment was negatived.

Mr. President: The question is:

"That for entry 9 of List II, the following entry be substituted:—

'9. Acquisition or requisitioning of property except for the purposes of the Union subject to the provisions of entry 35 of List III.'"

The amendment was adopted.

Mr. President: The question is:

"That entry No. 9, as amended, stand part of List II."

The motion was adopted.

Entry 9, as amended, was added to the State List.

Entry 10

Entry 10 was added to the State List.

Entry 10-*A*

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 10 of List II, the following entry be inserted :—

'10-A. Ancient and Historical Monuments other than those specified in entry 60 of List I.'"

We have distributed this entry, kept apart in List I and the other part is now placed in List II.

Mr. President : The question is :

"That Entry 10-A stand part of List II."

The motion was adopted.

Entry 10-A was added to the State List.

Entry 11

Mr. President : Entry No. 11.

Shri Raj Bahadur : I do not wish to move my amendment.

Entry 11 was added to the State List.

Entry 12

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 12 of List II, the following entries be substituted :—

'12. The salaries and allowances of Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof; the salaries and allowances of the members of the Legislature of the State.

'12-A. The privileges, immunities and powers of the Legislative Assembly and of the members and the Committees thereof, and if there is a Legislative Council, of that Council and of the members and the Committees thereof.'"

This is merely a counterpart of what we have done so far as List I is concerned regarding the centre.

Dr. P. S. Deshmukh : I do not move my amendment.

Mr. President : The question is :

"That for entry 12 of List II, the following entries be substituted :—

'12. The salaries and allowances of Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof; the salaries and allowances of the members of the Legislature of the State.

'12-A. The privileges, immunities and powers of the Legislative Assembly and of the members and the Committees thereof, and if there is a Legislative Council, of that Council and of the members and the Committees thereof.'"

The amendment was adopted.

Entries 12 and 12-A were added to the State List.

Entry 13

Mr. President : Entry 13.

Shri Brajeshwar Prasad : I do not move my amendment.

Entry 13 was added to the State List.

Entry 14

Mr. President: Entry 14.

Shri Brajeshwar Prasad: I am not moving my amendments.

Shri Mahavir Tyagi: Mr. President, sometimes it is really embarrassing to move amendments. I had given this amendment with reference to an amendment in the printed list. That amendment has not been moved and now he raises a point that I cannot bring in my amendment.

Mr. President: I think there is some substance in it.

Shri Mahavir Tyagi: Morally it seems he has let me down.

Mr. President: You should not have depended on him. You should have moved as a separate amendment.

Shri R. K. Sidhva: Since giving notice of my amendments changes have taken place and so I do not move my amendment.

Shri Mahavir Tyagi: The rule of giving notice, I always understood, means that Members are informed as to what subject is to come up for consideration. That purpose having been served in this case, I submit you might at least treat this as an independent amendment and allow me to move it.

Mr. President. Your amendment is something very different from entry 14. Entry 14 lays down :—

"Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration"

Your amendment is 'regulation and control of Houses and rents'. These are two different things.

Shri Mahavir Tyagi: The amendment in the printed list reads :—

"Local self-government in cantonment areas the regulation of house accommodation in such areas and the delimitation of such areas."

Therefore my amendment was relevant in relation to the amendment which I sought to amend.

Mr. President: We passed an entry which put the controls.

Shri Mahavir Tyagi: That was about Cantonments in List I. Now it is List II. As the matter is important you may allow this, and it may be numbered as a new entry.

Shri R. K. Sidhva: He wants to substitute the old entry with this 'regulation and control of Houses and rents'. I want to ask—regulation by whom ? My amendment was quite different.

Mr. President: These are two different things altogether.

Shri Mahavir Tyagi: Sir, my amendment was in substitution of the amendment in the printed list and after substitution it would read like this :—

"The regulation and control of houses and rents."

Mr. President: These two are different.

Shri Mahavir Tyagi: Then I would request you to allow me to move it as a separate entry and no member can take objection on the ground that it was not notified. If it is acceptable to the House, a new number can be given to it. It may be 14 or at the end.

Dr. P. S. Deshmukh: You cannot amend something which does not exist.

Mr. President: I cannot allow it to be moved as an amendment of 14. We will dispose of 14 now and then we will consider whether to take it up.

The question is :

"That Entry 14 stand part of List II.

The motion was adopted.

Entry 14 was added to the State List.

Mr. President: Now the question is whether we should have an additional entry as "Regulation and control of Houses and Rents". Mr. Tyagi, you move it as a separate entry.

The Honourable Dr. B. R. Ambedkar: Yes, he may move it as a separate entry.

Shri Mahavir Tyagi: I am grateful to you and also to Dr. Ambedkar. He has for the first time been generous to me.

Sir, I do submit that it is really embarrassing to move an amendment to the list which has been submitted by the Drafting Committee, for the Drafting Committee is always very resourceful and it is very difficult to struggle with them successfully.

Mr. President: But you are moving an additional entry.

Shri Mahavir Tyagi: Yes, Sir, but the acceptance of the Drafting Committee has to be sought. After all it is primarily they who accept suggestions, and if they accept them, then the House readily agrees to them.

The House has already agreed to one entry which says that all the residuary powers will go to the Centre, all that is not mentioned in List II or List III. I submit that the control of Houses in urban areas and the control of rents of those houses are an important matter today. It was not in the original list of the Government of India Act, 1935, because at that time the control over the houses and their rents was not needed and it was not prevalent in India. But . . .

The Honourable Dr. B. R. Ambedkar: I understand the honourable Member's argument and I could reply to him in a few minutes.

Shri Mahavir Tyagi: Yes, and I therefore only submit that this subject of control of the houses and the control of the rents should be there. I would even go further and say that the control of food grains also should come in. If the House agrees, it may be brought in as an independent item somewhere.

The Honourable Dr. B. R. Ambedkar: Sir, there are, I think three distinct questions, although they have not been stated by Mr. Tyagi in that form. The first question is whether the Provincial legislature should or should not have any power to regulate and control houses and house-rent. I think on that issue, there can be no difference of opinion, that the Provincial Governments must have such power. The question then is whether the Draft Constitution and the entries in the list make any provision for the provincial legislatures to exercise powers for the purpose of regulating and controlling the houses and the rents. Now, my submission is that the specific entry as proposed by Mr. Tyagi is quite unnecessary, because there are two other entries, namely entry 24 of List II which deals with "land, rights in or over land, land tenures including the relation of land-lord and tenant, and the collection of rents, etc. etc." That is one entry. Then there is another entry No. 8 in List III about transfer of property other than agricultural land; registration of deeds and documents. These two entries have been found to be quite sufficient to enable the Provincial Governments to

[The Honourable Dr. B. R. Ambedkar]

make laws relating to the regulation and control of Houses and rents. My Friend Mr. Tyagi knows also, that notwithstanding the fact that such an entry does not exist even today, under List II of the Government of India Act, none-the-less, the Provinces have enacted laws in this matter. Therefore entry 24 relating to land and the other entry. No. 8 about transfer of property are quite sufficient to give the power which Mr. Tyagi wants that they should have.

Another difficulty in the way of accepting the amendment of Mr. Tyagi is this. Suppose we were now to include this entry, it would cause a certain amount of doubt on the laws that have already been made by the provinces for the purpose of regulation of houses and the control of rents. It would appear that the legislature itself felt that the entry as it already existed, was not sufficient for the purpose of giving the legislature power to make laws for this purpose. And therefore it was necessary specifically to give this power. I think we would be unnecessarily casting doubts upon the validity of laws already made. Therefore, this is an additional ground against accepting the amendment. In the first place, as I have said it is unnecessary because the provinces have got sufficient power to make such laws and the other is this question of validity of laws made.

Now I come to the third part. My Friend Mr. Tyagi has been struggling to some extent when I was dealing with the question of cantonments to remove the power of allowing cantonments to regulate rents and the premises within their areas. If my friend's intention is that by getting this entry accepted, it would be possible for the provinces to nullify the power which has already been given by the entry in List I, as it has been already passed, then I think, he is completely under a mistake. Notwithstanding the fact that this entry may become part of the Constitution, the entry which we have already passed would be valid; notwithstanding any power vested in the Provinces, the Cantonments will have the power to make regulations with regard to the premises and the rent of the premises situated in that area. Therefore, I submit to my Friend Mr. Tyagi that his purpose is already served and it is unnecessary to have this entry, especially because it would be casting a certain amount of doubt on the validity of the laws already made under these entries as they stand.

Shri Mahavir Tyagi: Sir....

Mr. President: There is no right of reply.

Shri Mahavir Tyagi: I only want to put a question, if you will please permit me.

Mr. President: Put your question.

Shri Mahavir Tyagi: Will Dr. Ambedkar tell us, whether we should be guided by the difficulties which might be experienced by one Government or the other, or whether we should make the law without regard to the previous commitments of the provincial Governments, and authorise the provincial Governments to enact laws to control the rent? We cannot proceed on the basis that because no one has so far objected to an irregularity, everything is all right. Suppose the owner of a house takes objection on the ground that the provincial government has no right to control rents, then what happens?

The Honourable Dr. B. R. Ambedkar: No, he cannot because under the General Clauses Act, land includes the buildings.

Shri Mahavir Tyagi : It is a new interpretation of the law, that land includes the building.

The Honourable Dr. B. R. Ambedkar : It is new because law is not the profession of Mr. Tyagi.

New Entry 14-A

Mr. President : I shall put the new entry to vote. The question is :

"That after entry 14, the following new entry be added :

"14-A. The regulation and Control of houses and rents'."

The motion was negatived.

Shri Mahavir Tyagi : Sir, I had no chance of saying "Aye" because I was actually on my way back to my seat.

Mr. President : No, I gave you the chance, but you did not say "Aye" Now, we come to entry 15.

Shri R. K. Sidhva : Sir, about the programme for the present session, I would like to . . .

Mr. President : I shall dispose of this entry and then listen to what you say. Dr. Ambedkar.

Entry 15

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in entry 15 of List II, the words 'registration of births and deaths' be deleted."

This is transferred to the concurrent List.

Mr. President : There is no amendment to this ?

Shri Brajeshwar Prasad : Yes, Sir, there is one from me. But as Dr. Ambedkar has agreed to transfer this entry to List III, I do not move it, and I have nothing more to say.

Mr. President : Then there is amendment No. 280 (Fifth List, Sixth Week) by Mr. Kamath.

Shri H. V. Kamath : It is one o'clock, Sir. Shall I move it ?

Mr. President : I think we had better stop here.

Shri R. K. Sidhva : Sir, before you adjourn the House we would like to have some idea about the programme for this session. There are several important articles remaining, and we do not know when they will be taken up. If you can give us some idea as to when they will be taken up, we can . . .

Mr. Nazimuddin Ahmad : And also since they are important articles we should be given some time to consider them and give our amendments.

Mr. President : I think I shall be able to give you tomorrow some idea of the articles with the particular dates on which they will be taken up; and the articles will be circulated in time to enable Members to give any amendments to which they may be entitled.

The House now stand adjourned till nine o'clock to-morrow morning.

The Assembly then adjourned to Nine of the Clock on Friday the 2nd September, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 2nd September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair

CONDOLENCE ON THE DEATH OF SHRI GOPINATH SRIVASTAVA

Seth Govind Das (C. P. & Berar : General) : Sir, before the commencement of today's business, I want to draw your attention to certain rumours about the adjournment of the House. We want to fix up our programmes and we want to know when this session is going to be terminated. At the same time, suppose a certain day is fixed for a certain article and it is not disposed of, I would like to know whether you will accept closure on that article—a sort of guillotine—so that the article might be finished by one o'clock that day.

Mr. President : I mentioned yesterday that I would be able to give some idea of the programme of this Session today. I will do that at the end of the day.

I am very sorry to announce to the Members of the House the sudden death of Shri Gopinath Srivastava, who was a Member of this House in the beginning and later had to leave it on his appointment as a Member of the Public Services Commission of the United Provinces. He had a distinguished public career in his own province and had devoted all his time for many years to public activities. The province is especially poorer on account of his death and we shall all miss him in the public life of the country. I wish Members will show respect to his memory by standing in their places.

(The Members stood in their places for a minute)

DRAFT CONSTITUTION—(*Contd.*)

Seventh Schedule—(*Contd.*)

List II. Entry 15—(*Contd.*)

Mr. President : We were dealing with entry 15 yesterday when we rose.

Shri Brajeshwar Prasad (Bihar : General) : Sir, I did not follow the amendment moved by Dr. Ambedkar.

Mr. President : It is "That in entry 15 of the List the words 'registration of births and deaths' be deleted."

Shri Brajeshwar Prasad : He said something to the effect that it should be transferred to List III. He did not move the amendment as it finds place in the Paper.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : But there will be an amendment when we deal with List III.

Shri Brajeshwar Prasad: I was then mistaken. Therefore I would like to move my amendment. I thought that he had moved that this whole entry should be transferred to List III. I now find that his amendment is of a very limited character. Therefore, Sir, I seek your permission to move my amendment.

Mr. President: Very well, after Mr. Kamath.

Before we proceed with the entries, I would remind the House about what has been mentioned by Seth Govind Das. We must expedite the discussion of of these entries and I wish to finish them today. If we cannot, we may have to sit in the afternoon or tomorrow because we cannot go on with this List on Monday as I have fixed the programme for the days following in next week.

Shri R. K. Sidhva (C. P. & Berar: General): I think it was agreed that you would allow each speaker five minutes.

Mr. President: I said three minutes.

Shri Brajeshwar Prasad: I would rather have an evening session than a session tomorrow.

Mr. President: I hope it will not be necessary. We should be able to finish the entries today.

Shri H. V. Kamath: (C.P. & Berar: General) Sir, I move:

"That with reference to amendment No. 78 of List I (Sixth Week), the proposed entry 15 of List II be transfered to List III."

The proposed entry will now be *minus* that clause relating to registration of births and deaths. That entry will stand thus:

"Public health and sanitation: hospitals and dispensaries."

This entry, I suggest may be transferred to List III, that is the Concurrent List.

I find that Dr. Ambedkar has a separate amendment for the inclusion of the omitted item, that is to say, the registration of births and deaths in List III under Vital Statistics. The purpose of my amendment is to transfer the entry 15 with or without the registration of births and deaths to List III, Concurrent List.

While commending my amendment seeking to transfer public health, sanitation, hospitals and dispensaries to the Concurrent List, I should like to state that public health has been the Cinderella of portfolios in the Cabinet of our country. During the British Regime it was specially so, very sadly neglected and not much provided for: as a result of which the health of the nation has fallen to C-3 standards, it is the object of our government today to raise the health of the nation from C-3 to A-1 standard. If this were the aim of our Government we could not do better than make public health a Concurrent subject. It must be accorded top priority if the nation is to rise to its full stature. We have the old maxim:

शरीरमाद्यं खलु, धर्मसाधनम्।

Shareeramadyam khalu dharmasadhanam.

It means that health is the pre-requisite of higher life; and if the bedrock of health is not there nothing strong and durable can be erected on shifting sands. If the bedrock of health is there, the superstructure will stand the test of time and will resist the storms and winds that blow.

I know, from my experience of certain provinces, that the health schemes that are launched by provincial Governments while commendable as regards their good intentions, fail to achieve the desired consummation, because of the lack of direction and co-ordination from the Centre. In the last Budget Session the Health Minister pleaded for more powers for the Centre to co-ordinate and initiate various health schemes in the provinces so that our aim to raise the standard of health of the nation could be realized with the least possible delay. In modern times.....

Mr. President: The honourable Member has exceeded his three minutes.

Shri H. V. Kamath: I thought that the time limit was five minutes. However, Sir, this is a matter on which there is very serious divergence of opinion. I learn that provincial governments or ministers have resisted the transfer of this entry to List III and they are reluctant to have any change in this entry. I do not know how far it is correct, but I have heard rumours to the effect that provincial health ministers are reluctant to the transfer of this entry to List III. That is why I want the Drafting Committee and the House to bestow some more consideration on this subject.

The House is well aware that the Central Health Ministry has during recent times not merely advised the provinces about various health schemes and in the methods of disease-prevention, but also launched mass, vaccination schemes like BCG, and I believe they have also taken steps in the direction of Penicillin treatment on an All-India scale. Apart from that, the Central Government took the initiative in appointing what is known as the Chopra Committee, which has submitted its report dealing with various aspects of public health.

Bearing all these points in mind and viewing this important and vital matter from different points of view I feel very strongly that public health should not be relegated to the legislative powers only of the States but should be a Concurrent subject at least. I am sure my Friend Mr. Brajeshwar Prasad would try to include it in List I, but I would be happy if this matter were transferred to List III. Sir, I move my amendment and commend it to the House for its acceptance.

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment No. 3600 of the List of Amendments, for the word and figure 'List III', the word and figure 'List I' be substituted."

Sir, I do not understand the opposition of provincial ministers in this respect. If they feel that they are in a position to deal with all problems of public health and sanitation, if they are of opinion that hospitals and dispensaries can be run on efficient lines without the help and co-operation of the Government of India, they are welcome to hold their opinions. I also come from a province. I do not come from No man's land. I know that the administration of these departments has deteriorated after power was transferred to our hands. If you go to a general hospital you will see that flies and bugs are multiplying, that the clothes of the nurses are dirty, that phenyle and medicines are not available and the patients are not treated well. There is utter neglect and deterioration in efficiency. Therefore I feel that public health, sanitation, hospitals and dispensaries should be included in List I. The powers which I want the Centre to possess are intended for the purpose of aggrandisement of the Centre. They are intended for the performance of social service. I cannot understand why the co-operation of the Centre is not welcome. The provinces have enough powers in their hands but the resources at their disposal are of a very limited character. If the nation is to be saved fromth e scourge of disease and epidemics, all powers as far as this entry is concerned must be vested in the hands of the Centre. Of course I

[Shri Brajeshwar Prasad]

fully appreciate the point that by wresting these important powers provincial autonomy will be modified to a very large extent, but provincial autonomy is not an end in itself. It is only a means to an end—the end being the economic political and cultural advancement of the people of this country. Any movement of ideology that stands in the way of the economic, political and cultural advancement of the people of India must be liquidated and wiped out.

Mr. President: I do not think I should allow the honourable Member to repeat his arguments against provincial autonomy. This amendment is one which is in line with his other amendments which seek to transfer all powers to the Centre Yet I have allowed him to move the amendment, but his arguments are the same which he has advanced many times previously.

Prof. Shibban Lal Saksena (United Provinces : General): I do not move amendment 297.

The Honourable Dr. B. R. Ambedkar: I do not accept any of the amendments moved.

Mr. President: I will put the amendment moved by Mr. Kamath (280). The question is :

"That with reference to amendment No. 78 of List I (Sixth Week), the proposed entry 15 of List II be transferred to List III."

The amendment was negatived.

Mr. President: Now amendment No. 77 moved by Shri Brajeshwar Prasad is for the vote of the House. The question is :

"That in amendment No. 3600 of the List of Amendments, for the word and figure 'List III' the word and figure 'List I' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in entry 15 of List II, the words 'registration of births and deaths' be deleted."

The amendment was adopted.

Mr. President: The question is :

"That entry 15, as amended, stand part of List II."

The motion was adopted.

Entry 15, as amended, was added to the State List.

Entry 16

Mr. President: Entry 16 is now for consideration.

Prof. Shibban Lal Saksena: I move.

"That for entry 16 of List II, the following be substituted :—

'15. Pilgrimages to places within the State.' "

Sir, the entry in List II simply says, 'Pilgrimages, other than pilgrimages to places beyond India'. I therefore think that we should substitute for entry 16 in List II the words, 'Pilgrimages to places within the State.'

Shri T. T. Krishnamachari (Madras : General) : Sir, the purpose of Professor Shibban Lal's amendment is that pilgrimages, to places within a province should vest in the State. That is precisely the idea contained in entry 16. Actually a State cannot interfere with what is happening with regard to pilgrimages in another State. The idea is clearly carried out in entry 16, as it is.

Prof. Shibban Lal Saksena : Is that carried out in the entry ?

Shri T. T. Krishnamachari : Yes, it is fully carried out. The wording is the same as in the Government of India Act. The only type of pilgrimage for the time being with which the Centre is concerned is the Haj pilgrimage. That is a matter which is entirely within the purview of the Centre. If it happens that they have to regulate pilgrimage or pilgrim traffic to Haj and give directions to the provincial Governments in regard to quarantine accommodation, etc. for the pilgrims, that will be done by the Centre. This is purely a State List intended to control pilgrimages within the State. The purpose will not be served by accepting Prof. Shibban Lal's amendment. I therefore suggest that the House should reject the amendment and pass the entry as it is.

Mr. President : The question is :

"That for entry 16 of List II, the following be substituted :—

'16. Pilgrimages to places within the State.' "

The amendment was negatived.

Mr. President : The question is :

"That entry 16 be added to List II."

The motion was adopted.

Entry 16 was added to the State List.

Entry 17

Mr. President : I do not find any amendment to entry 17. I shall therefore put it to the vote of the House.

Entry 17 was added to the State List.

Entry 18

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 18 of List II, the following entry be substituted :—

'18. Education including universities, subject to the provisions of entries 40, 40-A, 57 and 57-A of List I and entry 17-A of List III.' "

Shri Brajeshwar Prasad : Sir, with your permission, out of the three amendments to this entry standing against my name, I will move the second one only. I move :

"That in amendment No. 3607 of the List of Amendments, in the proposed entry 18 of List II, the words 'subject to the supervision, direction and control of the Government of India' be added at the end."

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I am not moving my amendment No. 242, for reasons of economy of time.

Maulana Hasrat Mohani (United Provinces : Muslim) : *[Sir, it would be astonishing to you all why I, a protagonist of provincial autonomy and am opponent of making a strong Centre, am trying to make this particular item a central subject. Education should be included in the Concurrent List and not be made

*[ ] Translation of Hindustani speeches.

[Maulana Hasrat Mohani]

a provincial subject. Even then, I do not say that it be included in the First List. As I do not want to make the Centre all-powerful, I am trying to get this included in the Concurrent List. I would not have said even this much but I am helpless. I find, and I quite agree in this with my Friend Mr.Naziruddin, that Dr. Ambedkar is ever trying to increase the powers of the Centre, and to make the provinces weaker. I would go a step further and say that what is happening here today would only result in altering the very basis of the Constitution. At first I thought that this Constitution was being framed in accordance with the Objectives Resolution and it would be on the pattern of a Federal Republic and a Socialist Republic, but they have already done away with 'Socialist', and now they seem to be attempting to create a Unitary Indian Empire after merging all the States into it, like the old British Unitary Indian Empire. Besides that, I do not see any other object. Further on, you will realise that it is not only I who hold the opinion that it is no more Republican, Socialist or Federal in character. It would become a purely Indian Empire in which provinces will have no powers. This is my opinion. That is why I am totally opposed to it.

Now, I would tell you as to why I want the centre also to be vested with this power. It is because it is connected with the education in provinces. I want that provincial Governments should not be given full power as regards education in their provinces. I have proposed this because provinces have adopted autocratic and quite unreasonable attitude in regard to the question of the medium of instruction in education, regarding which Provinces have been given powers to take any decision they like, irrespective of the wishes of the Centre or of the people. This has been possible because it is a provincial subject and provinces can take any decision they like and they can have any medium of instruction. Perhaps my Friend would retort that in the provinces primary education would be imparted in the regional languages *i.e.,* in Madras Province education in the primary and secondary stages would be imparted through the medium of regional language, the same would be the case with the Bombay Province. In Bengal, education would be given through Bengali, in Punjab through Punjabi, or Gurumukhi. But I would like to tell you what are my difficulties. The difficulties which confront U.P.'ites are these that U.P. Government has adopted a strange procedure. They say that Hindi is the Provincial language, and their regional language is Sanskritised Hindi, and that Urdu has no place in the province. I am not saying this to you at random. You will be simply surprised, if I tell you what is happening there. Mr. Tandon, the Speaker of the Provincial Assembly, has ordered that all Bills to be moved in the Assembly should be in Hindi and Hindi alone. We do not get its copy in English. There, the agenda is also framed in Sanskritised Hindi and the list of questions is also prepared in Sanskritised Hindi. And if anybody happens to send his questions in Urdu, they are thrown away. This is not all. They have issued instructions in districts that anyone, who wants registration, must produce the document in Hindi. And if the document is brought in Urdu, registration is refused. Please tell us what to do in these circumstances. Urdu is not the language of Muslims only, it is the language of Hindus also.

Now, it is said that upto the primary and secondary stages the medium of instruction will be the regional language. But they do not follow even this instruction. They ought to impart education in these stages in the regional languages. And in regard to higher education they can do what they like. I do not want to take up this question for the present. I would like to say only this much that the system which they have adopted for the instruction in the primary and secondary stages is unjust. They ought to impart education in these two

stages in the mother-tongue. Boys, between the ages of six and eleven years, should be given instruction in their mother-tongue, so that they should be free from the burden of learning other languages. Formerly we used to oppose the British Government for this very reason and used to curse them for they had fixed English as the medium of instruction in High Schools. But you have surpassed them. They did so in high schools only. But apart from this, they started Vernacular Middle schools and gave the option of passing the middle class in Hindi or Urdu. Those who wanted to acquire further education in English used to join High Schools. So I want to say that the Provincial governments, now, are doing things which the British Government abstained from doing.

Besides this, I would like to say that compulsory education has been introduced in all primary schools in the villages. And it is obligatory on everyone that he should get his children admitted in primary or Basic schools, because people are bound to get their children admitted in these schools for their education. Now you see what is happening there. When these boys are admitted in the first Class, they are told they would not be taught "Alif", "Bay", as there was no arrangement for that. Now you can see for yourself what would these boys do whose mother-tongue is Urdu. They are told that they could not learn "Alif", "Bay", as there was no arrangement for that. So you should learn "Ka" "Kha" "Gha". What a cruelty it is, and what an injustice is this. Has any Government in the world ever done the injustice which has been perpetrated by the U.P. Government? And moreover they say that, as it is a provincial subject, they can do whatever they like. For this reason I have clearly said that in regard to this matter the Centre should issue instructions. Whatever mother-tongue is favoured in any region by the people should be adopted there.

In the University Commission report submitted by Mr. Radhakrishnan it is clearly written.

> "Mother language according to the Commission should be the medium of instruction in all stages of school education."

This is the opinion of your University Commission. Moreover, Shri Rajgopalacharya, in the Newspapers conference at Bombay on 10th August, said the following about the medium of Instruction :—

> "The State language should be learnt by itself. I personally feel that teaching should be done in a mixture of regional language and State language."

And many people say that, if not so much, at least you keep the mother-tongue as the medium of instruction. In regard to this, I say that three provinces, namely, Delhi, U.P., Bihar and Mahakoshal or C.P. should be made bilingual provinces. And those whose mother-tongue is Urdu should be given instruction in the same language.

The assertion of U.P. Government that its State language is Hindi and its regional language is also Hindi and that Urdu has no place there and that Urdu should be wiped off the face of the earth, is high-handedness. You know very well that the birth place of Urdu is U.P.]

Mr. President: *[Maulana Saheb, this is not the question before us at the moment. At present the question is that the education should be a provincial subject.]

Maulana Hasrat Mohani: *[I am also saying the same thing. I do not say that the Centre should be given all the powers. I would like to say only this and I have ventured to say so with this object that, at least in fixing the medium

*[ ] Translation of Hindustani speeches.

[Maulana Hasrat Mohani]

of instruction, they should also have a hand. From what the U.P. Government is doing, it appears that it is bent upon wiping off Urdu from the face of the earth.

Sir, I shall finish my speech after citing a few examples. In the Education Ministers' conference which was held here, they unanimously passed the following :—

> "The medium of instruction and examination in the junior basic stage must be the mother-tongue of the child and where the mother-tongue is different from the regional or State languages, arrangements must be made for instruction in mother-tongue by appointing at least one teacher, provided there are not less than forty pupils speaking the language in the whole school or ten such pupils in a class"

This is their opinion.

After this the memorandum submitted in the Education Ministers' Conference by the West Bengal people was very clear. They have displayed utmost sense of justice and they say, "The policy pursued in West Bengal rearding the medium of instruction in schools and the principle which should be adopted in this regard in all provinces were explained at the All-India Education Ministers' Conference."

Further they say, "The Education Ministry of West Bengal is of opinion that if the principle be adopted in other provinces and the provincial and regional language, where it is different from the mother-tongue of a child, be introduced as a compulsory second language in the secondary stage, then the difficulties of the school-students belonging to the linquistic minorities in different provinces may easily be removed."]

Mr. President : *[Maulana Sahib, there can be no two opinions perhaps about the things you are talking.]

Maulana Hasrat Mohani : *[Yes, Sir, but U.P. Government do not say so, on the other hand they stick to the plea that education is a provincial subject and so they do not care for the Centre. We are put in a great difficulty as my daughters who go to schools are asked to read "ka kha gha", and they further say, that they do not have instructions for teaching Urdu. What is this ! How can such things happen ? Therefore, my opinion is that whatever is suggested by Centre regarding the medium of instruction should be under the control of the Centre, and hence because of this control the subject of education should be added in List No. III, instead of List No. II. I do not want to give this right to the Centre but at the same time the Centre should have the power of setting them right in case they do anything unjust. But if this is not done then they should make it clear that they are not giving any right to the linguistic minorities and that they propose to wipe away Urdu from the surface of the earth. Therefore, either Dr. Ambedkar should accept my proposition or he should give me an assurance that the provinces would not play havoc with the medium of instruction. I want that this should be made clear.]

Mr. President : I think amendment No. 299 is the same as that of Maulana Hasrat Mohani.

Prof. Shibban Lal Saksena : No, Sir, it is quite different.

Mr. President : It is the same—"that entry 18 of List II be transferred to List III". You can move amendment No. 300.

*[ ] Translation of Hindustani speech.

Prof. Shibban Lal Saksena: Mr. President, Sir, I beg to move:

"That in amendment No 79 of List I (Sixth Week), for the proposed entry 18 of List II, the following be substituted:—

'18 Education up to the Secondary standard'."

I take it that my amendment No. 299 has already been moved. It is my firm belief that in order to have one single unified nation, it is necessary that at least higher education must be a Central subject. I am glad that in many of the amendments the Honourable Dr. Ambedkar has provided that some of the institutions which impart higher education shall be treated as Central subjects; but I wish that University education should be a responsibility of the Union Government alone. In this respect, Sir, I wish to read out a passage from a letter from the Honourable Maulana Abdul Kalam Azad, Minister for Education to the Drafting Committee, dated the 28th April 1948, in which he said —

> 'The second point to which I would draw your attention is that in the present state of development of Education in India, it is imperative that there should be Central guidance if not Central control, on Provincial progress. You have yourself seen the dangerous symptoms of fissiparous tendencies in the recent months If it can be secured that Education throughout India follows the same general pattern, we can be sure that the intelligentsia of the country will be thinking on similar lines This would be a better check against the dangers of fragmentation than any centralisation of Government or concentration of power in the hands of the Central Authority."

I therefore think with this main purpose in view, the whole nation must be given education on the same lines, so that it may be able to think on a particular pattern, and I think this is a very important object which we should strive to achieve. Besides, there are other difficulties which have also to be faced. We remember that Mahatma Gandhi spent a large part of his time in evolving his scheme of Basic National education and he wanted it to be uniform throughout the whole of India. The scheme was evolved after very great research and very great thought by the educationists all over India. It is obvious that such plans and such schemes can only be evolved and carried out on an All-India basis.

Then there are other advantages from university education under Union control. Firstly, our country has not got such large resources as other advanced countries. Our Universities should therefore specialise in different subjects in different places, so that there may not be much duplication in teaching and waste of effort. I think, therefore, that the Central Government should control all the universities so that it can advise each university with regard to the subject in which it should specialize Secondly, I feel that the State cannot afford adequate funds for University education. My feeling is that they are already spending large sums on primary education and secondary education and therefore University education is being starved. There must be provision for university education under the Central Government. That will enable those universities to develop properly and in the national interest Sir, I therefore think that this List II must only contain education up to the Secondary standard and not up to the University standard. Besides, Sir, the Inter-University Board wherein all the Universities are represented is of the opinion that University education should be a Central subject. For all these reasons, I hope the Drafting Committee will consider the subject and that the entry will be amended suitably.

Mr. President: Amendment No. 311 by Pandit Lakshmi Kanta Maitra: that is the same as the one moved by Maulana Hasrat Mohani. That need not be moved.

Dr. Ambedkar, do you want to say anything?

Shri T. T. Krishnamachari: Mr. President, Sir, there seems to be a general tendency on the part of a number of Members of this House to transfer a

[Shri T. T. Krishnamachari]

number of items in List II to List III. May I say at once that we, members of the Drafting Committee, are faced with two opposing problems. Certain Members of the House want that a greater responsibility should be shouldered by the Centre. On the other hand, there are a number of Members in this House who feel that the Centre is taking on to itself far more than it ought to, thereby rendering provincial autonomy a mere farce. Actually, such complaints also appear in the papers and I found recently a lecture by Mr. C. R. Reddy, Vice-Chancellor of the Andhra University who has heavily underlined this tendency of power gravitating to the Centre. I would like to repudiate at once so far as the Drafting Committee is concerned, that there is any idea of either over-loading the Centre or erring on the side of the provinces. All that we have done, to the extent that we are able to do, is only to see that the Centre takes only such powers as are needed for the purpose of co-ordinating the activities of the provinces. My honourable Friends who have moved these amendments either to take over the entry "education" to the Concurrent List or to limit the scope of entry 18 to Education up to the Secondary standard, if they would please persue the items relating to Education in List I, they will see that we have provided and the House has accepted those provisions, which confer enough power on the Centre to co-ordinate the educational activities of the States in the field of higher education, in the field of technical education, in the field of vocational education and also in the field of scientific research. That is about as far as it is safe for the Central Government to go; it would not be wise for any Central Government to go beyond that limit.

In regard to the particular point raised by my honourable Friend Maulana Hasrat Mohani, I must say that I do sympathise with his fears, if I am able to understand the gist of his speech. But I am afraid, in a matter like this, the remedy does not lie in the Centre taking over the power on to itself, though I have no doubt that the minorities may probably feel safer with the Centre than with the provinces. I would like to point out that he is not without remedies if the provinces should abuse their power to the extent of shutting out education facilities for any minorities. The fundamental rights, article 23 and article 23-A give him enough power to assert his own rights.

Maulana Hasrat Mohani: They are not sufficient; please read them closely.

Shri T. T. Krishnamachari: I am afraid I must differ with my honourable Friend. I think that is about the best that we can possibly do, consistent with the idea of having States with a large measure of autonomy for themselves and the Centre taking up the question of security, defence and general well-being of the country, leaving other things to the States. I think it is probably just a matter of the moment where enthusiasm outruns discretion and some provinces want to introduce new reforms at a fast pace. I may tell my honourable Friend that before long he will find things settling down and every provincial Government will respect the articles of fundamental rights 23 and 23-A and the minorities will have no cause for fear. In fact, he would find that there might be other articles coming up for discussion in the House later on which would give him additional safeguards in regard to the safeguarding the languages of particular groups of people. The question cannot be solved by the Centre taking over a responsibility which it cannot on the face of it adequately discharge.

In regard to the amendment of my honourable Friend Prof. Shibban Lal Saksena, I would like to tell him that the Centre has enough powers by means of entries 40, 40-A, 57, 57-A in List I to co-ordinate higher education. The cry that the provinces have not got enough money to spend in regard to University education is not quite real for the reason that what the provinces have really to spend on this type of education is only a microscopic portion of the entire educa-

tional budget on University education. I think, the expenditure by provinces is fairly liberal as things go. If the matter is really one where finances are retarding higher education, I have no doubt that the powers vested in the Centre under article 253(3) will be used wisely and generously so that the provinces will have adequate grants for the purpose of furthering higher education.

I, therefore, submit that the points raised by my honourable Friends to either restrict the scope of entry 18 beyond what it has been restricted to or to move it to List III are without substance, and I suggest to the House that they should accept the amendment moved by my honourable Friend Dr. Ambedkar.

Mr. President: The question is:

"That in amendment No. 3607 of the List of Amendments, in the proposed entry 18 of List II, the words 'subject to the supervision, direction and control of the Government of India' be added at the end."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 79 of List I (Sixth Week), the proposed entry 18 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No 79 of List I (Sixth Week), for the proposed entry 18 of List II, the following be substituted :—

'18. Education up to the Secondary standard'."

The amendment was negatived.

Mr. President: I now put the entry as moved by Dr. Ambedkar. The question is:

"That for entry 18 of List II, the following entry be substituted :—

"18. Education including universities, subject to the provisions of entries 40, 40-A, 57 and 57-A of List I and entry 17-A of List III.'"

The amendment was adopted.

Entry 18, as amended, was added to the State List.

Entry 19

Shri T. T. Krishnamachari: Mr. President, I move:

"That in entry 19 of List II—

(a) the words and figures 'minor railways subject to the provisions of List I with respect to such railways,' and

(b) the words and figures 'ports, subject to the provisions in List I with regard to major ports;' be omitted."

Sir, in regard to item (a) of this amendment, we have already passed the entry in regard to railways in List I which is a comprehensive entry and legislative power in regard to all railways whether major or minor now vests with the Centre. In regard to item (b), the idea really is that this entry should be transferred to List III and an amendment has been tabled to that effect. Instead of having the classification major and minor ports or giving power to the Centre to declare certain ports to be major ports, the idea is that the Centre will be given powers to give certain directions or make regulations for the provinces to follow in regard

[Shri T. T. Krishnamachari]

to the administration of ports called minor ports. In order to give the Centre this amendment is made transferring this particular portion of entry 19 to the Concurrent List. I hope the House will accept this amendment partly because they are already committed in regard to part (a), and partly because, so far as item (b) is concerned, the transfer is one that will conduce to the improvement of our minor ports generally. I move.

(Amendment No. 84 was not moved.)

Prof. Shibban Lal Saksena: Sir, my amendment is of a drafting nature I beg to move :

"That in entry 19 of List II—for the words 'Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I' the words 'Roads, bridges, ferries, and communications with their help' be substituted."

I hope the drafting Committee will accept it. I am not moving the second part of the amendment.

Shri T. T. Krishnamachari: I do not think there is any particular merit in the amendment proposed.

Mr. President: The question is :

"That in entry 19 of List II—for the words 'Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I' the words 'Roads bridges, ferries, and communications with their help' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in entry 19 of List II—

(a) the words and figures 'minor railways subject to the provisions of List I with respect to such railways', and

(b) the words and figures 'ports, subject to the provisions in List I with regard to major ports;' be omitted."

The amendment was adopted.

Mr. President: The question is :

"That Entry 19, as amended, stand part of List II."

The motion was adopted.

Entry 19, as amended, was added to the State List.

Entry 20

(Amendment No. 86 was not moved.)

Prof. Shibban Lal Saksena: Sir, I beg to move :

"That entry 20 of List II be transferred to List III."

I might point out that there are a number of amendments in this Order Paper to entries 20, 21, 22, 24, 27, 29, 34 and 46. These amendments are really of the same nature. What I really want is that agriculture and land revenue systems all over India should be amendable to planning on an all-India scale. Now we are making them State subjects in which the Centre will have practically no power. In fact the other day I read out a passage from Shri Jairamdas Daulatram's letter in which he had said that the time had come when the Centre ought to take up

the entire responsibility in regard to food. I feel it should be realised that agriculture, irrigation, cattle, land, forests etc. shall have to be developed according to an All-India plan and under Central direction. In fact we have in List III one entry No. 34 for planning. If we take up any book on planning we will find that no plan can be complete, unless it includes all-round long-term development of land and agriculture within its purview. Today we are thinking that if we put these items in List III, then we shall be depriving provinces of their autonomy. This is quite incorrect. By putting them in List III, we only mean that the Centre will have power to co-ordinate these activities, to finance them when necessary and to give expert advice. I do not want them to go to List I, but they should be put in List III so that the Centre will not interfere with the States and will only advice and co-ordinate their activities. It may be pointed out that even the 1935 Act had made such a complete division as is now proposed. In that Act there was the central responsibility of the Governor-General which was overriding and so that could keep the whole administration centralised but today we are dividing the functions of the Union Govt. and the State Govts. in water-tight compartments. Today we are fortunate in having one party ruling the whole country but tomorrow it may not be so and then it will be difficult to carry out the same plan in all the States. If India is to be made self-sufficient in food it must have irrigation facilities on a very large scale for the entire country, but can we know that the provinces and States will not be in a position to carry out large irrigation schemes costing several hundred crores? The total area irrigated at present is about 50 million acres of which Government canals account for nearly 28 million acres. The capital outlay on these projects is about Rs. 153 crores. During the next ten years according to the peoples' plan the irrigation projects should be extended by about 400 per cent. The total capital expenditure on this score would be about Rs. 600 crores and the maintenance charges will be about 15 crores. These will not be within the competence of any province. I would suggest that this subject should along with others be taken under Central direction so that plans according to entry 34 in List III could be implemented with the co-operation of the Centre and the States.

Shri T. T. Krishnamachari: Sir, I do not accept the amendment.

Mr. President: The question is:

"That entry 20 of List I be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry 20 stand part of List II."

The motion was adopted.

Entry 20 was added to the State List.

Entry 21

Shri Brajeshwar Prasad: Sir, I beg to move:

"That with reference to amendment No. 3586 of the List of amendments, entry 21 of List II be transferred to List I as new entry 92."

Sir, agriculture is a vital subject. We have been taking great interest in our legislative body and we subjected the Ministry to severe criticism. I would like to say that unless the Centre has got ample powers, unless agriculture becomes a central subject the problem of food supply and distribution will not be effectively tackled with and all programmes and schemes will unhappy come to naught. The real

[Shri Brajeshwar Prasad]

problem is how to prevent the sub-division and fragmentation of land. We have to change the laws of inheritance if our national economy is to be laid on sound scientific basis. Therefore I plead that agriculture must be nationalised, but here I am only saying that the power to legislate on this subject must remain exclusively in the hands of the Centre. All our defences and Foreign affairs will be of no avail if the system of agriculture is not improved. India is an agricultural country. The Centre must take up agriculture in its hands if the menace of subversive movements is to be effectively challenged and met with. There are other reasons why I am not in favour of agriculture being vested in the hands of the Provincial Governments but having due regard to observations that were made, I do not like to dilate upon them.

Mr. President: Mr. Saksena, do you wish to repeat your arguments?

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That entry 21 of List II be transferred to List III."

We are dealing with agriculture—I will only read out two or three important points in this connection. Development of agriculture can be done in two ways. Firstly, we can have intensive cultivation or we can extend the area under cultivation. The net area sown in British India is about 210 million acres. During the period of the next ten years according to the People's Plan this area should be extended by about 100 million acres of new land. This would amount to bringing under the plough new land to the extent of about 50 per cent. of the present net sown area. The expenditure needed for this purpose has been calculated at the rate of 60 rupees per acre on average. That would demand a sum of Rs. 600 crores. I do not think the Provinces can undertake such an amount of expenditure nor can they co-ordinate the efforts of the various provinces. For intensive cultivation what is required is the provision of adequate manures, improved seeds, etc. to the cultivator. For this Rs. 720 crores is required for the entire period of the next ten years covered by the plan. It will be obvious that no single State can undertake this huge responsibility. Therefore, I feel that this entry should also go to List III, so that the efforts of the Provinces and the efforts of the Centre could also be co-ordinated to solve these huge problems.

Chaudhri Ranbir Singh (East Punjab: General): *[Mr. President, in this connection I would like to submit that there are many pests problems that are inter-provincial by nature. Take for instance the locust problem. It is not confined to any particular province or country, but it is an international problem. There are many other pests that are of inter-provincial nature. A province may not have any information of its existence, until it is actually invaded by the pest from the neighbouring province. So when the province is actually faced with that pest, it is not in a position to combat the menace. I, therefore, request that 'pests' should particularly be included in the Concurrent List. Secondly, India is an agricultural land and there is shortage of food at present in this country. This subject is directly connected with agriculture and for this consideration too it ought to be placed in the Concurrent List.]

Shri T. T. Krishnamachari: Mr. President, Sir, this subject of agriculture has been brought up before this House in a variety of ways and a number of Members of this House have emphasised the need for the Centre taking it on hand. Well, it may be that there is a lot of force in many of the arguments adduced by them, in support of this stand. At the same time, agriculture happens to be the principal industry in this country, and practically one of the main functions of the State, and beyond taking certain powers for the purpose of co-ordination, I do

*[ ] Translation of Hindustani speech.

not think the Centre is at all capable of handling this vast problem. I might also take the House into confidence and tell the Members that certain proposals perhaps somewhat on the lines of those now made, were put before the Provincial Ministers when they met here a couple of months back, and the Drafting Committee also was invited to discuss those proposals with them. But there was a fairly general resistance to any further inroads into the field of provincial autonomy, and the proposals had to be dropped. I do not believe that the Centre is without resources at all, in this matter. There are many ways of the Centre directing the provinces to make improvements in agriculture or provide other amenities to the agriculturists by means of the grants they will be and have been making, lump-sum grants, specific grants and so on. The experience that the Centre has in helping the improvement of agriculture for the last six or seven years, I think will make it possible for it to effectively help in the proper promotion of agriculture by grants. Beyond saying that, and beyond pointing out to the entries in List I and to the powers that the Centre has to give grants, lump-sum grants for specific purposes, I am afraid the Drafting Committee are unable to accept the suggestion to transfer practically one of the major items in the administration of State Governments, to the Centre, whether it be in List I or List III. Sir, I oppose the amendments.

Mr. President: I put the amendment of Shri Brajeshwar Prasad.

The question is :

"That with reference to amendment No. 3586 of the List of Amendments, entry 21 of List II be transferred to List I as new entry 92."

The amendment was negatived.

Mr. President: Then I put Prof. Saksena's amendment.

The question is :

"That entry 21 of List II be transferred to List III."

The amendment was negatived.

Mr. President: I then put entry 21.

The question is :

"That entry 21 stand part of List II."

The motion was adopted.

Entry 21 was added to the State List.

Entry 22

Mr. President: Then we come to entry 22 and I find there is an amendment of Prof. Saksena, saying that entry 22 of List II be transferred to List III.

Shri T. T. Krishnamachari: There are also other amendments. There is an amendment of the Drafting Committee—No. 282, and there is No. 283 by Pandit Thakur Das Bhargava.

Mr. President: Yes, No. 282.

Shri T. T. Krishnamachari: Mr. President, Sir, I move :

"That in entry 22 of List II for the words 'Improvement of stock' the words 'Preservation, protection and improvement of stock' be substituted."

Sir, I would like to tell the House that the provocation for this amendment was an amendment of which Pandit Thakur Das Bhargava had given notice, in respect of improvement of the wording and adding to the wording of entry 30 which is an entry designed to legislate for the protection of wild birds and

[Shri T. T. Krishnamachari]

animals. He had brought in the idea of "Preservation and improvement of stock and useful breeds of cattle, banning the slaughter of animals etc." especially the slaughter of milch cattle. The matter was discussed by the Drafting Committee with him, and we felt that there was some force in his arguments, and that the proper place to put in his amendment was under "Improvement of stock," in entry 22. At the same time we were unable to take in the entire wording of his amendment, *i.e.*, specifically mention the banning of cattle-slaughter and so on, for the reason that the entry in these lists only mentions the legislative powers of the State or the Central Government, and does not go into the policy behind that power. In fact it would be inappropriate to determine policy by the wording of these entries. The idea really is that by means of preservation and protection and improvement of stock, the Government should have ample power to ban cattle slaughter and to protect stock, to protect milch cattle and so on. There is no need, we felt, to put in specifically the idea which has been put in the Directive Principles which really dictate the policy. Therefore, we feel that the purpose that Pandit Thakur Das Bhargava has in mind would be amply served by the amendment that I have now proposed, namely, preservation, protection and improvement of stock, and all possible steps that the Government may want to take in furtherance of the views of Pandit Thakur Das Bhargava can be taken by them, by means of the powers vested in them by this entry. I have no doubt that he will feel that this amplification of entry 22 is in the right direction and it also gives support to the expressed views of this House in passing an article relating to the protection of milch cattle and so on. I do hope that the House will accept this amendment and I also hope that my Friend, Pandit Thakur Das Bhargava will feel satisfied that the object that he has in view will be attained by means of this entry, even though we have not put in, for reasons that I have mentioned before, the exact wording that he sought to include in this entry No. 13, as original amendment stands. Sir, I move :

Pandit Thakur Das Bhargava (East Punjab : General): I do not propose to move the amendment that stands in my name but with your permission I would wish to make some observations on the amendment proposed by Mr. T. T. Krishnamachari. I am very much satisfied to know from Mr. Krishnamachari that he has accepted the underlying idea of my amendment. It appears it was in their minds that the ban of slaughter of animals was the accepted policy of the Government. We also passed an article here in this House. It is article 38-A. Now a reference to that article would establish that it is not only the improvement in the breeds of cattle that is contemplated by that section but it goes further and lays down the policy as follows :

> "The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle specially milch and draught cattle and their young stock."

In response to public demand, you yourself Sir, were instrumental in getting a Committee appointed. We know the recommendations of that committee. The recommendations of the Preservation and Development Committee appear on page 14 of the report. Their final recommendations are :

> "This Committee is of opinion that slaughter of cattle is not desirable in India under any circumstances whatsoever, and that its prohibition shall be enforced by law The prosperity of India to a very large extent depends on her cattle and the soul of the country can feel satisfied only if cattle slaughter is banned completely and simultaneous steps are taken to improve the cattle which are in a deplorable condition at present. In order to achieve these ends, the Committee suggests that the following recommendations should be given effect to :
>
> (i) The first stage which has to be given effect to immediately should cover the total prohibition of slaughter of all useful cattle other than as indicated below :

(a) Animals over 14 years of age and unfit for work and breedings.

(b) Animals of any age permanently unable to work or breed owing to age, injury or deformity.

I do not wish to read further from the recommendations because the Government of India through the Minister of Food and Agriculture on the 24th March accepted these recommendations of the Committee. Now the Government is committed to the prevention of useful cattle and they have brought in a Bill also, in the Legislative Assembly to ban the slaughter of useful cattle. This being so my humble submission is that the entry should have been amended in such a manner as to take it from the bounds of possibility that subsequently it could be said that the protection of cattle could be enforced by killing cattle. Two days back I received a pamphlet called : *"Anti-Slaughtering Campaign and its effect on Leather industry"* by Dhirendrodite, G. Puranesh which advocates that the protection of useful cattle can be achieved by slaughtering useless cattle. My humble submission is that when the Government of India appointed a Committee and accepted the policy of preservation and protection of these cattle banning slaughter of animals, then banning should be clearly proclaimed to be the policy, and we should not be shy of saying so, because we have passed article 38-A, not with the help of this or that section of the community, but with the help of almost all communities in this House. This banning of slaughtering cattle is also an accepted principle all over the world and even Pakistan has prevented the slaughter of animals. Therefore, I do not see why we should not say openly that the Government of India has accepted this policy. It may be said that these words should not come into the Constitution but I would suggest further that if they wanted brevity only, they could have substituted the word "animals" only for the entire entry, because the disease of animals etc., are all included in the word "animals". When they wanted to have an entry in respect of this important matter, they ought to have had such an entry as would have responded to public feeling in this matter. Only yesterday we heard Dr. Ambedkar expatiating, while he was discussing section 223 and section 91, and saying that though the entry 91 was redundant, as both entries said the same thing, still with a view to allay public feeling and satisfy the Provincial Governments, he would have this redundant entry. So I do not understand why the Government is feeling shy of using the words "ban of the slaughter of animals" in this item. If this is their policy, I do not think this Secular State will fall down if we use the right words. I would have been glad if the Drafting Committee used this expression at least for the purpose of satisfying the sentiments of the people. However, I bow down to the wisdom of the Drafting Committee and I do not want to move my amendment. After all, public sentiment does matter and if you are doing the right thing it is but right that you not only respond to public feeling but satisfy it by saying that you have responded to it. You have agreed to the principle but you are refraining from using the correct words. I am not satisfied with the wordings of the Drafting Committee, but as they have seen it fit to eliminate these words of mine, I do not propose to move my amendment.

Prof. Shibban Lal Saksena. Sir I move :

"That entry 22 in List II be transfrered to List III."

This entry has been amended by Dr. Ambedkar and he has used the words "Preservation, protection and improvement of stock". Sir, I object to this method of providing for ban on Cow Slaughter by the back door. Why is the Drafting Committee ashamed of providing for it frankly and boldly in so many plain words ?

[Prof. Shibban Lal Saksena]

There is no sense in trying to camouflage such vital matters. The entry as it stands now has no meaning, so far as ban on Cow Slaughter is concerned. I want that this entry should go to List III, not only on account of cow protection but because of the other problems involved. The entry relates to the improvement of stock which is a national problem and the provinces alone cannot solve it. In my part of my own province the cattle are so inferior that we cannot improve them, unless we import cows and bulls from Hissar etc. The same is the situation in other parts of the country. If you want to improve the stock you must have an all-India plan which should be co-ordinated by the Centre. If you put this Entry in List III, *i.e.*, the Concurrent List, the provinces will have all the powers and at the same the Centre can co-ordinate their efforts. Therefore this Entry must go to List III so that the Centre with its funds and knowledge would be able to co-ordinate State plans for improving the cattle stock, which is essential for improving the agriculture of the country.

Shri Lakshminarayan Sahu (Orissa : General) : *[Mr. President, I do not want to take much of your time in regard to this matter, but I would like to make one point. Here we want to mention 'preservation, protection and improvement of stock', which, in my opinion, does not exclude all possibility of ambiguity. Hence I would say that we should use the expression 'improvement of indigenous kinds of live-stock' which would better express our intention. When we say 'improvement of stock', it is not clear what 'stock' we mean; then we further say 'prevention of animal diseases'. The expression 'live-stock' would make it quite clear.

The other point is, that this should not be included in the Concurrent List. If it is included in the State List, every province will know what steps it has to take. We see that the animals sent to our province from Hissar and Sind cannot easily live there. Their youngones have got a short life. Hence I wish that this should be better included in the State List rather than the Concurrent List. We will have much more knowledge about the condition of our province, about the development of our live-stock than the Centre can.]

Shri T. T. Krishnamachari : Sir, in regard to Mr. Saksena's amendment it seems to be like a saying current in my part of the country which says that if you throw as many stones as you can at a mango tree at least one of them is bound to hit a mango and bring it down. Likewise my friend seems to have a scheme to have a series of amendments to get as many subjects transferred from List II to List III, in the hope that at least one amendment of his would be accepted by the House. If that is the approach I have nothing to say about it except to state that responsibility for the administration of these subjects should rest with the States.

As regards my honourable Friend Mr. Thakur Das Bhargava I had anticipated his argument when I spoke moving my amendment. We fully sympathise with him. We recognise that the purpose he has in view has been conceded by this House by putting it in the Directive Principles. But so far as putting anything which is a statement of policy in the list which confers legislative power on the Centre and the provinces is concerned, I am afraid we must say that we cannot agree with him. Therefore I feel that he might be satisfied that the purpose will be achieved without specifically putting the words in the entry. I hope the House will accept the amendment moved by me.

Mr. President : The question is :

"That in entry 22 of List II, for the words 'Improvement of stock' the words 'Preservation, protection and improvement of stock' be substituted."

The amendment was adopted.

*[ ] Translation of Hindustani speech.

Mr. President : The question is :

'That entry 22 of List II be transfered to List III"

The amendment was negatived

Mr. President : The question is .

"That entry 22, as amended, stand part of List II."

The motion was adopted.

Entry 22, as amended, was added to the State List.

Entry 23

Entry 23, was added to the State List

Entry 24

Prof. Shibban Lal Saksena : Sir, I move :

"That in entry 24 of List II, after the word 'loans' the words 'Consolidation of agricultural holdings, State, co-operative and collective agricultural farms; acquisition by the State of rights in agricultural land' be inserted."

Sir, I had also given an amendment that this entry should be transferred to List III which seems to have been omitted by mistake.

My Friend Mr. T. T. Krishnamachari objected to my amendments for transferring certain items of List III. I would draw his attention to para. 233 of the report of the Joint Committee on Indian Constitutional Reforms where they say :

> "We turn now to the problems presented by the Concurrent List. We have already explained our reasons for accepting the principle of a Concurrent List, but the precise definition of the powers to be conferred upon the Centre in relation to the matters contained in it presents a difficult problem. In the first place, it appears to us that while it is necessary for the Centre to possess in respect of the subjects included in the List a power of co-ordinating or unifying regulations, the subjects themselves are essentially provincial in character and will be administered by the Provinces and mainly in accordance with Provincial policy; that is to say, they have a closer affinity to those included in List II than to the exclusively federal subjects At the same time, it is axiomatic, that, if the concurrent legislative power of the Centre is to be effective in such circumstances, the normal rule must be that, in case of conflict between a central and a provincial Act in the concurrent field, the former must prevail"

It is obvious that the Concurrent List is intended to be a list of those subjects in which the Centre should have the power of co-ordinating the activities of the States and of advising them and therefore when I suggested that these entries should be transferred to List III, I did not want to deprive the provinces of their power. I only want that the Centre should have the power of advising the units and of co-ordinating their activities and the finances of the Centre will be helpful in the development of those activities.

I feel that this particular item is a most important one in the whole list and you cannot carry out any scheme of planning without having it under central control. I will quote some figures.

We are now engaged in the abolition of the zamindari and in my own province it will cost about 150 crores of rupees in compensation alone.

Similarly in Bihar a large amount will have to be spent in acquiring zamindari property In regard to these big schemes of social engineering, the provinces have experienced great difficulty, and therefore if such schemes are taken up by the Centre, then the Government of India can have a uniform policy for the liquidation of the system all over the country. It is my opinion that India cannot prosper and her rural economy cannot improve, until the present antiquated system of land tenure is abolished. There is this difficulty in every province Fortunately in my own province it will soon be solved If we want that this zamindari system should be abolished all over the country quickly, then this subject

[Prof Shibban Lal Saksena]

should be in the hands of the Centre. We should have for all-India a uniform system of land tenure. If this subject is therefore in the Concurrent List, the Centre will be able to regulate the policy to be followed by the provinces and may succeed in abolition of landlordism in the shortest possible time.

If you want to develop land, I suggest that consolidation of agricultural holdings shall have to be included in a comprehensive ten-year Plan. Collective farms, some 20,000 in number, shall have to be established costing Rs. 3 crores This much sum cannot be found by one single State unit Therefore I suggest that this entry might be transferred to List III

Shri Brajeshwar Prasad: Sir, I move

'That for amendment No 3611 of the List of Amendments, the following be substituted

'That entry 24 of List II be transferred to List I' "

With your permission I shall move also the next amendment, *viz.*,—

"That for amendment No 3611 of the List of Amendments, the following be substituted —

That for entry 24 of List II, the following be substituted

'24 Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land, land improvement and agricultural loans; colonization subject to the supervision, direction and control of the Union Government.' "

I heartily endorse the arguments advanced by my honourable Friend, Mr Shibban Lal Saksena. His premises are sound, but the conclusion he has drawn does not follow therefrom. He has made out a case for the transfer of this entry to List I. I agree that there should be all-India planning and uniformity in regard to this matter. But that does not mean that this should be transferred to List III.

The Honourable Dr. B. R. Ambedkar: We do not accept the amendments

Mr. President: I will now put amendment No. 88 of Shri Brajeshwar Prasad to vote.

The question is :

'That for amendment No. 3611 of the List of Amendments, the following be substituted —

That for entry 24 of List II, the following be substituted :

'24 Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization subject to the supervision, direction and control of the Union Government.' "

The amendment was negatived.

Mr. President: Now I will put Prof. Shibban Lal's amendment No. 305.

The question is :

"That in entry 24 of List II, after the word 'loans', the words 'Consolidation of agricultural holdings; State co-operative and collective agricultural farms; acquisition by the State of rights in agricultural land' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That for amendment No. 3611 of the List of Amendments, the following be substituted :—

That entry 24 of List II be transferred to List I.' "

The amendment was negatived.

Mr. President: Then we have the next amendment of Prof. Shibban Lal Saksena. The question is :

"That entry 24 of List II be transferred to List III."

The amendment was negatived

Mr. President: The question is :

"That entry 24 stand part of List II"

The motion was adopted

Entry 24 was added to the State List

Entries 25 and 26

Entries 25 and 26 were added to the State List

Entry 27

Mr. President: If Mr. Brajeshwar Prasad is moving amendment No 89, he should not repeat the old arguments

Shri Brajeshwar Prasad: No, Sir. I move :

"That entry 27 of List II be transferred to List I."

Mr. President: In the case of the next amendment also Prof. Saksena need not repeat his arguments.

Prof. Shibban Lal Saksena: I will take only two minutes, Sir, I moved :

"That entry 27 of List II be transferred to List III"

In this connection I want to refer to the condition of the forests in our land Out of 1,200,000 square miles of State forests nearly 54,000 sq. miles are inaccessible. They have remained unexploited. Therefore with a view to explore and exploit them and to conduct researches on an all-India basis, and to co-ordinate the activities of the various States. I have moved this amendment.

Shri Brajeshwar Prasad: I endorse all the sentiments expressed by Prof. Shibban Lal Saksena.

Mr. President: The question is :

"That entry 27 of List II be transferred to List I."

The amendment was negatived.

Mr. President: Now I will put Prof. Shibban Lal Saksena's amendment to vote. The question is :

"That entry 27 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is :

"That entry 27 stand part of List II."

The motion was adopted.

Entry 27 was added to the State List

Entry 28

Shri T. T. Krishnamachari: Sir, I move :

"That in entry 28 of List II, the words 'and oilfields' be deleted."

This is explained by the moving of a similar entry in List I. Sir, I move :

Shri Brajeshwar Prasad: Sir, I move :

"That entry 28 of List II be transferred to List I."

Mr. President: The next one.

Shri Brajeshwar Prasad: I am not moving any other amendment.

Mr. President: The question is :

"That in entry 28 of List II, the words 'and oilfields' be deleted"

The amendment was adopted.

Mr. President: The question is :

"That entry 28 of List II be transferred to List I."

The amendment was negatived.

Mr. President: The question is :

"That entry 28, as amended, stand part of List II."

The motion was adopted.

Entry 28, as amended, was added to the State List

Entry 29

Prof. Shibban Lal Saksena: Sir, I move :

"That entry 29 of List II be transferred to List III."

Mr. President: The question is :

"That entry 29 of List II be transferred to List III"

The amendment was negatived.

Mr. President: The question is :

"That entry 29 stand part of List II."

The motion was adopted.

Entry 29 was added to the State List.

Entry 30

(Amendment No. 94 was not moved.)

Shri T. T. Krishnamachari: Mr. President, Sir, I move :

"That for entry 30 of List II, the following entry be substituted :—

'30. Protection of wild animals and birds.'"

It was suggested that the wording of the entry as it stands in the Draft Constitution should be amended, and therefore it has been amended on the lines suggested by me. Sir, I move :

Shri Brajeshwar Prasad: I would like to speak on this.

Mr. President: Very well.

Shri Brajeshwar Prasad: Sir, I support the entry as moved by my Friend, Mr. T. T. Krishnamachari, but he seems to be partial towards wild animals and birds. I think he ought to have included all animals and birds in general. Why only wild animals and birds? After all, in this country there is a tradition of non-violence and to the extent to which it may be possible for provincial Governments to show consideration and mercy to animals and birds in general that consideration ought to be shown.

(Amendment No. 243 was not moved.)

Mr. President: The question is :

"That for entry 30 of List II, the following entry be substituted :—

'30 Protection of wild animals and birds' "

The amendment was adopted.

Mr. President: The question is :

"That entry 30, as amended, stand part of List II "

The motion was adopted.

Entry 30, as amended, was added to the State List.

Entry 31

Prof. Shibban Lal Saksena: Sir, I move :

"That entry 31 of List II be transferred to List III "

Mr. President: The question is :

"That entry 31 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is :

"That entry 31 stand part of List II "

The motion was adopted.

Entry 31, was added to the State List

Entry 32

Shri T. T. Krishnamachari: Mr. President, Sir, I move :

"That for entry 32 of List II the following entry be substituted :—

'32 Trade and commerce within the State, subject to the provisions of entry 35-A of List III; markets and fairs' "

Sir, the amendment has been found to be necessary because we have put in the Concurrent List an entry which empowers the Centre to give directions in regard to trade and commerce and the products of industries which it controls. Therefore this change has been made and for no other reason.

Shri Brajeshwar Prasad: Sir, I move :

"That in amendment No 3616 of the List of Amendments, in the proposed entry 32 List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted "

Mr. President: There is no other amendment. The question is :

"That in amendment No 3616 of the List of Amendments, in the proposed entry 32 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted "

The amendment was negatived.

Mr. President: The question is :

"That for entry 32 of List II, the following entry be substituted :—

'32 Trade and commerce within the State, subject to the provisions of entry 35-A of List III; markets and fair' "

The amendment was adopted.

Mr. President: The question is :

"That entry 32 as amended, stand part of List II "

The motion was adopted.

Entry 32, as amended, was added to the State List

Entry 33

Shri T. T. Krishnamachari: Sir, I beg to move:

"That entry 33 of List II be deleted."

Sir, this entry is no longer necessary because provision has been made elsewhere for this purpose.

Shri Brajeshwar Prasad: Sir, I beg to move:

"That for amendment No. 3617 of the List of Amendments, the following be substituted:

'That for entry 33 of List II, the following be substituted:—

'33. Regulation of trade, commerce and intercourse with other States for the purposes of the provisions of article 244 of this Constitution subject to the supervision, direction and control of the Government of India.'"

Mr. President: Do you wish to move the next amendment No. 99?

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment No. 3617 of the List of Amendments, for the word 'deleted' the words and figure 'included in List I' be substituted."

Mr. President: The question is:

"That for amendment No. 3617 of the List of Amendments, the following be substituted:—

'That for entry 33 of List II, the following be substituted:—

'33. Regulation of trade, commerce and intercourse with other States for the purposes of the provisions of article 244 of this Constitution subject to the supervision, direction and control of the Government of India.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 3617 of the List of Amendments, for the word 'deleted' the words and figure 'included in List I' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That entry 33 of List II be deleted."

The motion was adopted.

Entry 33, was deleted from the State List.

Entry 34

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That entry 34 of List II be transferred to List III."

This is an important amendment. I would like the House to realise the magnitude of the problem. We all want to wipe out rural indebtedness. Sir, in this connection I would like to read an extract from the *People's Plan for Economic development of India,* which runs as follows:—

"The other problem that will have to be tackled, along with this problem of the outmoded land tenure system, will be the problem of rural indebtedness. The total rural indebtedness was estimated by the Central Banking Inquiry Committee, in the year 1929, at about 900 crores of rupees. Subsequent estimates have been [illegible] the figure at a much higher level. The estimate according to

the report of the Agricultural Credit Department of the Reserve Bank of India in the year 1937 is about 1800 crores of rupees. It is not possible that this might have reduced to any significant extent since the year 1937, nor can the so called agricultural boom at present be said to have produced very substantial reductions. The money-lender in the country dominates more in that strata of the agricultural population which is relatively worse off.

"The boom can hardly be said to have benefited that strata. On the other hand, the debt represents accumulations of decades. The debt legislation in the various provinces has not admittedly, been able to touch even the fringe of the problem. We feel it necessary, therefore, that the debt should be compulsorily scaled down and then taken over by the State. Experiments made in this direction in the Province of Madras, for example, serve as a useful pointer. Under the working of the Madras Agriculturist' Relief Act of 1938, debts were scaled down by about 47 per cent. and the provisions of the Act can, by no logic, be characterised as drastic. In the Punjab, under the operations of the Debt Conciliation Boards, debts amounting to 40 lakhs were settled for about 14 lakhs. It should, therefore, be possible and must be considered as necessary to scale down the present debts to about 25 per cent. before they are taken over by the State Assuming the present indebtedness to amount to about Rs. 1,000 crores the debt to be taken over by the State will come to about Rs. 250 crores.

The compensation to be paid to the rent-receivers as well as to the usurers will thus amount to Rs. 1985 crores. This should be paid in the form of self-liquidating bonds issued by the State. These should be for a period of 40 years at the rate of interest of 3 per cent. and should be compulsorily retained by the State in its possession. The annual payments to be made by the State for these bonds will come to about Rs. 60 crores.

On the carrying out of these initial measures will depend the success of the planned economy for raising the productivity of agriculture in the interests of the cultivators Unless the *status quo* is changed in this manner there can be no hope of improving the standard of living of the vast bulk of our peasantry, and therefore no hope of building up an industrial structure in the country on sound, stable and secure foundations. We are aware of the difficulties in the way of carrying out the above measures, but we are unable to see any alternative to them whatsoever."

It is thus obvious that if we really want to remove agricultural indebtedness, the problem cannot be solved merely by action taken by individual States. Only a comprehensive plan and its bold execution with the fullest co-operation of the Union Government with the Government of the States can solve these problems. It is therefore that I have suggested that this entry should be transferred to List III.

Sir, I have tabled my amendment only with this purpose in view. I feel and I am quite convinced that we cannot change the face of our country and we cannot realise the 'India' of our dreams unless we adopt a comprehensive plan and have powers to co-ordinate the activities of the Centre and the Provinces I therefore commend my amendment for the earnest consideration of the House.

Mr. President: The question is :

"That entry 34 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is :

"That entry No. 34 stand part of List II."

The motion was adopted.

Entry 34, was added to the State List.

Entry 35

Mr. President: I do not see any amendment to this entry.

Shri H. V. Kamath: On a point of clarification may I ask whether 'inns' include hotels and restaurants? There is no provision in the list for hotels and restaurants as such.

Shri T. T. Krishnamachari: That seems to be the idea. We have borrowed here an archaic expression and I quite agree that there is some force in the point raised by my honourable Friend, but I think it is comprehensive enough to cover the purpose that he has in mind

Shri R. K. Sidhva: 'Inns' in the dictionary mean 'Dharmasalas'.

Shri T. T. Krishnamachari: They are not.

Mr. President: There is no amendment to this entry.

The question is :

"That entry 35 stand part of the List II."

The motion was adopted.

Entry 35 was added to the State List.

Entry 36

Shri T. T. Krishnamachari: Mr. President, Sir, I move :

"That for entry 36 of List II, the following entry be substituted :—

'36. Production, supply and distribution of goods subject to the provisions of entry 35-A of List III.' "

The words that have been added are "Subject to the provisions of entry 35A of List III." I have explained before that there is a specific entry in List III in regard to production, supply and distribution of goods of industries that are subjects under Central control and therefore this addition has become necessary. Sir, I move :

Shri Brajeshwar Prasad: Sir, I beg to move :

"That in amendment No. 3619 of the List of Amendments, in the proposed entry 36 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted."

Prof. Shibban Lal Saksena: I only move amendment No. 310.

"That entry 36 of List II be transferred to List III."

Mr. President: The question is :

"That in amendment No. 3619 of the List of Amendments, in the proposed entry 36 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That entry 36 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is :

"That for entry 36 of List II, the following entry be substituted :—

'36. Production, supply and distribution of goods subject to the provisions of entry 35-A of List III.' "

The amendment was adopted.

Mr. President: The question is :

"That entry 36, as amended, stand part of the List II."

The motion was adopted.

Entry 36, as amended, was added to the State List.

Entry 37

Shri T. T. Krishnamachari: Mr. President, Sir, I move :

"That for entry 37 of List II, the following entry be substituted :—

'37. Industries, subject to the provisions of entry 64 of List I.'"

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move :

'That in amendment No. 3620 of the List of Amendments, in the proposed entry 37 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted."

Mr. President: The question is :

"That in amendment No. 3620 of the List of Amendments, in the proposed entry 37 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted"

The amendment was negatived.

Mr. President: The question is :

"That for entry 37 of List II, the following entry be substituted :—

'37. Industries, subject to the provisions of entry 64 of List I.'"

The amendment was adopted.

Mr. President: The question is :

"That entry 37, as amended, stand part of List II."

The motion was adopted.

Entry 37, as amended, was added to the State List.

Entry 38

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move :

"That in amendment No. 3621 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List III' be substituted."

Shri H. V. Kamath: Mr. President, Sir, on a point of order. Amendment No. 3621 has not been moved and therefore I do not see how this amendment will arise, when that has not been moved.

Mr. President: His amendment only seeks to substitute the words "transferred to List III" instead of "deleted." Deletion is not transfer. We do not want propositions for deleting an entry to be moved. We take them as moved, because they are of a negative character.

Shri Brajeshwar Prasad: Sir, adulteration of foodstuffs and other goods have assumed scandalous proportions in this country. It is not a problem that is confined only to one province. Therefore, it must be tackled on an All-India basis. There is not one single food commodity that we get which is not adulterated. When we purchase milk there is more water than milk. In fact there is hardly any commodity that has not been adulterated. Now, Sir, the evil has assumed an All-India proportion. It is therefore in the fitness of things that this Government of India which proclaim to be the servants of the people must serve the people in this vital affair.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, Sir, I beg to move :

"That entry 38 of List II be transferred to List III."

[Pandit Lakshmi Kanta Maitra]

Entry 38 relates to adulteration of foodstuffs and other goods. It has been included in the State List. My suggestion is that it should be transferred to the Concurrent List so that not only the Provincial Governments, the State Governments but the Government at the Centre also may have power to legislate with regard to this.

Sir, I can assure you at the very beginning that I have not the least desire to take the time of the House when it is hard pressed for it unless I feel absolutely convinced of the importance of this subject. I will therefore beseech you to bear with me for a few minutes if I make a few hurried remarks with regard to the background against which I want this amendment to be considered.

The Government of India in 1937 brought into being a body called the Central Advisory Board of Health which had been functioning till the formation of the last Interim Cabinet before the final transfer of power. I happened to be an elected member of the Central Advisory Board of Health from its very inception. This Central Advisory Board of Health was composed not only of the provincial ministers and State Ministers of Health, but also of important persons concerned with the medical profession and public health. Year after year, the Board were confronted with the problem of tackling this question of adulteration of foodstuffs. It was a very embarrassing situation for any Government to tackle. Each one of the provincial Governments had almost its own set of standards. The result was nothing short of confusion. What complied with the requirements of a particular province failed to comply with those of another. So, in this state of flux and uncertainty, the Government of India appointed a technical Committee, an expert Committee to go into the whole aspect of food adulteration in India. It was a purely Technical Committee. But, unfortunately or fortunately, I happened to be one of the members of that Technical Committee and I had to devote a considerable amount of study to the subject. We produced an unanimous report. This report indicated that certain types of foodstuffs which had inter-provincial, inter-state circulation could not be effectively dealt with by any State legislation alone. Take for instance ghee, or any of the milk products. I am particularly referring to ghee. Ghee used to constitute until before the war a most important item in the dietary of this country. Today, we do not get ghee; ghee has practically left the land, thanks to the advent of the hydrogenated edible oil, the *Dalda Banaspati*. What was felt at that time was that articles like ghee, mustard oil, cocoanut-oil—because cocoanut-oil and *til* oil are used for edible purposes in several places—milk and milk products—all these circulated freely throughout this country and therefore the places of their sale are not the only places where the mischief should be combated. The Expert Committee found that there were certain indispensable tests. With regard to ghee, there is, for instance, the Butyro-refracto-meter test, the Reicherst Wolny value test, the saponification value test, the iodine value test, the phytesterol Acetate test, the specific gravity test and others. These are technical matters; I do not want to weary the House with all these details. The rock-bottom fact is that the expert Committee, which was also composed of experts brought from outside, found that with regard to these tests, there should be one denominating factor which should govern all species of ghee. For instance, ghee is manufactured in Kathiawar. They have got one set of tests. Guntur is another manufacturing area; it has got to comply with another set of tests. Khurja in the U.P. has another set of tests. The consuming provinces like ours, Bihar, Bengal, Orissa, Assam who mainly consume these products imported from outside their own areas, are in a helpless condition. They cannot effectively tackle this problem with their individual provinical

measures. All that they can do is, if milk is sold in a particular town in a particular province, they have got the lactometer test under the Food Adulteration Act of the province which simply deals with the percentage of water. Today it has been found and amply demonstrated that this test is an absolute fraud and that we can by some artificial means, by some addition of sucrose content, we can get the prescribed standard with adulterated stuff.

Therefore, the Government of India felt the need to pass an all-India Food Adulteration Act. A model Act was drafted by us in consultation with all the provinces. Now, before that Act could be brought before the legislature, the transfer of power took place. The findings of the Expert Committee are there and the Government of India was absolutely convinced that without such a piece of legislation emanating from the Centre, it would be a hopeless task to tackle with this problem of food adulteration. My honourable Friend Mr. Brajeshwar Prasad rightly pointed out that it has assumed the proportions of a scandal.

Sir, the country appreciates with a deep sense of gratitude the stand that you have taken with regard to these hydrogenated edible oils. If other eminent persons also set their feet against this, I think this problem of food adulteration could be effectively checked. This cannot be done if it is left simply to the provincial legislature. Take for instance the scandal about mustard oil that we see in Bengal today. The Public Health Department of the Calcutta Corporation has announced that the city and the rural areas also have been passing through an epidemic of dropsy, call it beri-beri or whatever you like, in a very acute form. They say you may drop down dead at any moment without even a moment's notice because of your consumption of the poison of mustard oil. They say that the mustard oil which is largely used in Bengal, Bihar, Orissa for edible purposes, is mixed with a sort of thing called argemon seed, which is dangerous for human health. Now, the poor fellow who sells the mustard oil in Patna, Bhagalpur or Calcutta, has to import the whole stuff from another province. *e.g.*, the U.P. You can at best get hold of him, put the article to some tests and then you can straightaway punish him. That fellow will say, and with good reason "what have I done ? I have purchased these fifty or sixty or two hundred tins from such and such place in U.P.; it is our main source of supply". The provincial Government of the place where it is retailed has not got the power to deal with the Supplies from a different province. All they can do is to get hold of these pedlars, retail dealers and deal with them.

This is a matter of serious import. You must go to the root of the matter. The evil must be tackled at the very source. It is rather unfortunate that this matter has come before the House when its attendance is thin and the members are also inattentive. But, let me tell the House, that as a member of that Committee, or perhaps the only surviving member in this House of the Central Advisory Board of Health, I can say with an amount of emphasis which is peculiarly mine, as it is born of my conviction that if this country is determined to stamp out this evil of food adulteration, it cannot be done in this kind of half-hearted manner by placing this matter in the provincial field. I know my honourable Friend Mr. T. T. Krishnamachari of the Drafting Committee will get up and say we have got provision for that in entry 66-A in the Union List, "standardisation of goods". Let me tell him frankly that this will not meet with the situation. You can put "standardisation of goods" in the Union List; but in the State List entry 38, you definitely say "adulteration of foodstuffs" belongs to the provincial sphere. Whenever the Centre will seek to legislate on foodstuffs and prescribe standards therefor the provincial Governments will at once raise the hue and cry "you are entrenching on our field because food adulteration is specifically provided for in entry 38 in the State List".

[Pandit Lakshmi Kanta Maitra]

I have only referred to one or two matters. I can speak for hours. This matter took us full two years and I now find that with all the great amount of labour on the part of representatives of Health Ministers from the different provinces and experts from outside, and the tremendous expenditure of money, their findings could not be given effect to because of the sudden change in the political set-up. Now that we are going to enact a Constitution, I beseech the members of the Drafting Committee to consider this aspect. I want the provinces as well as the Centre to get seisin of the matter, so that even now we can give effect to the findings of the Central Advisory Board of Health, now defunct. I wish the Honourable the Minister for Health had been here. I am sure if the Director-General of Medical Services were here, he would have supported me. It is my misfortune that I happen to be the only surviving member in this House of the Central Advisory Board and there is no body else to support me. The Government representatives of the Public Health Department also are not here.

I therefore suggest in all seriousness that nothing would be lost if it is transferred to the Concurrent List. I am not the type of a member who moves amendments for nothing. Unless I am morally convinced, I do not move amendments or make speeches. Today food adulteration has assumed proportions which, unless you check it now, will kill the whole nation. Recently I have been interested in the movement which was very kindly inaugurated by you. Mr. President, with regard to Dalda. Mahatma Gandhi with his characteristic insight rightly started this. In six different institutions researches are now being carried on with regard to the hydrogenated oils. I have seen reports of one or two important research institutes. I had a prolonged discussion with some of the eminent scientists about a month ago about the results they had achieved regarding this. The results are conflicting. There is perhaps no vice as such in the process of hydrogenation; but what matters most is the basic oil pressed out of diseased seeds and mixture with other varieties of injurious stuff with the result that the product of hydrogenation assumes deleterious properties which bring on disease. I am awaiting the results of the researches of the other five institutions. You, Mr. President, rightly sounded the note of warning. Unless these matters are tackled both from the Centre as well as from the provinces this great social vice cannot be stamped out or effectively checked. I commend this amendment to the consideration of the House, as I feel that it is essential in the interest of the national health of this country.

(Amendment No. 105 was not moved.)

Dr. P. S. Deshmukh: (C. P. & Berar : General) : Mr. President, I strongly support the amendment that has been moved by Shri Brajeshwar Prasad. When I moved a similar amendment some time ago it fell on deaf ears so far as the members of the Drafting Committee and the learned Dr. Ambedkar were concerned; but probably I should have been prepared to bear this without complaint as they were not prepared to accept my amendment regarding the prevention of adulteration of articles of food whether imported, propsed to be exported or otherwise, arrangement for analysis, control and regulation of all such articles, as an entry in List I. It is very necessary that I should speak here because I have given notice of a similar amendment to List III; but if this amendment is put to vote and rejected I would be precluded from moving that amendment or even speaking on that occasion because you may give a ruling that the subject had been discussed and decided.

So I would beg your permission to support the amendment that has been moved by Mr. Brajeshwar Prasad and to urge that the amendment of which

I had given notice so far as the Union List was concerned and of which I have given, fresh notice, which is amendment 295, by which I seek the entry so far as adulteration of foodstuffs to be altered as follows :—

"Prevention of adulteration of articles of food whether imported, proposed to be exported or intended for domestic use, arrangements for analysis, control and regulation of all such articles."

The importance of this question has already been amply brought home to all the honourable Members of this House by my Friend Pandit Maitra who has just spoken and although he may be the last surviving member of that Commission which he referred to I hope the whole House is alive to the need of stopping adulteration of foodstuffs. It is a disgrace that should be put down at the earliest possible opportunity. It is really curious that for two years all sorts of adulteration of foodstuffs has gone on and the evil is showing no signs of diminishing yet and in spite of the fact that we are passing hundreds of laws and ordinances and rushing through dozens of Bills in a couple of minutes each the Government has not come forward with a Bill dealing with this important matter and so as to stop this evil which is affecting the health as well as the prosperity of the whole nation. It is likely to affect the country much more seriously than any other single thing. We know that adulteration is going on on such a scale that people have not left anything undone in this respect. I may mention here a highly interesting case which came to light in my province. A certain merchant was, throughout the war, i.e. for nearly six years melting tons of gur in big pans. After melting it, he mixed it with near about twenty per cent of mud, earth taken from the old "gadhies" of which we have many in the C. P. and from which we get very fine earth. This earth was consistently mixed with gur to the extent of 20 per cent and the adulterated gur was sold to all sorts of people, for all those years. The case came to the court only because the potter who supplied the large quantity of earth on the backs of his donkeys was not paid the money due to him, by the avaricious merchant and he had to bring the matter to the court. That was how the Government came to know of this dastardly offence. There are even worse cases than this.

Hence I claim that there is absolute necessity for putting this matter at least in the Concurrent List, if it is not possible to leave it to the exclusive powers of the Union. It is essential that there should be legislation which will prevent this kind of cases. What I propose is done in any and every agricultural country. In Canada as early as 1920, there are provisions for the proper grading of all sorts of agricultural products, and for the punishment of offences of adulteration. Even the irresponsible British Government was alive to the issue and that is why it appointed a Commission to go into this question. But our independent national government has not realised the importance of this question, and this amendment among other things seeks to bring this important question to the attention of the Central as well as the Provincial Governments. It seeks more to focus the attention of the Centre on this question, as the Provincial Governments are liable to prove ineffective.

Moreover it is absolutely impossible for one State to check the evil because other States also are equally vitally concerned. There are also ports from which the adulterated stuffs are sent round the whole country. Therefore it is necessary to have all-India legislation. There should be not only the prevention of adulteration, but there should also be arrangements for government analysts who will be able to detect what sort and extent of adulteration there has been and thus bring home the offences to the people who have committed them. I therefore, think that the amendment moved by my Friend is quite proper and this subject should not be left only to the States. By placing it in the Concurrent List, we do not deprive the States of their power of legislation in respect of this subject, but so far as may be necessary, the Centre will have the power to interfere. I know the Drafting Committee has been criticised on various occasions. I do not wish to

[Dr. P. S. Deshmukh]

indulge in such criticism over again; but I do feel that some of the things said about the Committee are justified, that it need not be obstinate enough not to take into account the reasonable suggestions which have not occurred to them or appealed to them previously. I think this is one of them, and I do hope even at this late stage, that they will agree to the amendment proposed, and transfer this entry to List III.

Mr. President: I do not think it is necessary to have many speeches. We have had the point clearly put before us.

Shri T. T. Krishnamachari: Mr. President, Sir, I must confess that I have a great deal of sympathy with the objects which my honourable Friend Pandit Maitra wants to serve, by transferring this entry from List II to List III, and I do not for one moment even contemplate refuting the various arguments that have been put forward by previous speakers in regard to the necessity for prevention of adulteration of foodstuffs. These arguments, I admit, are sound. I do admit that adulteration exists and that it ought to be prevented. The dispute really is, which is the agency to prevent it? Is it to be the Centre or is it to be the State? I am afraid, Sir, that our technical advisers who happen to be the Ministry of Health in this particular instance, have not even suggested that we should transfer this entry from List II to List III.

Pandit Lakshmi Kanta Maitra: Did you refer this matter to them at all? What is the use of saying that did not make such a suggestion?

Shri T. T. Krishnamachari: My honourable Friend will please bear with me for a minute. The whole matter has been referred to the various ministries according as their interests lay, and actually, I might mention that in regard to public health legislation, the Health Ministry wanted to take it over, and make it a Concurrent subject. As has been explained on a previous occasion.

Dr. P. S. Deshmukh: The Health Ministry, Sir, is not the last word here.

Shri T. T. Krishnamachari: As was previously explained by Dr. Ambedkar, there was a lot of resistance from the Provinces and the Health Ministry did not suggest that this item should be transferred to the Concurrent List. I agree with my honourable Friend Dr. Deshmukh that the Health Ministry is not the last word on the subject; nor are we, the Drafting Committee, the last word on the subject. Ultimately the last word on the subject happens to be the wishes of this House. Well, this is a difficult question—the question of apportionment of the legislative powers between the Centre and the Provinces. It has to be considered carefully. The safest thing is to maintain the *status quo*. But if there is to be a change, the change should be made after full and careful scrutiny, after full investigation and after obtaining the full consent of the authorities who are in charge of the administration. That is the only safe way of determining where the legislative powers ought to be vested and the responsibilities of the Centre and the States determined in so far as the Schedule is concerned. And I would submit that the Drafting Committee has followed that line. It has not merely forwarded all these various entries to the Ministries concerned, at the Centre, but every opportunity was taken to get into correspondence with the Ministries in the Provinces, frequent conferences were held, opposing views were mentioned there and the lists and the amendments as we now propose them, are the result of those conferences and the result.....

Pandit Lakshmi Kanta Maitra: Sir, can the honourable Member say whether in the case of these last minute, these fifty-ninth-minute changes, he is in communication with the Ministers of the Provinces? Then in that case, the honourable Member must be having the power of clairvoyance and also clair-audience.

Shri T. T. Krishnamachari: I would willingly admit to the honourable Member that every change that we make in the fifty-ninth minute and in the fifty-ninth second is a change that is based on a certain amount of consultation and some investigation. It is not an *ad hoc* change introduced by the Drafting Committee, because the Drafting Committee does not take the initiative in any of these matters.

Dr. P. S. Deshmukh: Does the honourable Member hold to this opinion even after what has been said in the House?

Shri T. T. Krishnamachari: Will the honourable Member please allow me to finish my speech?

As I was saying, this item was discussed with the various Premiers of the Provinces, and it was suggested that a small change should be made, and the Drafting Committee, accordingly tabled an amendment in support of that change. But we then found that some of the entries in List III would conflict with this entry, if that change were made. That is why I did not move that amendment. Every item on this List has been gone through with the Provincial Prime Ministers.

Pandit Lakshmi Kanta Maitra: And the Provincial Prime Minister say that these were not considered and discussed with them.

Shri T. T. Krishnamachari: I leave it to the discretion of the honourable Member to believe whomsoever he likes. But so far as I am concerned, I feel perfectly safe in mentioning that everyone of these items in the List were gone through and the decisions to make changes or not to make them are the results of such discussions.

Now, coming to the main point. I quite appreciate the force of the argument of Pandit Lakshmi Kanta Maitra. But as he himself has pointed out, I do not think the Centre is without any power whatsoever with regard to the control of movement of adulterated foodstuffs, from one State to another. He himself referred to entry in List I, entry 61-A which has been accepted by the House It reads thus—

"Establishment of standards of quality for goods to be exported across customs frontier or transported from one State to another"

Under this, I suggest there is ample power for the Centre to prevent adulterated foodstuff from going from one State to the other, and there will be enough power under this legislative entry for the Centre to impose penalties on those merchants who export adulterated foodstuffs from one State to another, and the purpose that my honourable Friend has in mind can be served. What, then, is the object of transferring it to the Concurrent List or to List I, I do not understand

Pandit Lakshmi Kanta Maitra: May I explain? The object is to save the Government from the odium that the Centre does not want to face the responsibility and so wants to pass it on to the Provincial Governments. We want to help the Central Government and to restore public confidence in it.

Shri T. T. Krishnamachari: The honourable Member is an old friend and colleague of mine, and I know he feels strongly on any point that he exercises his mind on. But I think he will understand that in this fairly important matter, we cannot take *ad hoc* decisions here, because some people feel strongly on the subject. The interested parties are the Health Ministry here and the Provincial Ministries, and after full discussions we have come to the conclusion that such and such provisions should be there and punitive measures can be taken by the provinces. We have left it to the provincial governments to see that

[Shri T. T. Krishnamachari]

these provisions are observed. And I think if circumstances are such that we cannot.... (*Interruptions by Pandit Lakshmi Kanta Maitra and Dr. P. S. Deshmukh*). There is no use interrupting me. I must finish my arguments. If the Central Government feels, and if the Provincial Governments also feel that the powers vested in the provincial governments under entry 38 of List II and under entry 61A of List I are not adequate for the purpose, even then, we are not entirely without power.

Dr. P. S. Deshmukh: This finding has already been reached by a Commission.

Shri T. T. Krishnamachari: I say, even then we are not entirely without resources. Action can be taken under article 226 or 229. If it is found necessary, a Central Act can be passed under article 229. Such an Act was passed in the past in order to control the drug trade, which was entirely a provincial subject, and it was because of that Act that we have now put it in the Central List, because co-ordination is necessary. We are not, therefore, entirely without resources The position is undoubtedly serious, but it need not be unduly magnified by reason of the fact that the powers are put in the State List and not in the Concurrent List. Some honourable Members seem to think that the great Central Government of the future will have so many arms with which it can clutch at any offender at any particular place. We must, on the other hand, place the responsibility squarely on the shoulders of the Provincial Governments. I think that is the only way in which the purpose of my honourable Friend can be served. The Provincial Governments are on the spot and they are the persons to take action. If the Provincial Governments do not take any action for carrying out the necessary punitive measures for the purpose of seeing that the co-ordinating measures are not infringed upon, then 61-A gives enough power in the hands of the Centre to act. I do feel that although there is a lot of sentiment in this matter, and there is a lot of truth that there is adulteration of foodstuffs, the remedy cannot be sought by merely putting the entry into the Concurrent list or List I. Provincial Governments must accept the responsibility and face it squarely and if there is need we have enough powers under 61-A of the Act. But I feel that, much as I sympathise with my friend, I am unable to accept the suggestion.

Dr. P. S. Deshmukh: Why not wait till Dr. Ambedkar is there and consult him.

Pandit Lakshmi Kanta Maitra: I think at least they can ask the Health Ministry. On several occasions statements have been made on the strength that Provincial Ministers have agreed. But I have often been told by Provincial Ministers that they have not been consulted. This is our experience. This being an important matter, the Health Minister can be contacted, the Director-General of Medical Services could be contacted, and the Director of Health, Delhi, could also be contacted before any decision is taken. It will be a great national calamity if the Centre does not tackle it.

Mr. President: It is not usual for me to take part or sides.

Pandit Lakshmi Kanta Maitra: Quite true. I am appealing to my friend to be considerate.

Mr. President: Suppose if the matter is held over?

Shri T. T. Krishnamachari: It could be held over. The point is that I cannot see how the Provincial Governments can be consulted in the matter, and quick decision taken.

Mr. President : You can consult them

Shri T. T. Krishnamachari : If it is a suggestion from the Chair I have no other option but to accept it.

Mr. President : It is not so much from the Chair. But I see that there is considerable feeling in the House and I must confess that I have my sympathies with that feeling. It is not really from the Chair but from the House.

Shri T. T. Krishnamachari : If you agree, it could be taken up a week hence.

Mr. President : Yes, we may do that.

Shri T. T. Krishnamachari : I would suggest that the Drafting Committee refer the matter to the Ministries concerned.

Entry 39

Mr. President : Since there are no amendments to entry 39 I shall put it to the House :

Entry 39 was added to the State List.

Entry 40

Shri T. T. Krishnamachari : Sir, I move :

"That for entry 40 of State List II, the following entry be substituted —

'40. Intoxicating liquors that is to say, the production, manufacture, possession transport, purchase and sale of intoxicating liquors' "

This amendment is necessary because we have shifted poisons and drugs to the Concurrent List and opium happens to be in the Central List. This entry, therefore, will suffice for the purposes of State Governments. Sir, I move.

Shri H. V. Kamath : What is the distinction between production and manufacture ? Is there any fine distinction ?

Mr. President : Between production and manufacture ?

Dr. P. S. Deshmukh : I suppose it is legal phraseology to cover all possibilities !

Mr. President : I think that is the explanation.

So I shall put the amendment to the House. The question is :

"That for entry 40 of State List II, the following entry be substituted —

'40 Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.' "

The amendment was adopted.

Mr. President : The question is :

"That entry 40, as amended be added to List II."

The motion was adopted.

Entry 40, as amended, was added to the State List.

Entry 41

Shri T. T. Krishnamachari : Sir, I move :

"That in amendment No. 107 of List I (Sixth Week) for the proposed entry 41 of List II, the following entry be substituted :—

'41. Relief of the disabled and unemployable.' "

The original entry read : "Relief of the poor : unemployment." We are taking "unemployment" to the Concurrent List. Therefore what remains is

[Shri T. T Krishnamachari]

only relief of the poor. It was felt by many Members of this House that it is offensive to sentiment for the word "poor" to be there. Actually the relief that is contemplated is not relief of the poor but only relief of those people who are needy, of the disabled and unemployable. That is why these words have been substituted. I hope the House will accept the amendment.

Dr. P. S. Deshmukh : I would like to move only a part of my amendment. Sir, I move :

"That in amendment No. 107 of List 1 (Sixth Week) for the proposed entry 41 of List II, the following entry be substituted :—

'41-A. Relief of the poor, control of begging, poor houses, training and employment of young persons.' "

My only point in moving this amendment is to provide for the control of begging. There has been some discussion yesterday on this point and the question is whether it will not be necessary to put specifically the control of begging as one of the items for legislation in this List.

But so far as employment is concerned, I am glad to find that it has been relegated to the Third List, which is certainly an improvement, and I feel happy about it.

So far as the control of begging is concerned, I would like to know if that is also proposed to be placed in List 3, or whether it is considered to be covered by some other items. I am not sure of this If my Friend could throw some light on it I would be in a position to consider my amendment.

Mr. President : Which amendment are you moving ?

Dr. P. S. Deshmukh : Amendment 41-A. I am not moving the rest

(Amendment 245 was not moved.)

Shri H. V. Kamath : Sir, I find from the Concurrent List that there is a new article, entry 27—employment and unemployment. They are very comprehensive terms. I want to know from my honourable Friend, Mr. T. T. Krishnamachari what exactly is connoted by the word "unemployable" here, apart from the word "disabled" already used A man is unemployable—is something else meant than by saying that he is disabled and therefore unemployable : or does it mean that there is a category of persons for whom the State cannot provide work, though according to the Directive Principles of State Policy, we have laid down that the State must secure the right to work for every person. Does it mean people for whom Government cannot obtain employment, or those people who for some reason, other than being disabled, cannot secure employment ? If that is so, what is that category ? I would like my Friend to throw some light on this point.

Shri T. T. Krishnamachari : I would at once confess that I have not had the opportunity that my honourable Friend Mr. Kamath has had of education in England and therefore I am unable to appreciate the point raised by him.

Shri H. V. Kamath : I am sorry, Sir, to interrupt, but I was not educated in England.

Shri T. T. Krishnamachari : The suggestion came from persons for whom most of us have very great respect. Obviously the idea seems to be to indicate those that are disabled and for some reason or other cannot undertake any employment.

So far as the amendment moved by Dr. Deshmukh is concerned there was some discussion yesterday in regard to beggary when it was pointed out by Dr. Ambedkar that that might be covered by entry 24 in the Concurrent List—Vagrancy. In any case if proper relief is provided for the disabled and the unemployable I think beggary to a large extent by those who are really needy will cease.

Dr. P. S. Deshmukh : Though I am not satisfied with the explanation of Mr. T. T. Krishnamachari I beg to withdraw my amendment.

The motion was, by leave of the Assembly, withdrawn.

Mr. President : The question is

"That in amendment No. 107 of List I (Sixth Week), for the proposed entry 41 of List II, the following entry be substituted :—

'41. Relief of the disabled and unemployable.' "

The amendment was adopted

Mr. President : The question is :

"That entry 41, as amended, stand part of List II"

The motion was adopted.

Entry 41, as amended, was added to the State List.

Entry 42

Entry 42 was added to List II.

Entry 43

Pandit Thakur Das Bhargava : Sir, I move :

"That with reference to amendment No 3626 of the List of Amendments, entry 43 in List II be transferred to List III as entry 9-A."

In regard to this entry it is clear that religious endowments, etc., etc., have provincial as well as inter-State importance. There are many institutions which may be said to be of more than provincial importance. For instance there is the Gandhi National Memorial, the Kasturba Trust, the Kamala Nehru Hospital, the Begum Azad Hospital, etc. As regards religious institutions we have a very large number in this country, especially in big towns. There are the Somnath Temple, the Badrinath, Jagannath, Rameshwaram, Dwaraka, Vishwanath, Madura, Srirangam and many other temples which are held in veneration and people go for worship from all parts of India. Similarly we have very big Mutts and Akharas. For instance there are the Ramakrishna and Vivekananda Missions, the Gurudwaras, Dharamshalas, etc. The income from some of them are sufficient to run even universities. The beneficiaries consist of crores of people and therefore in regard to such charitable institutions it is very necessary that the Centre should also be invested with power to legislate in addition to the States. In regard to such institutions which are of provincial or local importance the State alone may have the right to legislate. I have, therefore, suggested that so far as these other institutions are concerned both the States and the Centre will have the power to legislate. The line of demarcation between them is not very distinct and therefore it may happen that it will be difficult to decide which is of local and which of more than local importance. But as it is a matter in which both the Centre and the provinces are equally interested and there is no chance of any clash of interest whatsoever.

When we come to fundamental rights in article 19 the right to religion has been to a certain extent hedged in by two sub-clauses which run as follows :

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus."

[Pandit Thakur Das Bhargava]

When we consider this aspect of the question it becomes all the more necessary that the Centre should have the right to legislate. Therefore my submission is that this entry be transferred from the States List to the Concurrent List.

Sardar Hukam Singh (East Punjab : Sikh) : Sir, I have come to lend wholehearted support to the amendment moved by my Friend Pandit Bhargava. Ordinarily no support is necessary to an amendment like this nor is one permitted, but I felt myself bound because I had certain fears. In this connection I support the grounds as well, mentioned by Pandit Bhargava.

When I saw this entry in this List it certainly struck me that if such important institutions are allowed to remain in the States List they might not be maintained and looked after as they ought to be. Therefore I felt that I should move an amendment regarding Gurudwaras, particularly for the insertion of a new entry and I did that by amendment No. 253. I was particular about the maintenance and control of Gurudwaras such as those in States like Hyderabad and in Assam and which are of historical importance. There might not be, and probably there would not be, any Sikh representation in those local legislatures, to put the case of those Gurudwaras. I, therefore, felt that there should be a special entry in the Concurrent List and I sent a notice of that amendment. Now, that Pandit Bhargava has moved this amendment that this entry should be transferred to the Concurrent List there is no need for me to move my amendment and I wholeheartedly support Pandit Bhargava's amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I am prepared to accept this amendment.

Mr. President : The question is :

"That with reference to amendment No 3626 of the List of Amendments, entry 43 in List II be transferred to List III as entry 9-A."

The motion was adopted.

Entry 43 of List II was transferred to the Concurrent List.

Entry 44

Shri T. T. Krishnamachari : Sir, I move :

"That for entry 44 of List II, the following entry be substituted :—

'44. Theatres, dramatic performances, cinemas, sports, entertainments and amusements, but not including the sanctioning of cinematograph films for exhibition.' "

With your permission, I move also amendment No. 287 standing in my name, *viz.*,

"That in amendment No. 111 of List I (Sixth Week), in the proposed entry 4 of List II, for the words 'not including' the words 'subject to the provisions of List I with respect to' be substituted."

The amended amendment will read thus :

"44. Theatres, dramatic performances, cinemas, sports, entertainments and amusements, subject to the provisions of List I with respect to the sanctioning of cinematograph films for exhibition."

The idea that the sanctioning of cinematograph films for exhibition should be transferred to the Centre has been accepted. There is no further variation here except that 'sports, amusements and entertainments' have been added to the original entry in the Draft Constitution.

Mr. President : Dr. P. S. Deshmukh and Shri Raj Bahadur are not moving their amendments.

Amendment No. 286 stands in the name of Mr. Kamath.

Shri H. V. Kamath : Sir, I move :

"That in amendment No. 111 of List I (Sixth Week), in the proposed entry 44 of List II, for the words 'entertainments and amusements, the words 'playgrounds, gymnasia and stadia' be substituted."

I feel, Sir, that by including 'entertainments and amusements' in this entry—they were not there in the original draft—the Government are trying to arrogate to themselves far more powers to interfere with the lives of citizens than are necessary. The other day there was a report in the Bombay papers that that Government was trying to ban even a harmless game like rummy. I think that entertainments of this kind at least must be kept beyond the purview of Government.

Shri T. T. Krishnamachari : It comes in as entry 45 in the List.

Shri H. V. Kamath : It comes under the term 'Entertainments and amusements'. I do not want that entertainments and amusements should be subject to any kind of governmental interference. Already in modern times Governments are taking so much power that it seems that the sky is the limit to their greed for power. With the sky as the limit the Government are trying to encroach upon each and every field. I do not see any reason why entertainments as such should be mentioned in any of the Lists here. I have mentioned specifically, 'playgrounds, gymnasia and stadia,' because in recent times, in Russia as well as in Germany and Italy, during the third decade of this century, it was governmental action which brought into existence amphitheatres, vast playgrounds and what are called parks of culture and rest. Government might move in these matters and organise these things for millions of citizens. But this is something different from legislating with regard to entertainments and amusements. We have the old Sanskrit saying :

काव्य शास्त्र विनोदेन कालो गच्छति धीमताम् ।

'Kavya Shastra vinodena kalo gcchati dhimatam.'

Any Government if it is so disposed might regard *vinoda,* innocent entertainment, as coming within the ambit of this provision.

Just as you cannot beat people into conformity, just as you cannot shoot people into loyalty or obedience, so too you cannot legislate people into moral beings. If crimes against humanity are committed, then the State should intervene and punish the offender. But it is one thing to punish crimes against humanity, and quite another to create conditions for the commission of offences. That is what you are doing here. Government are trying to legislate with regard to certain amusements and entertainments. One does not know which amusements will fall within this entry and which not. I am really unable to understand why this entry should have been modified in this regard—The old draft entry 44 might have been left as it was. I do not know why this change has been made. I would be happy if the words 'entertainments and amusements' are deleted, even if my amendment to insert "playgrounds. etc." is not accepted. But the words 'Entertainments and amusements' must go.

Prof. Shibban Lal Saksena : Sir, I beg to move :

"That in amendment No. 111 of List I (Sixth Week), the proposed entry 44 of List II be transferred to List III."

My only reason for moving this amendment is that I consider theatres, cinemas and dramatic performances to be very important modern means of promoting adult education. In our country, if we want to bring literacy to everybody, this entry should go to List III so that there can be co-ordination and

[Prof Shibban Lal Saksena]

regulation of the production and use of the films for educational purposes of the whole nation. By putting this in List III we would not be taking away anybody's powers.

Shri Brajeshwar Prasad: Sir, I rise to support the new entry moved by Shri T. T Krishnamachari. I am opposed to what all was said by Mr. Kamath on this occasion. I hold that entertainments and amusements if they are to be available to the poor, the provincial Governments must have power. The entertainments today are available only to the rich. The poor are deprived of these amenities of life. The record of the Soviet Union in this sphere is simply admirable. I support the amendment moved by Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari: Sir, I appreciate what my honourable Friend Mr. Kamath has said in regard to undue interference by the State in the activities of private persons in Clubs and other places, but I do not think that this entry relates to that matter a all. What it really relates to is a certain amount of control which the States should have over places of public resort for purposes of health, morality and public order. These three matters of the State will have to safeguard in places of public resort. What my friend contemplates to do should be done under the powers conferred by the next item 45. The recent order of the Bombay Government is to stop the play of rummy because of the stakes involved. The people that play this game for such high stakes that it takes the form of gambling, and it is for that reason that under the powers that the Bombay Government have under entry 45 they have sought to prohibit the playing of rummy for money. I do not think that this particular entry under discussion will be abused by any State Government to unduly restrict any pleasures or diversions that people have. The purpose of this entry is entirely different.

Mr. President: Then I will put Mr. T. T. Krishnamachari's amendment to the vote. No. 287.

Shri T. T. Krishnamachari: No. 287 and 111 form part of one whole

Mr. President: The question is :

"That in amendment No 111 of List I (Sixth Week), in the proposed entry 44 of List II, for the words 'not including' the words 'subject to the provisions of List I with respect to' be substituted "

The motion was adopted.

Mr. President: Then amendment No. 111 as amended by amendment No. 287. The question is :

"That for entry 44 of List II, the following entry be substituted :—

'44 Theatres, dramatic performances, cinemas, sports, entertainments and amusements, but subject to the provisions of List I with respect to the sanctioning of cinematograph films for exhibition ' "

The amendment was adopted.

Mr. President: The question is :

"That in amendment No. 111 of List I (Sixth Week), in the proposed entry 44 of List II, for the words 'entertainments and amusements', the words 'playgrounds, gymnasia and stadia' be substituted "

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 111 of List I (Sixth Week) the proposed entry 44 of List II be transferred to List III."

The amendment was negatived.

Mr. President : The question is

"That entry 44, as amended, stand part of List II"

The motion was adopted

Entry 44, as amended, was added to the State List.

Entry 45

Mr. President : Amendment No. 313 is for deletion of the entry. It is not an amendment but Prof Shibban Lal Saksena can speak on it.

Prof. Shibban Lal Saksena : Sir, betting and gambling are being legalised by this entry in the Schedule I thought that gambling was a crime and so I am surprised to see that gambling and betting are provided for as a legitimate field of activity under this Schedule In fact, I was sorry that entry No. 78 in List I was passed without any opposition, "Lotteries organised by the Government of India or the Government of any State" I think that this is against the principles to which we are committed Gambling and betting should be banned. Sir, I strongly oppose this entry.

Shri Lakshminarayan Sahu : *[Mr President, I am opposing this for the reason that when we are going to build the entire structure of our State on the foundations of truth and non-violence, when we are guided by the lofty ideals of Mahatma Gandhi, there should be no mention at all of betting and gambling in the Constitution we are to frame The very mention of these words would indicate that our National Government favours the idea of encouraging betting and gambling and seeks to have its own control on them. Have we forgotten the lessons of the Mahabharat? Taxation on such items does not appear proper. The clause relating to lottery laid down in the Constitution, is also not proper.]

Sardar Hukam Singh : Does the honourable Member want that there should be no betting and gambling?

Shri Lakshminarayan Sahu : [Yes, I want that.]

Sardar Hukam Singh : Who is to prohibit it?

Shri Lakshminarayan Sahu : The Constituent Assembly which is making the rules now, should prohibit it. *[Therefore, Mr President, I oppose it.]

The Honourable Dr. B. R. Ambedkar : Sir, I am very much afraid that both my friends, Mr. Shibban Lal and Mr. Sahu, have entirely misunderstood the purport of this entry 45 and they are further under a great misapprehension that if this entry was omitted, there would be no betting or gambling in the country at all. I should like to submit to them that if this entry was omitted, there would be absolutely no control of betting and gambling at all, because if entry 45 was there it may either be used for the purpose of permitting betting and gambling or it may be used for the purpose of prohibiting them. If this entry is not there, the provincial governments would be absolutely helpless in the matter

I hope that they will realise what they are doing. If this entry was omitted, the other consequence would be that this subject will be automatically transferred to List I under entry 91. The result will be the same, *viz.* the Central Government may either permit gambling or prohibit gambling. The question therefore that arises is this whether this entry should remain here or should

*[ ] Translation of Hindustani speeches

[The Honourable Dr. B. R. Ambedkar]

be omitted here and go specifically as a specified item in List I or be deemed to be included in entry 91. If my friends are keen that there should be no betting and gambling, then the proper thing would be to introduce an article in the Constitution itself making betting and gambling a crime, not to be tolerated by the State. As it is, it is a preventive thing and the State will have full power to prohibit gambling. I hope that with this explanation they will withdraw their objection to this entry.

Mr. President: The question is:

"That entry 45 stand part of List II"

The motion was adopted.

Entry 45 was added to the State List.

Entry 38—(contd.)

The Honourable Dr. B. R. Ambedkar: May I request you to go back to entry 38 and to amendment No. 311 standing in the name of Pandit Lakshmi Kanta Maitra? I heard, Sir, that you were pleased to direct Mr. T. T. Krishnamachari to have this entry held back, but I am prepared to accept the amendment suggested by my honourable Friend, Pandit Maitra.

Mr. President: Very well. The question is:

"That entry 38 of List II be transferred to List III."

The amendment was adopted.

Entry 38 was transferred to the Concurrent List.

Entry 46

Shri Brajeshwar Prasad: Sir, I beg to move:

"That entry 46 of List II be transferred to List I."

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That entry 46 of List II be transferred to List III."

I wish to point out to the Drafting Committee that the present stage of land records varies from province to province so much that no reliable all India statistics about land can be obtained. In fact in my province of U.P. it is the patwaris who keep all records and they are very able and from them we can get many statistics. But in Bihar there are no patwaris and so the Bihar Government have not go many important statistics. A question arose as to how much acreage was grown with sugarcane in Bihar, and the Bihar Government could not supply that information. So without proper land records, it is impossible to maintain uniform statistics for the whole country and it is a very important thing which must be provided for. In accordance with the amendments which I have already moved, that all entries about agriculture and land and allied subjects should be transferred to Part III, I suggest that this also should be transferred in the same manner and in this way we shall have uniform systems of keeping land records and uniform rates of land revenue and I consider this to be most important. If that is not done, you cannot have any statistics on a country-wide basis on a uniform basis, and agricultural progress will be handicapped.

Chaudhri Ranbir Singh: *[Mr. President, Sir, I am sorry for not being able to send my amendment in time. Mr. Brajeshwar Prasad wants that this subject should be included in the 1st List but I do not want that. I want that

*[ ] Translation of Hindustani speech.

this should be transferred to the Concurrent List. I shall just state my reasons for this suggestion. At present the land revenue is assessed in different provinces on different principles. I want that land revenue should be assessed on a uniform basis throughout the whole country. Land revenue should also be assessed on the principle on which other income-taxes are assessed. There should be one system for the assessment of land revenue throughout the whole country, and in my opinion the same principle on which other income-taxes are assessed should be followed in regard to land revenue also. An income of Rupees three thousand has been exempted from tax, and this exemption should also be applied in the case of agricultural income. Millions of agriculturists are, today, looking to this Assembly with the hope that it would pass some law which will free them from the injustice they have been constantly subjected to for thousands of years. This cannot be done only by including this item in the Concurrent List, for such inclusion will enable the future Central Legislature to pass a uniform Law in respect of income-taxes.]

The Honourable Dr. B. R. Ambedkar: I cannot accept this amendment. As our system of revenue assessment is at present regulated, it would upset the whole of the provincial administration. The matter may, at a subsequent stage, be investigated either by Parliament or by the different provinces, and if they come to some kind of an arrangement as to the levy of land revenue and adopt the principles which are adopted in the levy of income-tax, the entry may be altered later on but today it is quite impossible. The matter was considered at great length in the Conference with the Provincial Premiers and they were wholly opposed to any change of the place which has been given to this entry.

Mr. President: The question is:

"That entry 46 of List II be transferred to List I."

The amendment was negatived.

Mr. President: The question is:

"That entry 46 of List II be transferred to List III"

The amendment was negatived.

Mr. President: The question is:

"That entry 46 stand part of List II"

The motion was adopted.

Entry 46 was added to the State List.

Entry 47

Prof. Shibban Lal Saksena: I do not propose to move my amendment No. 315.

Mr. President: There is no other amendment to this entry.

Entry 47 was added to the State List.

Entry 48

Shri Brajeshwar Prasad: Sir, I beg to move:

"That in amendment No. 3631 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted."

Prof. Shibban Lal Saksena: I also move my amendment No. 316:

"That entry 48 of List II be transferred to List III."

The Honourable Dr. B. R. Ambedkar: I do not accept that.

Mr. President: The question is :

"That in amendment No. 3631 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That entry 48 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is :

"That entry 48 stand part of List II."

The motion was adopted.

Entry 48 was added to the State List.

Entry 49

Shri Brajeshwar Prasad: Sir, I move :

"That in amendment No. 3632 of the List of Amendments for the word 'deleted' the words and figure 'transferred to List I' be substituted."

Prof. Shibban Lal Saksena: Sir, I beg to move :

"That entry 49 of List II be transferred to List III."

My object in moving both of my amendments to entries 46 and 49 is that these taxes should be uniform all over the country and for that reason I have moved that these entries should be removed to List III. My whole scheme postulates that everything about agriculture and land should go to List III for enabling both the Centre and provinces to work together in close co-operation.

The Honourable Dr. B. R. Ambedkar: For the reasons which I have given while dealing with entry 46, I do not accept the amendment.

Mr. President: The question is :

"That in amendment No. 3632 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That entry 49 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is :

"That entry No. 49 stand part of List II."

The motion was adopted.

Entry 49 was added to the State List.

Entry 50

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That in entry 50 of List II, the words 'or roads' be added at the end."

Prof. Shibban Lal Saksena: Sir, I beg to move :

"That entry 50 of List II be transferred to List III."

My only object is that you are taxing passengers and goods carried on inland waterways and roads. These roads and waterways pass through various States. In order that there may be uniformity and control and co-ordination, it is necessary that the Centre should have some power. I suggest that this should go to List III so that the Centre and the provinces may co-ordinate their work.

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment.

Mr. President : The question is :

"That in entry 50 of List II, the words 'or roads' be added at the end."

The amendment was adopted.

Mr. President : The question is :

"That entry 50 of List II be transferred to List III"

The amendment was negatived.

Mr. President : The question is :

"That entry 50, as amended, stand part of List II."

The motion was adopted.

Entry 50, as amended. was added to the State List.

Entry 51

Shri Brajeshwar Prasad : Sir, I move :

"That in amendment No. 3633 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted."

Prof. Shibban Lal Saksena : Sir, I move :

"That entry 51 of List II be transferred to List III."

This is rather an important amendment that this entry should be transferred to List III. Agricultural Income-tax is a very important item of taxation. I am prepared to give all the proceeds of the tax to the provinces. But, there must be uniformity of scale in its imposition all over the country. Suppose Madras were to levy at one rate and Central Provinces at another rate. This would create great discontent. For purposes of uniformity and co-ordination, this entry should be transferred to List III so that if there are conflicting legislations, they may be co-ordinated in the best interests of the country.

Mr. President : The question is :

"That in amendment No. 3633 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted"

The amendment was negatived.

Mr. President : The question is :

"That entry 51 of List II be transferred to List III."

The amendment was negatived.

Mr. President : The question is :

"That entry 51 stand part of List II."

The motion was adopted.

Entry 51 was added to the State List.

Entry 52

Shri Brajeshwar Prasad : Sir, I move :

"That for amendment No 3634 of the List of Amendments, the following be substituted :—

'That entry 52 in List II be transferred to List I.' "

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in entry 52 of List II, the words 'non-narcotic drugs' be omitted"

This is merely consequential

Mr. President : The question is :

"That in entry 52 of List II, the words 'non-narcotic drugs' be omitted"

The amendment was adopted.

Mr. President : The question is :

"That for amendment No 3634 of the List of Amendments, the following be substituted :—

'That entry 52 in List II be transferred to List I' "

The amendment was negatived.

Mr. President : The question is :

"That entry 52 as amended, stand part of List II"

The motion was adopted.

Entry 52, as amended was added to the State List.

Entry 53

Entry 53, was added to the State List.

Entry 54

Shri Brajeshwar Prasad : Sir, I move :

"That entry 54 of List II be transferred to List I"

Mr. President : There is no other amendment. The question is

"That entry 54 of List II be transferred to List I."

The amendment was negatived.

Mr. President : The question is :

"That entry 54 stand part of List II."

The motion was adopted.

Entry 54 was added to the State List.

Entry 55

Entry 55 was added to the State List.

Entry 56

(Amendment No. 120 was not moved.)

Prof. Shibban Lal Saksena : Sir, I move :

"That entry 56 of List H be transferred to List III and the following explanation be added at the end :—

'*Explanation*—Nothing in this entry will be construed as limiting in any way the authority of the Union to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.' "

Sir, I may say this explanation is also contained in the amendment proposed by the Premier of the United Provinces, but he is not here to move the amendment. I think that it is necessary that this Explanation should be there. Otherwise, the objection may be raised that any taxes on professions may be regarding as limiting the authority of the Union to levy Income-tax. Therefore, I think it is proper that this Explanation should be added.

The Honourable Dr. B. R. Ambedkar : Sir, I think this amendment is rather based upon a mis-conception. This entry is a purely provincial entry. It cannot limit the power of the Centre to levy Income-tax. On the other hand, this entry 56 may be so worked as to become an encroachment upon Income-tax that is leviable only by the Centre. You may recall, Sir, that I introduced an amendment in article 256 to say that any taxes levied by the local authorities shall not be deemed to be Income-tax. This amendment is not necessary.

Prof. Shibban Lal Saksena : I do not press the amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That entry 56 stand part of List II."

The motion was adopted.

Entry 56 was added to the State List.

Mr. President : There is notice of an amendment for adding a new entry by Mr. Patil and Mr. Gupte.

(The amendment was not moved.)

Entry 57

Mr. President : There is no amendment.

Entry 57 was added to the State List.

Entry 58

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 58 of List II, the following entries be substituted :—

'58. Taxes on the sale or purchase of goods.

58-A. Taxes on advertisements' "

We are trying to cut out the word 'turnover'.

Prof. Shibban Lal Saksena : Sir, I move :

"That in amendment No. 121 of List I (Sixth Week), the proposed entries 58 and 58-A of List II be transferred to List I."

Sir, this is a very important entry, about tax on sale and purchase of goods, and tax on advertisements. The imposition of sales tax by the various provinces has caused much confusion and there has been a great indignation in business quarters against the varying rates in this tax.

It varies from place to place and has a very bad effect on the trade and industry in the province. Therefore there has been a very great volume of opinion in the press that there should be uniform scales of taxation on sales and it is therefore necessary that these taxes should be imposed by the

[Prof. Shibban Lal Saxena]

Centre. I would not mind that the entire yield is given over to provinces but the principles on which these are based and the method in which they are levied should be decided by the Centre. I do not know how these have been included in this entry. Regarding advertisements, only yesterday we had a big debate that this amendment was *ultra vires* on article 13. Tax on advertisement realy means tax on freedom of opinion. You are pleased to hold over your ruling on the point and so I do not know how this can be moved at all.

Mr. President: There is No. 122 of which notice is given by a large number of Members.

Shri V. I. Muniswamy Pillay (Madras: General): I move:

"That with reference to amendment No 3638 of the List of Amendments, in entry 58 of List II, after the words 'purchase of goods' the words 'other than Newspapers' and after the words 'taxes on advestisements' the words 'other than those appearing in Newspapers' be inserted respectively."

Shri Deshbandhu Gupta (Delhi): I suggest this may be also held over.

Mr. President: This was a question which was raised yesterday. I hold it over for my ruling.

The Honourable Dr. B. R. Ambedkar: I suggest that amendment No. 122 might be treated as an independent thing which may be brought in by an additional entry. Then subsequently the Drafting Committee may work the two things together if accepted. Subject to that, this entry may go. Those interested in 122 may be permitted to bring in this in the form of an additional entry.

Mr. President: Your point is not touched so far as newspaper and advertisement is concerned.

Shri Deshbandhu Gupta: If it is felt that the Drafting Committee should provide this somewhere else then it would become difficult to revise the past, once a decision is taken by the House on this entry.

The Honourable Dr. B. R. Ambedkar: Before we conclude discussion of the three Lists this matter may be brought up.

Mr. President: I am prepared to allow this to be taken up separately when we take up 88-A which we held over yesterday. So the position is that the question relating to advertisement is held over, but apart from that, this entry is to be put to vote, as amended by Dr. Ambedkar.

Prof. Shibban Lal Saksena: When a ruling is pending how can it be passed?

Shri Deshbandhu Gupta: It will be simpler if it is held over.

Mr. President: Well, let it be held over. We will take it up along with 88-A which we held over yesterday.

Entry 58 of List II was held over.

Entry 59

Mr. President: Entry 59.

The Honourable Dr. B. R. Ambedkar: I move:

"That in entry 59 of List II, the following be added at the end:—
"Subject to the provisions of entry 21 of List III.'"

In List III we are going to say that the Centre should have the power to lay down the principle of taxation.

Mr. President: The question is:

"That in entry 59 of List II, the following be added at the end:—
'Subject to the provisions of entry 21 of List III.'"

The amendment was adopted.

Mr. President: The question is:

'That entry 59, as amended, stand part of List II."

The motion was adopted.

Entry 59, as amended, was added to the State List

Entries 60 *to* 63

Entry 60 was added to the State List.
Entry 61 was added to the State List.
Entry 62 was added to the State List.
Entry 63 was added to the State List.

Entry 64

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That entry 64 of List II be deleted."

That is taken in the Concurrent List.

Mr. President: The question is:

"That entry 64 of List II be deleted."

The motion was adopted.

Entry 64 of List II was deleted from the State List.

Entries 65 *and* 66

Entry 65 was added to the State List.
Entry 66 was added to the State List.

Mr. President: There are certain new entries proposed. No. 322.

Entry 67

Kaka Bhagwant Roy (Patiala & East Punjab States Union): Sir, I move:

"That in List II, the following new entry be added:—
'67. Allowances to be paid to a ruler of a State in Part III of the First Schedule.'"

Sir, the allowances to the ruler of a State in Part III of First Schedule are to be paid out of the revenues of the State and it must be a charge and a burden on the State budget. Therefore it is meet and proper that the State legislature should have the power to consider over this. The people of the State have to pay the revenues out of which these allowances are to be paid. Therefore the State peoples, representative should have some say in the matter, and my entry will give the State Legislatures the opportunity to consider the allowances that are given to the rulers. So I request that this subject should be placed in List II.

The Honourable Dr. B. R. Ambedkar: Sir, this matter will be covered by the Part of the Constitution which we propose to add to the existing Draft, the part where all the payments that are to be made to the rulers will be dealt with, and for the present, I do not see any necessity for any such amendment. I think my Friend, after seeing that part which we propose to introduce by way of an amendment, may see whether his object is carried out by our proposal. If not, he may be quite in order in moving an amendment to that part when that part comes before the House

Kaka Bhagwant Roy : Sir, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there are several amendments by way of new entries, in the Printed List, Vol II.

(Amendment Nos. 3642, 3643, 3644, 3645, 3646, 3647, 3648, 3649 and 3650 were not moved.)

These are all the amendments which we have relating to List II.

List III : Entry I

Mr. President: Then we go to List III. Entry No. 1 if List III. I do not see any amendment to that. So I put it to vote.

Entry 1 was added to the Concurrent List.

Entry 2

Mr. President: Then we come to entry 2. I do not see any amendment to that either. I put it to vote.

Entry 2 was added to the Concurrent List.

Entry 2-A

Mr. President: Then we come to entry 2-A. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That after entry 2 of List III, the following entry be inserted :—

'2A. Preventive detention for reasons connected with stability of the Government established by law and the maintenance of public order and services or supplies essential to the life of the community; persons subjected to such detention.' "

Prof. Shibban Lal Saksena: I want to oppose it.

Mr. President: There is an amendment by Mr. Kamath—No. 289.

Shri H. V. Kamath: I move, Sir amendment No. 289 of List V, Sixth Week.

"That in amendment No. 124 of List I (Sixth Week), the proposed new entry 2-A of List III be deleted."

Mr. President: It is really not an amendment, but asking for deletion. But I will allow you to speak.

Shri H. V. Kamath: Sir, I feel that after the adoption of entry 3 in List I, we should not provide any more scope of grounds for preventive detention as such. I think we have restricted the freedom and liberties of the subject to a very considerable extent in the Constitution, and in item 3 of List I that we have passed a few days ago, it was provided that the legislative power of the Central Union, extended to preventive detention in the territory of India for reasons connected with defence, foreign affairs, or the security of India. I

cannot conceive of any other reasonable circumstances where preventive detention could be or ought to be exercised. The power for preventive detention should not be exercised by the State except for reasons connected with defence, foreign affairs or the security of India, and this power has already been vested in the Union Legislature. I do not think, it is safe or wise to include it among the concurrent powers, that is to say, with the Union as well as with the States. We should not confer powers with regard to preventive detention for reasons connected with stability of the Government established by law and the maintenance of public order and services or supplies essential to the life of the community. I am not aware of any Constitution in the world which provided in the body of the Constitution either as an article, or as a Schedule to the Constitution such sweeping powers for the units or the Centre. Of course, I am well aware of the powers vested in the Centre in times of emergency. For that we have already made provision in Chapter XI which this House has adopted. The Centre, under entry 3 of List I, has got the powers for preventive detention. Now, this is a very dangerous move on the part of the Drafting Committee, and I hope the House will not be a party to this move, to vest further powers in the Centre and in the States for detention, for reasons connected with the stability of the Government. That is a very vague wording, and very mischievous in its connotation and dangerous in its implications, and certainly not in conformity with the spirit of the democratic republic which we profess to build in this Constitution for our country. I feel that if, at all, powers are to be vested in the Centre or the States, for reasons connected with the stability of Government, say so—call it sedition or what you will, and provide for it as a crime punishable after fair trial. But I do not want such powers as these to be vested in the Centre or in the State to detain a person on the suspicion that he may jeopardise the stability of the Government established by law. You can provide for his arrest and proper trial and conviction; but to detain him merely because the men in power think that the stability of the government is in danger would be the worst tyranny that has been exercised in modern times. I feel, Sir, that this is a most serious matter. Such a provision would lead to very serious consequences in the hands of unscrupulous persons. I therefore feel that this entry should be deleted from this List.

Mr. President: I was asked to make some announcement with regard to the future programme. I propose to give the programme for the next week, that is to say, from Monday next to the end of the week.

5th September: Monday: Fifth and Sixth Schedules and the Second Schedule.

6th September: Tuesday: Articles 263A, 264, 264A, 265, 265A and 266.

7th September: Wednesday: Articles 281, 282, 282A and 283.

8th September: Thursday: Articles 296, 299, 302, 243, 244, 245 and 234A,

9th September: Friday: Articles 304 and 305 and the Eighth Schedule.

If I find that the work is not progressing as quickly as we wish, and we are unable to finish the whole thing within the week, then I shall have to consider whether we should not sit twice a day, because I do not want to go beyond the week for finishing this programme. I shall adjust the programme according to the progress that we make.

I thought we would have finished this List III today but we have not. So the only course is either to meet in the afternoon today or to meet tomorrow.

Seth Govind Das: You have not announced the date up to which this session will go. I wanted to know that so that we could fix up our programme.

[Mr. Naziruddin Ahmad]

Sir, I beg to move :

That in amendment No 124 of List I (Sixth Week), in the proposed new entry 2-A of List III, for the words "stability of the Government" the words "security of the State" be substituted.

The expression "stability of the Government" is not proper . . .

The Honourable Dr. B. R. Ambedkar: I do not think any argument is needed as I am accepting the amendment.

Mr. Naziruddin Ahmad: I know. But there is the House. I will say only one or two words. The expression "stability of the Government" is rather vague in the context of the new entry proposed by Dr. B. R. Ambedkar, namely, "preventive detention for reasons connected with the stability of the Government". "Government" and "State" are different things.

The Honourable Dr. B. R. Ambedkar: That is the reason why I have accepted it.

Mr. Naziruddin Ahmad: But, Sir, he has not made it clear as to why he has accepted it.

The Honourable Dr. B. R. Ambedkar: I have said that "security of the State" is the proper expression So there is no necessity of an argument.

Mr. Vice-President: The amendment proposed by the honourable Member having been accepted, there is no need for elaborate arguments.

Mr. Naziruddin Ahmad: But the House should know. Why should there be so much nervousness about the exposure of bad drafting? That is the point.

The Honourable Dr. B. R. Ambedkar: If my honourable Friend is satisfied with an admission on my part that I have made a mistake I am prepared to make it.

Mr. Naziruddin Ahmad: It should be appreciated not merely by the House but by the world at large. Drafted as it is, "stability of the Government" may mean insecurity of the Ministry for which they might imprison the opposition.

The Honourable Dr. B. R. Ambedkar: Very well, we have bungled. Is that enough?

Mr. Vice-President: I do not think there is any other amendment.

Shri Brajeshwar Prasad (Bihar : General) : I want to speak on the amendment. Mr. Vice-President, I rise to offer a few remarks on this new entry which has been proposed by the Chairman of the Drafting Committee.

This entry vests power into the hands of the Government of India to detain persons for reasons connected with the security of the State established by law and the maintenance of public order and services or supplies essential to the life of the community.

The power vested in the hands of the Centre is of a very limited character. Over and above preventive detention, the Government of India has got no other power till the situation has deteriorated to such an extent that emergency provisions come into operation. The Government of India ought to have been vested with more powers to nip the mischief in the bud. If the Government of India feel's that without its co-operation and assistance a State Government is not likely to deal effectively with outbreak of lawnessness, than it must have the power to step in and take command of the situation. It is sheer folly to

circumscribe the limits of its jurisdiction Concurrent powers over maintenance of public order is necessary in order to strengthen the forces of law and order If we want that emergency provisions should not come into operation at all, it is necessary to enlarge the scope of the Central jurisdiction. Where there is a conflict between the forces of law and order and the claims of provincial autonomy, there should be no hesitation in choosing the former as against the latter.

I regret I do not find myself in agreement with Mr. Kamath here as well. His political doctrines are a strange mixture of Individualism and Philosophical anarchism. Both these doctrines have no place in our life. The challenge of the forces of collectivism are so strong and insistent that no political being, unless he wants to live in the land of lotus-eaters, can afford to pay even lip homage to the memory of Mill and Bakunin the torch-bearers of Individualism and Philosophical anarchism.

Mr. Vice-President: I will now put the amendment to vote.

The question is :

"That in amendment No 124 of List I (Sixth Week), in the proposed new entry 2A of List III, for the words 'stability of the Government' the words 'security of the State' be substituted"

The amendment was negatived.

The Honourable Dr. B. R. Ambedkar: Sir, the amendment as amended has to be put and not as in the Notice Paper.

Mr. Vice-President: I will now put amendment No. 124 as revised by Dr. Ambedkar. The question is :

"That after entry 2 of List III, the following entry be inserted :—

'2-A. Preventive-detention for reasons connected with the security of the State and the maintenance of public order and services or supplies essential to the life of the community; persons subjected to such detention'"

The motion was adopted.

Entry 2-A, as amended, was added to the Concurrent List.

Entry 3

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for entry 3 of List III, the following entry be substituted :—

'3. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 2A of this List'"

Mr. Nazimuddin Ahmad: I am not moving amendment No. 291.

Mr. Vice-President: Amendment No. 292. The Member is not present and the amendment is not therefore moved.

I will put Dr. Ambedkar's amendment to vote. The question is :

"That for entry 3 of List III, the following entry be substituted :—

'3 Removal from one State to another State of prisoners accused perosns and persons subjected to preventive detention for reasons specified in entry 2A of this List'"

The amendment was adopted.

Entry 3, as amended, was added to the Concurrent List.

Entry 4

The Honourable Dr. B. R. Ambedkar: I move :

"That in entry 4 of List III, the words and figures for the time being specified in Part I or Part II of the First Schedule' be deleted."

Mr. Vice-President: There are no other amendments to this entry.

I will put the amendment to vote. The question is :

"That in entry 4 of List III, the words and figures 'for the time being specified in Part I or Part II of the First Schedule' be deleted"

The amendment was adopted.

Mr. Vice-President: The question is :

"That entry 4, as amended, stand part of List III."

The motion was adopted.

Entry 4, as amended, was added to the Concurrent List

Entry 5

Mr. Vice-President: Mr. Kamath is not in his place. The amendment standing in his name (No. 293) is not moved.

Entry 5 was added to the Concurrent List.

Entry 6

Dr. P. S. Deshmukh (C. P. & Berar : General) : Sir, I move :

"That in entry 6 of List III, after the word 'infants' the words 'care and protection of destitute and abandoned children and youth' be inserted."

or, alternatively,

"That in entry 6 of List III after the word 'infants' the words 'protection of childhood and youth against exploitation and against moral and material abandonment' be inserted."

Sir, this is my second attempt to bring in the care of children and young ones who are likely to be exploited or abandoned either morally or materially. Last time I moved an amendment that this entry be included in the exclusive powers of the Union. It may be said that it was a subject which need not be in the exclusive jurisdiction of the Centre. But I am now moving to include it as an item in List III so that both the States as well as the Centre can have concurrent jurisdiction in regard to this. It is likely to be urged that the words "infants and minors" can be interpreted to include what I propose and that there would be sufficient scope to look after children and youthful persons under the entry as it is in the original draft as entry No. 6.

I had pointed out before and I beg to reiterate now that infants have a specific meaning and the word can by no means include all children. Again, minors are persons who do not include all minor children *ipso facto*. "Minority" is something of a legal nature and it will therefore refer only to those persons who are minors under the law. Moreover, Sir, all these five words that you find in this entry "marriage and divorce; infants and minors; adoption" refer to their legal status and do not refer in any way whatsoever to their being given any care and protection.

Secondly, it will be found that there are provisions and entries so far as assisting religious organisations or literary, scientific and cultural institutions is concerned. Some of my friends drew my attention to entries 42 and 43 in the State List. Those two entries will be confined to giving financial assistance to these institutions. What I wish the Centre and the States to take up, however, is direct responsibility for looking after the welfare of the destitute and abandoned children. For this there is no specific provision and it will be very wrong at the present moment and under the present circumstances not to have a specific provision to this effect. If we examine legislation in foreign countries, we will find that every care is taken of this subject. As late as 1946 and 1948 the British Parliament passed new legislation on this subject.

There are two aspects of this question. We have had legislation in the provinces so far as delinquent children are concerned, but so far as the responsibility either of the provinces or of the Centre in respect of the abandoned and

destitute children are concerned, there has been no legislation whatever. The wording of article 31 is exactly what I have put in my amendment, "that childhood and youth are protected against exploitation and against moral and material abandonment." It is said that the very fact that this is included in the Directive Principles of State Policy will give the Centre jurisdiction. I am not at all convinced of this argument and I feel convinced as a matter of fact of the inadmissibility of this argument. The mere inclusion of this in the Directive Principles of State Policy does not mean that power for legislation has been given, more especially because ours is going to be come sort of a Federation and it will always be arguable whether the responsibility for this is that of the Centre or the provinces; and since this ambiguity will be there, I think, Sir, that it is very necessary that there should be some provision for this in the Concurrent List so as to make the responsibility for this both that of the States as well as of the Centre

I have already given notice of a Bill to be moved in the Legislative Assembly and I have taken my stand on the Directive Principles which have been embodied in the Constitution. If we do not have this entry, it may be urged that this is a thing which does not fall within the purview of the Centre; since Borstal institutions are subject-matters for the States, it is the States alone who are competent to deal with this and therefore legislation must emanate from the provinces. In order to avoid this ambiguity, in order to avoid this difficulty, in order to remove any obstacle in the way of looking after these children and youthful persons by the Centre also, I have urged that this entry should be there. If we examine legislation in other countries, we will find that they take care not only of children up to the age of 14 but that the age has been taken right up to 25. Their contention is that the State has now ceased to be a mere policeman and a judge and that it is becoming more and more of a social corporation and in a social corporation nothing can be more important than the care and protection of children and youthful persons.

From that point of view, it is absolutely necessary that this entry should be there. I hope that we will not have to waste time in bitter discussion over this matter as we did yesterday in trying to convince the sponsors and leaders of the Drafting Committee to accept the item with regard to the aduleration of food. This is more important, if I may say so, than even that entry and it will be a disgrace if for any technical reason or for any other reason this entry is opposed and is not accepted. I know that a large number of honourable Members of this House wish to support this entry and I hope therefore that without much discussion or debate it will be possible for the honourable Doctor to accept either of my two amendments I would prefer the second to the first

Shrimati G. Durgabai (Madras : General) : Mr. Vice-President, Sir, I have great pleasure in supporting the amendment moved by my Friend, Dr. Punjabrao Deshmukh. I wish to say and also I appeal to the Drafting Committee and this House to realise the great importance of this subject, *viz.* the protection of children from exploitation or abandonment, and accept the principle behind it; I appeal more especially to the Drafting Committee to find a suitable entry for this subject. Unless the State takes up a direct responsibility to pass legislation on this matter, I do not think there will be adequate attention given to this subject. I know that they have not neglected this matter and the Chairman of the Drafting Committee would come forward to say that there are a large number of entries to this effect in all the three Lists and that sufficient protection is being given to the protection of children and the destitutes and the abandoned. I know that they have accepted this principle under the Directive Principles. Article 31, clause (vi), lays down the principle in the terms of the amendment now moved. It is the protection of children and youth against exploitation and

[Shrimati G. Durgabai]

against moral and material abandonment. Sir, this is exactly the language of the amendment which is moved by Dr. Punjabrao.

No doubt this principle has been recognised under the Directive Principles. I should say that there is no use in simply recognising this principle under the Chapter on Directive Principles. It will remain a really pious declaration or intention on our part to do something in the matter of protection of children, but that is not sufficient. None of the entries has mentioned this subject. If you examine all the three Lists, you do not find a definite entry to this effect in anyone of these Lists. In the absence of a definite entry on this matter, really there will not be adequate protection given to children It will leave this matter in great confusion. You do not know who will legislate on this matter, whether it will be the Centre or the State or both.

Therefore, Sir, I would appeal to the Drafting Committee to see its way to include this matter in this Concurrent List or any other List.

Unless the State undertakes a direct responsibility there will be no good. It is open to the State to come forward and make some subsidy or give some donation or some contribution to an Association either started by private enterprise or by a philanthropist for the protection of infants. We know how these associations are struggling for their daily existence and for lack of funds they are not able to get on well and in this manner these poor homes could no longer serve the cause of poor children. I do not know what kind of help they will get if the State does not take direct responsibility. This is not a matter which could be left to private enterprise, but the State must take direct responsibility. There is no good in our stating the Directive Principles, which will remain as pious declarations unless given effect to by the State.

It may be argued that there is penal law which deals with the matter. I know that the criminal law deals with this matter of abandonment. I also, know, because I am conversant with it, how deep matters are going on. It is true that the persons who is charged with the offence of abandoning is really punished and he or she is sentenced for that offence. But what happens to the child that is abandoned? That is the question. Where is it to go? How long is it going to wait in search of somebody to come forward and take it for protection? Therefore, Sir, it is a very dangerous thing. If only we leave the children to themselves, they will take to beggary and also to many vices such as stealing and they would cultivate very bad habits. Therefore it is the duty of the State to come forward and help these children sufficiently in time, to see that they are developed well, because these children are our future hope and the nation depends upon these children, their good-manners, their upbringing, their good health and their strong character.

Sir, I tell you that if the Drafting Committee could find its way to make an entry for the protection of wild birds, I do not know whether the children could not come under the classification of even wild birds. Therefore, if you see your way to give a particular place in the Constitution for wild birds, I appeal to you to see your way also to give protection to the children that are abandoned, by a suitable entry in the Constitution.

Shri Brajeshwar Prasad: Sir, I would like to speak before Dr. Ambedkar is allowed to reply on this entry.

Mr. Vice-President: Shrimati Durgabai, have you finished?

Shrimati G. Durgabai: I have finished. I have nothing further to say. I only wish that Dr. Ambedkar assures us that he will see his way to examine all the clauses in the Constitution for this purpose. Certainly he will find it easier to accept our proposition. He can include it in any list, we do not mind, but let us be assured that this entry finds its way into the Constitution and also there will be no further difficulty in accepting this principle. Sir, I appeal to the

Drafting Committee and to the House to give recognition to this matter, realizing the great importance of this subject

Shri Brajeshwar Prasad: Sir, I rise to support the amendment moved by my honourable friend Dr. Deshmukh and supported by Shrimati Durgabai. If there is to be protection of childhood and youth against exploitation and against moral and material abandonment, the Government of India must be vested with the necessary powers. The Government of India must provide necessary facilities for birth-control, if we are to protect the future generation from exploitation both moral and material.

Secondly, Sir, I am definitely of the opinion that the profession of prostitution must be regulated on sound scientific lines. Sir, in 1938 I moved a resolution in the Gaya Municipality, when I was a member of that Municipal Board. The resolution was on the lines of amendment No. 252 standing in the name of Dr. P. S. Deshmukh. The resolution which I tabled in the Board was for the regulation and control of prostitution and maintenance of public houses. This resolution is on similar lines. But I am sorry to say that the resolution was disallowed by the President of the Municipal Board on the ground that it did not fall within the purview of the Municipal Board. Sir, I want that the Government of India and the Provincial Governments must take an interest in this matter and regulate this profession so that the youth of the country may be protected from moral abandonment. There is another argument that I wish to place before this House. It is the duty of the State to nurse every child from the moment of its birth till he or she reaches the age of maturity. The State must provide education, medical facilities and means of livlihood to each and every citizen living within the ambit of the Indian Union. The institution of family is undergoing rapid transformation. I do not know what ultimate form it will assume But I am quite clear in my own mind that today it is not in a position to protect childhood and youth against exploitation and against moral and material abandonment. It is incumbent therefore on the State to protect the youth of the country from all evil influences. Family, according to Plato, circumscribes the horizon of a man's love and affection. One nursed in the cradles of family life cannot but be an intellectual and moral dwarf. If man is to rise to the height of his being, he must be protected from the pernicious influences of family life. If he is to rise to grand heights and to develop all that is latent in him the institutions of private property and marriage, in conformity with the doctrines of Plato's Republic, will have to be wiped out. I support the amendment moved by Dr. P. S. Deshmukh.

The Honourable Dr. B. R. Ambedkar: Sir, there can be no doubt that the amendment of my honourable Friend, Dr. Deshmukh, in so far as it seeks to interpolate certain words dealing with the protection of children in entry 6 are out of place because entry 6 no doubt refers to infants and minors, but it has to be borne in mind that taking the entry as a whole, that entry deals with status. In so far as the status of infants and minors are concerned, these categories are included in entry 6, but "care and protection of destitute and abandoned children and youth" are not germane to their status.

Dr. P. S. Deshmukh: That was exactly why I had wanted to introduce an independent entry. There is an amendment already in my name which seeks to have an additional entry separately.

The Honourable Dr. B. R. Ambedkar: I was just going to deal with the amendment moved by him. These words could not be interpolated in this entry 6, without seriously damaging the structure of that entry No. 6. Therefore at this stage I certainly cannot accept the proposition of interpolating these words.

Now, Sir, I will deal with the general question of the protection of children. There can be no doubt about it that every Member in the House including

[The Honourable Dr. B. R. Ambedkar]

myself and the members of the Drafting Committee could ever take any exception to the protection of children being provided for by the State, and there can be no difference of opinion; but the only question is whether in the list as framed by the Drafting Committee that matter is not already covered. In framing these entries, what we have done is to mention and categorize subjects of legislation and not the objects or purposes of legislation.

Protection of children is a purpose which a legislature is entitled to achieve if in certain circumstances it thinks that it must do so. The question is whether under any of these entries, it would not be possible for the State to achieve that purpose, namely, the protection of children.

It seems to me that any one of these entries which are included in List II could be employed by the State for the purpose of framing laws to protect children. For instance, under entry 2 of List II, administration of justice, it would be open for the State to establish juvenile courts for children.

Dr. P. S. Deshmukh: That is not what I meant. I never referred to juvenile Courts.

The Honourable Dr. B. R. Ambedkar: For instance, take prisons and reformatory and Borstal institutions, they may be empowered to establish special kinds of prisons where there would be, not the principle of punishment, but the principle of reformation. Take the case of education.

Shrimati G. Durgabai: May I submit, Sir, the case of delinquent children stands absolutely on different footing and from destitute and abandoned children?

The Honourable Dr. B. R. Ambedkar: As I was saying entry 18, which deals with education in List II, could be used by the State for the purpose of establishing special kinds of schools for children including even abandoned children. Under entry 42, dealing with the incorporation of societies and so on, it would be open to the State to register societies for the purpose of looking after children or they may themselves start some kind of corporation to do this.

Therefore, if my friends contend that the statement, which I am making in all sincerity, that there is every kind of provision which the State may make for the purpose of protecting children under the entries which are included in List II, I think there is no purpose in having a separate entry dealing with the protection of children. As I stated, protection of children cannot be a subject of legislation; it can be the object, purpose of legislation.

Dr. P. S. Deshmukh: You have made provision for the protection of wild birds, even!

The Honourable Dr. B. R. Ambedkar: I can quite see both of my Friends are very persistent in this matter. I would therefore request them to withdraw their amendment on the assurance that the Drafting Committee in the revising stage will go into the matter and if any such entry can be usefully put in any of the Lists, they will consider that matter and bring a proposal before the House. At this stage, I find it rather difficult to accept it because I have not had sufficient time to devote myself to a full consideration of the subject which is necessary before such an entry is introduced.

Mr. Vice-President: Does Dr. Deshmukh wish to press his amendment?

Dr. P. S. Deshmukh: I would like to request Dr. Ambedkar at least to say that by the time my next amendment for in independent entry is reached, he will be able to say something more favourable than he has been able to say now.

The Honourable Dr. B. R. Ambedkar: I will consider the whole matter.

Dr. P. S. Deshmukh: I do not press this amendment here in view of the fact that I am moving the other amendment.

The amendment was, by leave of the Assembly, withdrawn

Mr. Vice-President: The question is:

"That entry No. 6 stand part of List II."

The motion was adopted.

Entry 6 was added to the Concurrent List.

Entries 7 to 14

Entry 7 was added to the Concurrent List.

Entry 8 was added to the Concurrent List.

Entry 9 was added to the Concurrent List.

Entry 10 was added to the Concurrent List.

Entry 11 was added to the Concurrent List.

Entry 12 was added to the Concurrent List.

Entry 13 was added to the Concurrent List.

Entry 14 was added to the Concurrent List.

Entry 15

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 15 of List III, the following entry be substituted:—
'15. Actionable wrongs'."

The words which I seek to omit are really unnecessary.

Mr. Vice-President: The question is:

"That for entry 15 of List III, the following entry be substituted:—
'15. Actionable wrongs'."

The amendment was adopted.

Mr. Vice-President: The question is:

"That Entry No. 15, as amended, stand part of List III."

The motion was adopted.

Entry 15, as amended, was added to the Concurrent List.

Entry 16

Entry No. 16 was added to the Concurrent List.

Entry 17

Shri R. V. Dhulekar (United Provinces: General): Sir, I want to speak on the entry—entry 17. Entry 17 deals with legal, medical and other professions. With your permission, Sir, I shall try to make some observations on the medical subject alone leaving the other portion of the entry to other gentlemen to deal with.

[Shri R. V. Dhulekar]

First of all, I wish to submit that the word "medical" that is being used in India for some time past has been laying too much stress on the medicinal side of the health problem of this country. The word 'medical' is a misnomer. It simply means medication and therefore we have come to a position when we feel that the administration of the medical department could only be seen and looked at from the point of view of what medicines are useful in the country. I would submit, Sir, that having studied the medical question from different points of view, I have come to the conclusion that it is the duty of the State to see that every individual, every human being who possesses of body, must know something about the preservation, protection and prolongation of life. The word "medical" is a wrong word. I would submit that the word in India was Ayurveda, science of life.

Looked from that point of view, I feel, that this subject has not been given the importance which it deserves during the British regime and today also. I feel that the Government of India is not doing any thing towards imparting the knowledge of the science of life. The science of life, Ayurveda, is a basic science in the country and it has been taught for a long number of years, thousands of years. But the foreigners came and foreign education came and Ayurveda has been relegated to the background. It has been made out from platforms and platforms by Heatlh Ministers and other people that Ayurveda that was taught in India in ancient times and which is existing in India today and ministering to the needs of 85 per cent. of the people of this country, is not a science at all. I would say that this word "medical" is a word which should be eschewed from our vocabulary.

Lately some attempts are made to join the word 'health' with medical department. There are Health Departments in the provinces and there is Health Department in the Centre also. As this is a Concurrent List, I would say, that sufficient attention should be paid to the medical or I would say, the life problem of the country. I am not one of those who fix all responsibility for preservation of health of individuals on the State. I do not feel that, just like the Bhore Committee report, all emphasis should be laid only on the State. If we take into consideration the Bhore Committee report we find, crores on rupees, even if they are spent annually, will not solve the problem of the health of India. So I feel that the words as they are put—"profession of medical" etc. would not serve the purpose. The science of life cannot be a profession. I wish to draw the attention of the Assembly to the important fact that unless and until we take to the principle that every human being knows something about his life, something about his body and health and hygiene we cannot solve the problem.

Therefore, I say that where you put legal, medical and other professions I would say that you will lay more emphasis on the medical education that is to be imported to a human being than on the profession itself. What I am driving at is, if you want to control the medical profession, then it does not mean that registration of medical profession is the only thing you should do Medical profession has become a profession of loot. It is not a profession of helping humanity; and therefore where you can call the medical profession, I would advise the Assembly to bear in mind, when the time comes, these observations of mine that the medical profession will be controlled not from the point of view of only allowing the people to fleece others but from the point of view of helping humanity.

Mr. Vice-President: The question is:

"That entry 17 stand part of List III."

The motion was adopted.

Entry 17 was added to the Concurrent List.

New Entry 17-A

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 17 of List III the following entry be inserted :—

'17-A. Vocational and technical training of labour'."

Mr. Vice-President : Amendment 249 is not moved. **The question is :**

"That after entry 17 of List III the following entry be inserted :—

'17-A. Vocational and technical training of labour' "

The motion was adopted.

Entry 17A was added to the Concurrent List.

Entry 18

Entry 18 was added to the Concurrent List.

Entry 19

Entry 19 was added to the Concurrent List.

Entry 20

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 20, the following entry be substituted :

'20. Drugs and poisons, subject to the provisions in entry 62 of List I with respect to opium'."

(Mr. Kamath did not move his amendment.)

Mr. Vice-President : The question is :

"That for entry 20, the following entry be substituted :—

'20. Drugs and poisons, subject to the provisions in entry 62 of List I with respect to opium'."

The amendment was adopted.

Entry 20, as amended, was added to the Concurrent List.

Entry 21

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 21 of List III, the following entry be substituted :—

'21. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied'."

Mr. Vice-President : The question is :

"That for entry 21 of List III, the following entry be substituted :—

'21. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied'."

The amendment was adopted.

Entry 21, as amended, was added to the Concurrent List

Entries 22 to 25

Entry 22 was added to the Concurrent List.

Entry 23 was added to the Concurrent List.

Entry 24 was added to the Concurrent List.

Entry 25 was added to the Concurrent List.

New Entry 25-A

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 25 of List III, the following new entry be inserted:—

'25-A. Vital statistics including registration of births and deaths'."

Mr. Vice-President: The question is:

"That after entry 25 of List III, the following new entry be inserted:—

"25-A. Vital statistics including registration of births and deaths"

The motion was adopted.

Entry 25A was added to the Concurrent List.

Entry 26

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

"That for entry 26 of List III the following entry be substituted:—

'26. Welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pensions and maternity benefits'."

Mr. Vice-President: I now place amendment No. 132 before the House The question is:

"That for entry 26 of List III, the following entry be substituted:—

'26. Welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation, invalidity and old age pensions and maternity benefits'."

The amendment was adopted.

Entry 26, as amended, was added to the Concurrent List.

New Entry 26-A

Mr. Vice-President: Now Dr. Deshmukh may move his new item 26-A.

Dr. P. S. Deshmukh: Sir, I move:

"That in amendment No. 133 of List I (Sixth Week), after the proposed new entry 26-A of List III, the following new entry be added:—

'26-B. Welfare of peasants, farmers and agriculturists of all sorts'."

Mr. Vice-President: I am sorry. I should have first requested Dr. Ambedkar to move his amendment regarding entry 26-A.—amendment No. 133. After that you may move your new entry.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 26 of List III, the following entry be inserted:—

'26-A Social insurance and social security'."

Mr. Vice-President: I do not think there is any amendment to this. I put it to the House. The question is :

"That after entry 26 of List III, the following entry be inserted :—

26-A. Social insurance and social security'."

The motion was adopted.

Entry 26A was added to the Concurrent List.

New Entry 26-B

Mr. Vice-President: Now Dr. Deshmukh may move his amendment No. 250.

Dr. P. S. Deshmukh: Sir, I move :

"That in amendment No. 133 of List I (Sixth Week), after the proposed new entry 26A of List III, the following new entry be added :—

'26-B. Welfare of peasants, farmers and agriculturists of all sorts'."

Sir, it is really unfortunate that it should be necessary to remind the House regarding the welfare of this section of our people and to bring forward an amendment to this effect. India is known to be and is still proclaimed to be the land of agriculturists, where the agriculturists predominate, not only by numbers, but also by the importance of the interest they serve. It is this class of persons who are the real and legitimate masters of India; and yet their welfare is the concern of nobody. There can be only two explanations for this. Either that it is a colossal responsibility, which no one is capable of looking after or, that it is so unimportant that there is no necessity for any specific provision, no need of any special effort nor any specific entry in our Constitution required.

Sir, I am really surprised and cannot suppress my sense of utter dissatisfaction of the way in which the Drafting Committee seems to have made up its mind on many matters of very vital importance and the attitude with which it looks at all of them. I think they are suffering from an obsession, and from a certain false conviction, as if these are the very people who are going to be perpetually in power, that there is going to be no other side to the question, and that these entries are not capable of being interpreted in more than one way. God forbid, but they may themselves have to rue the day and repent the power they are giving to the President and progressively reducing the sovereignty of Parliament every day. It may be that they do not continue in power for long, and when other people come and sit on judgment and exercise those very powers, these may be the very people probably, who will have to resort to black flag processions and protests and walk-outs in Parliament. I would not be surprised if this happens. At the present moment their attitude is so obstinate. I am sorry it is not one of compromise, not one of adjustment, but one of resisting each and every new suggestion and in this case the inclusion of any new entry. Even the suggestion to include an entry for the protection of children was so strongly resisted; one regrets to have to say, by having recourse to such far-fetched arguments. Dr. Ambedkar flung the same arguments in my face which I had myself put forward before and which he then refused to accept. The interpretation of entry 6 which he has given now is exactly the same as I had advanced yesterday. Then he said infants and minors covered every thing. Now he says children cannot appropriately even be mentioned along with infants. That is very curious very dissappointing, but I hope that so far as this amendment of mine is concerned....

Mr. Vice-President: We are not dealing with entry 6, but with entry 26.

Dr. P. S. Deshmukh: I have come back to entry 26, Sir. I hope that so far as this amendment is concerned, the Honourable Doctor will take up a different attitude.

[Dr. P. S. Deshmukh]

It is very necessary to have this amendment, because it is a matter of concrete fact that the welfare of peasants and farmers seems to be the concern of none. But look at the case of labour. From the time we have had special labour representation, from the time we have had labour representatives and labour Ministers, the welafre of the labourers has been an integral part of the labour portfolio and of our administration. Labourers form only a small number compared to agriculturists, but still we are solicitous that there should be hospitals for them, air-conditioned factories for them, provision for their medical relief, sanitation and all these things. And this huge mass of humanity, the agriculturists, on whose sweat all of us prosper live and maintain ourselves, for these persons, not a single welfare officer has yet been appointed I am sorry to say—and I am glad also, in a way—that I was the first, as a member of the Standing Committee for Agriculture at the Centre to press that the Ministry of Agriculture at the Centre also should include in it the welfare of agriculturists. That suggestion I learnt went to the Law Ministry—I do not know what the wonderful Law Ministry has to do with it—and they appear to have given an interpretation that it cannot form part of the Ministry of Agriculture of the Centre, because the subject 'agriculture' was a provincial subject.

These are the difficulties and as the Honourable Dr. Ambedkar knows them fully, I hope he will rather err on the side of having more entries than having less, I hope even now he will consider the matter with a sympathetic heart and be prepared to accept this amendment—although I have very little hope as I have seen him advance most wonderful arguments such as when he said that the welfare of children can be included in the Police list—the strangest and the most surprising argument that could be used. But he is in power and he has got the authority and the backing of the whole House and whatever he says is law. Even so, I would request him to concede a little and err on the side of having even a superfluous entry, since so many Members of the House feel so strongly about it, and not turn down the suggestion.

I hope he will look at this entry from that point of view I have found that it is not included anywhere. Nowhere has it been considered or regarded as the duty of the agriculture Minister to look specifically to the welfare of the peasants and farmers. And nobody can gainsay the fact that the education of the labourers is better, their sanitation is better, that their welfare is better looked after than those of the innumerable peasants and farmers in our villages That is simply because so much has been done for the former, but hardly any thing has been done for the latter. It might be said that the whole Government after all, is directing its attention to them. But if you think that for a few million labourers, special welfare officers are necessary, why not have at least a few more of such officers for the farmers and peasants who will at least tell you from time to time what is necessary? The situation is tragic and I feel nothing will be lost by making a provision here by which the State and the Legislature will be made responsible for the welfare of the peasants and agriculturists in a special way. I am certain that if we had some officers of this nature, the condition of the agriculturists would not have remained what it is. We have appointed welfare officers even for Scheduled Castes. Why did we do it? Because we know that they suffer from special and very serious handicaps.

Shri S. Nagappa (Madras: General): Sir, my honourable Friend says, "We have appointed labour officers even for Scheduled Castes." Only Scheduled Castes require those officers. Why should he use that word "even"? I take objection to that word: he should withdraw it.

Dr. P. S. Deshmukh: These special officers are only for special classes of people.

Shri S. Nagappa: They, the Scheduled Castes, are the people who require them.

Dr. P. S. Deshmukh: If they are appointed only for the Scheduled Castes, these officers have certainly contributed to the welfare and progress of the Scheduled Castes If they could help the Scheduled Castes....

Mr. Vice-President: The honourable Member has already exceeded his time

Dr. P. S. Deshmukh: All right, Sir. If the Scheduled Castes could be helped and their uplift secured, may be even in the smallest of measures by the appointment of these officers, why not the same be done so far as the peasants, the farmers and agriculturists are concerned? We know they too are handicapped for want of education, for want of sanitation and have innumerable other difficulties to face If it was possible for these Ministries to take account of their condition and look after the welfare of the peasants, much more progress than what we find today would have been achieved.

Sir, I do not wish to take more time, but that does not mean that I have not other arguments by which to convince the somewhat unconvinceable Dr. Ambedkar. But I hope that so far as this entry is concerned, he will be sympathetic and accept my amendment because as a matter of fact this is a thing which is not regarded as the legitimate duty by any of the Ministers for Agriculture and I have heard at least the Honourable Minister for Agriculture at the centre say that the provisions of the Government of India Act come in their way. That lack of provisions could have reference to nothing else except this Schedule. From that point of view, Sir, I think the entry is absolutely necessary.

Shri R. K. Sidhva (C. P. & Berar-General): Sir, I do not think the idea here is to redress the grievances of labour or of agriculture. I only want to know from Dr. Ambedkar whether—in entry 26, 'Welfare of labour'— whether "labour" includes agriculturists and peasants or only industrial labours. As I have understood the term, 'labour' means industrial labour and not agricultural. If that is so, I wholeheartedly support Dr. Deshmukh's amendment.

Sir, if you enact legislation for industrial labour, you cannot exclude agricultural labour. Therefore, peasants and farmers must be included either in entry 26 or in a separate entry as Dr. Deshmukh has suggested The peasants are the backbone of the country. We cannot look after the welfare of only industrial labour which is vocal and whose grievances could be heard and redressed by Government; we cannot certainly ignore the peasants who are not vocal and who are not well organised. I personally feel that this labour legislation should be in List I. I know that being in the Concurrent List, each Province will have its own legislation. At present Bombay has enacted legislation which is in conflict with that of U.P., and U.P.'s legislation is in conflict with that of Bengal. If there had been a central labour organisation, I am quite confident that the condition of labourers would have been different.

I, therefore, even go to the length of saying that labour legislation of all classes should be entered in List I: but if that is not possible, I certainly feel, Sir, that you cannot under any circumstances ignore that section of labour known as agricultural labour, the peasants, the farmers etc. You are particularly mentioning industrial labour and giving it a place in the Constitution. How will it be understood? It will be understood that the House ignored

[Shri R. K. Sidhva]

the peasants when they were giving a preference to industrial labour. Because labour can make tremendous noise and approach the Ministers and Government and get their grievances redressed, this has been done. It is most unfair. I therefore strongly support the amendment moved by Dr. Deshmukh, unless my friend Dr Ambedkar is prepared to satisfy us that 'labour' includes agricultural labour also. If he by any means wants to convince the House that it does include agricultural labour, I am prepared to accept his wording, and oppose Dr. Deshmukh's, amendment.

Mr. Nazirudddin Ahmad : Mr. Vice-President, I beg to support the amendment moved by Dr. Deshmukh. The cause of the peasants, farmers and agriculturists is going by default. So far as industrial labour is concerned, that is well cared for. In fact, they are the pampared children of the Government But so far as agricultural labourers are concerned and the peasants, farmers and agriculturists, they are being sacrificed at every step. There are the capitalists at the top, there is the labour at the bottom and the middle classes between the two are going to be squeezed out of existence. This entry, if accepted, will at least make it incumbent on the part of the Government to look into their case, to frame adequate legislation and to chalk out an administrative programme. I submit that this subject is highly important and an entry to this effect will cause no harm—it will draw attention of Government and of the Legislature to the need for focussing Government and public attention on this subject. So, from this point of view, this entry should be accepted.

Chaudhri Ranbir Singh : (East Punjab : General) : *[Mr. Vice-President, I support the amendment moved by Dr. Deshmukh. If you compare the present conditions of workers with those of the agriculturists you will find a glaring difference between the two. We are going to include in the Draft Constitution an exclusive clause relating to Labour, which lays down that if there be even twenty-five children having the same language, the State shall provide them with schooling facilities. But in contrast to this, no school or hospital facilities are provided for the children of millions of agriculturists. I have all sympathy for such brethren as have migrated from West Punjab or other regions. School and hospital amenities should be provided for them and their children. I am second to none here in supporting their cause. But it would be a pity if no facilities with regards to schools and hospitals are provided for the children of agriculturists. It is not a question of merely a single entry; rather, I say it is a question of life and death for the peasants. If this item is included in the list it will offer them some hope and consolation. Millions and millions of peasants of India are looking today to you. I mean, to the Members of this House with the expectation that the new Constitution would certainly contain some specific provision for their welfare and that when it comes into force they will be benefited. If you do not include in the Constitution any specific provision for their welfare, it will give them a very cruel disappointment, the extent of which, perhaps, you cannot imagine.

I, therefore, without taking any more time of the House, lend my wholehearted support to the amendment and hope that Members of the House who have to approach the electorates for the coming election will keep their future in view].

The Honourable Dr. B. R. Ambedkar : Sir, may I explain ? There seems to be a certain amount of confusion and misunderstanding about the entries in the List. With regard to my Friend Dr. Deshmukh's amendment, he wants welfare of peasants, farmers and agriculturists of all sorts. Well, I would like to have some kind of a clear conception of what these omnibus words, "agri-

*[ ] Translation of Hindustani speeches.

culturists of all sorts" mean. Does he want that the State should also undertake the welfare of zamindars who pay Rs. 5 lakhs as land revenue?

Shri R. K. Sidhva: You can drop those words.

The Honourable Dr. B. R. Ambedkar: It will also include *malguzars*. Before I accept any entry, I must have in my mind a clear and consistent idea as to what the words mean. The word "agriculturists" has no precise meaning. It may mean a rack-renter. It may mean a person who is actually a cultivator. It may mean a person who has got two acres. It may also mean a person who has five thousand acres, or five lakhs acres.

Dr. P. S. Deshmukh: I am prepared to omit that particular expression.

The Honourable Dr. B. R. Ambedkar: That is one difficulty I find.

The second point is my Friend Dr. Deshmukh does not seem to pay much attention to the different entries and what they mean. So far as agriculture is concerned, we have got two specific entries in List II—No. 21 which is Agriculture and No. 24 which is Land. If he were to refer to these two entries he will find..

Dr. P. S. Deshmukh: What fallacious arguments are being advanced! For that matter, Labour welfare is a specific entry and yet you wanted separate provision for their vocational training? Do not advance fallacious arguments.

The Honourable Dr. B. R. Ambedkar: It is not my business to answer questions relating to the faults of administrations. I am only explaining what the entries mean. As I said, we have already got two entries in List II. Entry 21 is there for Agriculture "including agricultural education and research, protection against pests and prevention of plant diseases".

Dr. P. S. Deshmukh: Then why do you want "welfare of labour"?

The Honourable Dr. B. R. Ambedkar: Why can't you have some patience? I know my job. Do you mean to say I do not know my job? I certainly know my job.

Dr. P. S. Deshmukh: I know your attitude also. Do not try to fool everybody!

The Honourable Dr. B. R. Ambedkar: There is already an entry which will empower any State to do any kind of welfare work not merely with regard to agriculture but with regard to agriculturists as well. In addition to that we have entry 24 where it is provided that laws may be made with regard to "rights in or over land, land tenures including the relation of land-lord and tenant". All the economic interests of the peasants can be dealt with under this entry. Therefore, so far as entries are concerned there is nothing that is wanting to enable the Provincial Governments to act in the matter of welfare of agricultural classes.

Then I come to the question raised by my Friend Mr. Sidhva which, I think, is a very legitimate question. Hill question was what was the connotation of the word 'labour' and he asked me a very definite question whether 'labour' meant both industrial as well as agricultural labour. I think that was his question. My answer is emphatically that it includes both kinds of labour. The entry is not intended to limit itself to industrial labour. Any kind of welfare work relating to labour, whether the labour is industrial labour or agricultural labour, will be open to be undertaken either by the Centre or by the Province under entry 26.

Similarly, conditions of work, provident funds, employers' liability workmen's compensation, health insurance, including invalidity pensions—all these

[Dr. B. R. Ambedkar]

matters—would be open to all sorts of labour, whether it is industrial labour or agricultural labour. Therefore, so far as this entry, No. 26, is concerned, it is in no sense limited to industrial labour and therefore the kind of amendment which has been proposed by my Friend Dr. Deshmukh is absolutely unnecessary, besides its being—what I might call—vague and indefinite, to which no legal connotation can be given.

Dr. P. S. Deshmukh: Is there no class of persons except agricultural labour in this country? Has Dr. Ambedkar ever heard of a class called "farmers" and "peasants"?

The Honourable Dr. B. R. Ambedkar: Their welfare will be attended to under entries 21 and 24 of the Provincial List, as I have already explained.

Mr. Vice-President: I now place amendment No. 250 (Dr. Deshmukh's amendment) before the House.

The question is:

"That in amendment No. 133 of List I (Sixth Week), after the proposed new entry 26A of List III, the following new entry be added:—

'26-B Welfare of peasants, farmers and agriculturists of all sorts'."

The motion was negatived.

Dr. P. S. Deshmukh: Sir, I demand a division.

Mr. Vice-President: I shall ask Members to hold up their hands.

The Assembly divided by show of hands.

Ayes: 26

Noes: 42

The amendment was negatived.

Entry 27

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 27 of List III, the following entry be substituted:—

'27. Employment and unemployment.'"

Mr. President: The question is:

"That for entry 27 of List III, the following entry be substituted:—

'27. Employment and unemployment.'"

The amendment was adopted.

Entry 27, as amended, was added to the Concurrent List.

Entry 28

Mr. Vice-President: There are no amendments to entry 28.

Shri S. Nagappa: Before it is put to vote I want to say a few words.

Mr. Vice-President: The honourable Member will finish in three minutes.

Shri S. Nagappa: Mr. Vice-President, Sir, the term "trade union" denotes, as far as its currency goes, only those as regards industrial labour. The Honourable Dr. Ambedkar was kind enough to say that the word "labour" includes agricultural labour also. When this article was passed in this Constitution, I gave an amendment that "labour" should mean also agricultural labour. He was kind enough to accept that and to say definitely that it would mean agricultural and other classes of workers.

Again, with regard to "labour disputes" there may be a dispute among the labourers themselves. My friends who have been good enough to vote for

agricultural labour now have misunderstood the position they do not draw a line or difference between agriculturist and agricultural labour. The agriculturist also does work hard. But for whom does he work? For himself. On the other hand agricultural labour labours for the sake of others. The agricultural labourer is a wage-earner, whereas the agriculturist labours for himself and acquires the property for himself. There is a difference between agriculturist and agricultural labourer which should be understood. Now, if my friends are reasonable and if they come forward and press this august Body to include a clause to defend that agricultural labour and to give it all sorts of privileges, I am one with them Otherwise I cannot understand why the agriculturist should be given this sort of facility After all agriculture, or land has been given by nature to all the children of the soil But by their greediness and avocation somehow or other the agriculturists have grabbed it. Now they want still more facilities to be given to them. It is unjust and going out of the way to agree to it. I do not think the agriculturists require any such protection in this country. I do not think any agriculturist has a right over the land He has only the right to cultivate the land and pay land-revenue to the State.

Mr. Vice-President: I am afraid the honourable Member has exceeded the time-limit.

Shri P. S. Nagappa: This is an important thing. About 70 per cent of the population of this country are agricultural labourers.

Dr. P. S. Deshmukh: It has nothing to do with agricultural labour.

Shri S. Nagappa: It has everything to do with agricultural labour. If you organise them into a union they will get the right to claim Government support and the Government will be bound to give it. So far as the agricultural labourer is concerned, it is not easy to organise it. Almost all agricultural labourers are illiterate and ignorant people. I think it is the duty of the future Government to come forward and do what is necessary for these people. I hope the Government in future will be composed of these very people under the system of adult suffrage They will be the right royal owners and wield power hereafter. But I think it will be the duty of every sane, just and benign Government to see that these people are given their just rights.

Mr. Vice-President: I will now put the question.

The Honourable Dr. B. R. Ambedkar: I want to say a word. The words "trade union" with regard to welfare of labour have a very wide connotation and may include trade unions not only of industrial organisations but may also include trade unions of agricultural labour. That being so, I am rather doubtful whether by introducing the word 'industrial' here, we are not trying to limit the scope and meaning of the term 'trade union'. But I am not moving any amendment. I would like to reserve an opportunity to the Drafting Committee to examine the term and to consider this. I want the entry to stand as it is now. I have expressed my doubt that in view of the wide connotation of 'trade union', a part of the entry may require amendment.

Mr. Vice-President: Subject to what Dr. Ambedkar says, I put entry 28 to vote. The question is :

"That entry 28 stand part of List III.

The motion was adopted.

Entry 28 was added to the Concurrent List.

New Entry 28-A

The Honourable Dr. B. R. Ambedkar: I move :

"That after entry 28 of List III, the following new entry be inserted :—
'28-A. Commercial and industrial monopolies, combines and trusts'."

Dr. P. S. Deshmukh: I am not moving my amendment.

Mr. Vice-President: I will put the amendment to vote. The question is:

"That after entry 28 of List III, the following entry be inserted:—

'28-A. Commercial and industrial monopolies, combines and trusts.'"

The motion was adopted.

Entry 28A was added to the Concurrent List.

Entry 29

Mr. Vice-President: As there is no amendment to entry 29, I will put it to vote.

Entry 29 was added to the Concurrent List.

Dr. P. S. Deshmukh: Sir, a part of this amendment of mine was very kindly accepted yesterday. But, so far as the wording is concerned, we have yet to decide it. When we were discussing the State List, it was decided that we should transfer 'adulteration food' to List III and therefore it would probably be relevant if we take up the wording of this entry at this stage. At the same time I would like that the first amendment of mine should also be accepted.

The Honourable Dr. B. R. Ambedkar: May I draw attention to the fact that the introduction of entry 29A has already been covered by entry 61A in List I which has been passed by the House in much wider terms? The words used are "goods" which will include agricultural products, etc. Similarly 29B was accepted yesterday on the motion of Mr. Maitra and it is now entry 20A in List III.

Dr. P. S. Deshmukh: I accept the first part of my friend's suggestion. I do not move for adding 29A. But I am not clear whether it is the mere transposition of the entry as it stood in List II that is proposed?

The Honourable Dr. B. R. Ambedkar: It is transferred to Concurrent List as 20A. That was the motion passed by the House.

Dr. P. S. Deshmukh: Would it not be better to enlarge its scope?

The Honourable Dr. B. R. Ambedkar: 'Adulteration of food' includes everything, I think.

Dr. P. S. Deshmukh: If that is so, I do not move this amendment.

Mr. Vice-President: Then I will put entries 30 and 31 to vote.

Entries 30 and 31 were added to the Concurrent List.

New Entry 31-*A*

The Honourable Dr. B. R. Ambedkar: I move:

"That after entry 31, the following new entry be inserted:—

'31-A. Ports, subject to the provisions of List I with respect to major ports'."

Mr. Vice-President: The question is:

"That after entry 31, the following new entry be inserted:—

'31-A. Ports, subject to the provisions of List I with respect to major ports'."

The motion was adopted.

Entry 31A was added to the Concurrent List.

Entry 32

The Honourable Dr. B. R. Ambedkar: I move:

"That entry 32 of List III be deleted."

This has been transferred to List I.

Mr. Vice-President: The question is:

"That entry 32 be deleted."

The motion was adopted.

Entry 32 was deleted from the Concurrent List.

Entry 33

The Honourable Dr. B. R. Ambedkar: I move:

"That entry 33 of List III be deleted."

As I said, this also has been transferred to List I.

Mr. Vice-President: The question is:

"That entry 33 be deleted."

The motion was adopted.

Entry 33 was deleted from the Concurrent List.

Entries 33A and 33B

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 33 of List III, the following new entries be inserted:—

'33A Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

33B. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan."

(Amendment No. 296 was not moved.)

Mr. Vice-President: The question is:

"That after entry 33 of List III, the following new entries be inserted:—

'33A. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

33B. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan'."

The motion was adopted.

Entries 33A and 33B were added to the Concurrent List.

Entry 34

Shri Brajeshwar Prasad: There is an amendment to this. After that amendment is moved, I would like to speak on this entry, Sir.

Shrimati Purnima Banerjee (United Provinces: General): Sir, I move:

"That for entry 34 of List III, the following be substituted:—

'34. Economic, educational and social planning.'"

[Shrimati Purnima Banerjee]

The reason why I have added the word "educational" is that, I think, most Members of this House would agree with me that social planning is something quite separate from educational planning and does not include the connotation of educational planning. Social planning means planning for society which may change the structure of society upon a completely different basis. It really relates to economic planning. I therefore hope that the Drafting Committee, particularly Dr. Ambedkar, will see the difficulty which I find. Under the Union List, the Centre has taken powers to lay down standards of education. By entry 40 it has taken upon itself the task of running important educational institutions. By entry 40A they are going to take over scientific and technical institutions. Under 57A they are taking over co-ordination and maintenance of educational standards in institutions for higher education. If all these the Union seeks to do, I am certain that the Union should also have powers for educational planning all over the provinces.

While discussing the Union List, some friends went to the extent of saying that university education should be entirely a Union subject. I do not agree with them to that extent, but I do think that the Centre should plan education for all the provinces, and because I feel that economic and social planning does not include educational planning specifically, I seek to move my amendment. I, therefore, suggest that either the word "educational" should be included in this entry, or educational planning should be provided for in a separate entry, whichever may be found convenient by Dr. Ambedkar. I hope Dr. Ambedkar will see our difficulty and tell us whether he does not agree that social and economic planning have got a particular meaning and actually educational planning does not form a major part of it even though it may be a minor part of it, or whether he considers that under this entry the Union has got power to plan education throughout the country.

Shri Brajeshwar Prasad: Mr. Vice-President, Sir, I rise to support the amendment moved by my sister, Shrimati Purnima Banerjee. It is only in the sphere of higher education that the Centre has been vested with the power of planning. This amendment purports to vest the Government of India with the power of planning in the sphere of education without any restriction or reservation. This power must be vested in the hands of the Centre if our nation is to advance rapidly. It ought to be the duty of the Centre to see that wrong type of education is not instilled in the minds of the young in the primary and secondary stages of education. The impressions of this period of primary and secondary education are not likely to be erased from the minds of the young, whatever we may do in the university stage to wipe out the impressions of the wrong type of education imparted during the primary and secondary stages of education. There is a real danger that provincial governments imbued with the spirit of provincialism may be tempted to poison the minds of the young. If an all-India outlook is to be developed, educational planning must be placed in the Concurrent List so that the Centre may have the power to plan our education on a sound and secular basis.

Sir, there is another aspect of the question to which I would like to draw the attention of the House. Entry 34 reads thus:

"Economic and Social planning."

What about political planning?

Some Honourable Member: It will be too disastrous.

The Honourable Dr. B. R. Ambedkar: It can be done by way of amendment of the Constitution.

Shri Brajeshwar Prasad: Let me continue. There is need for political planning as well. Plato in his Republic advocated a rigid system of discipline

and training for philosopher Kings. We must also produce rulers and administrators. There is dearth of leadership in the country. An attempt was made in Nazi Germany to train rulers and administrators on a planned basis. A similar attempt should be made in this country also. Public Service Commission examinations are not enough.

An Honourable Member: Do you want Nazism here?

Shri Brajeshwar Prasad: It is easy to label ideas. Ideas should not be labelled. Labels and Trade marks are meant for Post Offices and Government Departments.

There should be a similar attempt at planning in all the spheres of our political life. Our foreign policy must be planned. I am glad that my honourable Friend, Mr. Keshkar, is present here today. The distant and immediate goals must be laid down in clear and explicit terms. There is need for the establishment of an Institute for the study of geopolitics in this country. The whole gamut of our political life must be systematically and scientifically planned. Political planning is as essential as economic and social planning. Every step taken in the political sphere must be on a planned basis.

Shri Rohini Kumar Chaudhuri (Assam: General)*: Sir, it seems to me to be an age since I spoke last. It is not that my tongue does not reach so long, but I loathe to speak in this House lest I impede the progress of the work here, but today the heart-throbbing speech of my honourable Friend Shrimati Purnima Banerji has aroused me from my slumbers. I come here not to appreciate the speech of my honourable Friend Shrimati Purnima Banerji, but to oppose it with all the might that I posses. Sir, we have come nearly to the end of these Lists, I, II and III and what do we find? What we find is that the position of the States are no longer States or Provinces, but they have been reduced to the position of municipal and other local bodies. All the powers have been taken away either in List I or List No. 3. It reminds me of the words in the Upanishad:

पूर्णस्य पूर्णमादाय
पूर्णमेवावशिष्यते ।
Poornasya Poornamadaya
Poornamevavasishyate.

After having taken out everything the same fullness remains: it is as if it is a full Moon; We are taking slices of the full Moon and yet the full Moon still continues as before. That is the position to which we have arrived after going through all these lists. No power is left to the Provinces and the full Moon remains a full Moon as before.

Sir, I would draw the attention of the House to an amendment which was proposed or was tabled by my honourable Friend, Mr. Santhanam, amendment No. 3668 in which he rightly tries to delete this entry 34 altogether. It would have been much better to have dropped this entry 34 altogether. What do you mean by economic and social planning? The economic and social planning of a province or State must be left entirely to the legislature itself. Whenever there is any conflict between List II and III, the legislation which is proposed by the Centre will prevail. In that case by admitting this entry, are you not exposing the State to an interference by legislation passed by the Centre in the ordinary normal working of the State in the matter of social and economic planning? What do you mean by social and economic planning. All the subjects which have been mentioned in List II in one way or the other lead to economic planning and the result of having economic planning in List II and to have another entry here in order to give jurisdiction to the Centre to

*Speech not corrected by the Honourable Member

[Shri Rohini Kumar Chaudhuri]

interfere with such economic planning, is I think most unwise. And it is still more unwise on the part of my honourable Friend, Shrimati Purnima Banerji, to limit the powers of the State by adding the word "educational". 'Education' has been rightly left in the hands of the State. Why should the Centre in any way interefer with educational facilities? It should in the opinion of the States be given to the provinces. You want to put in "educational facilities" here, but why not put "health facilities" also? Why do you want to lay stress on education? If you agree to the amendment moved by Shrimati Purnima Banerji, I ask, why not put health facilities also which is more important than education? If the object of Shrimati Purnima Banerji is to draw pointed attention of the House to educational facilities, then why should she not think of health before education? After all, health is more important than education. Then another Member who is absolutely enamoured of artistic subjects might say that art facilities also might be put in. You can go on increasing one facility after another and take away as far as possible the powers which have been given to the State. That is the object of Shrimati Purnima Banerji and that object should be strongly disapproved of by this House and I would submit if it is possible even at this late stage the House would do well to delete entry 34 altogether.

The Honourable Dr. B. R. Ambedkar: Sir, I am very sorry but I cannot accept this amendment moved by Shrimati Purnima Banerji. The introduction of the word "education" seems to me to be quite unnecessary. The word "social" is quite big enough to include anything that relates to society as a whole except, of course, religious planning, and a contradiction would be only between 'social' and 'religious'. What the State would not be entitled to plan would be 'religion'; everything else would be open to the State.

With regard to the observations of my honourable Friend Shri Rohini Kumar Chaudhuri, I think he will realize that this entry finds a place in the Concurrent List and the State also would have the freedom to do its own planning in its own way. It is only when the Centre begins to have a plan and if that plan conflicts with the plan prepared by the State that the plan prepared by the State will have to give way and this is in no sense an encroachment upon the planning power of the State and therefore, this entry, I submit, should stand in the language in which it stands now.

Mr. Vice-President: The question is:

"That for entry 34 of List III, the following be substituted:—

'34. Economic, educational and social planning'."

The amendment was negatived.

Mr. Vice-President: The question is:

"That entry 34 stand part of List, III."

The motion was adopted.

Entry 34 was added to the Concurrent List.

Entry 34-*A*

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 34 of List III, the following new entry be inserted:—

'34A. Archaeological sites and remains.'".

This would be Concurrent.

Mr. Vice-President: The question is.

"That after entry 34 of List III, the following new entry be inserted :—

'34A. Archaeological sites and remains.'"

The motion was adopted.

Entry 34A was added to the Concurrent List.

(At this stage Mr. Vice-President vacated the Chair which was taken by Mr. President.)

Entry 35

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for entry 35 of List III, the following entry be substituted :—

'35. The principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given.'"

Mr. President: There is no amendment to this.

The question is :

"That for entry 35 of List III, the following entry be substitutd :—

'35. The principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given.'"

The amendment was adopted.

Entry 35, as amended was added to the concurrent List.

Entry 35-*A*

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That after entry 35 of List III, the following new entry be inserted :—

'35A. Trade and commerce in, and the production, supply and distribution of the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest.'"

(Amendment No. 331 was not moved.)

Mr. President: The question is :

"That after entry 35 of List III, the following entry be inserted :—

'35A. Trade and commerce in, and the production, supply and distribution of the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest.'"

The motion was adopted.

Entry 35A was added to the Concurrent List.

Entry 36

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for entry 36 of List III, the following entry be substituted :—

'36. Industries and statistics for the purposes of any of the matters specified in List II or List III.'"

Mr. President: There is no amendment.

[Mr. President]

The question is :

"That for entry 36 of List III, the following entry be substituted :—

'36. Industries and statistics for the purposes of any of the matters specified in List II or List III' "

The amendment was adopted.

Entry 36, as amended, was added to the Concurrent List.

New Entry

Mr. President : There is a new entry proposed by Pandit Govind Ballabh Pant.

(Amendment No. 144 was not moved.)

Dr. P. S. Deshmukh : Sir, I move :

"That the following new entry be added in List III .—

"Protection of children and youth from exploitation and abandonement, *vide* article of (vi).' "

Sir, I had moved similar amendments on two occasions.....

The Honourable Dr. B. R. Ambedkar : This amendment was considered along with other amendments and I gave a reply telling my friend that this matter will be considered by the Drafting Committee. He was then agreeable.

Dr. P. S. Deshmukh : My only submission is that the wording may be altered as the Drafting Committee may decide but provisionally the entry may be accepted as proposed by me. It should not merely be left to be considered by the Drafting Committee. Any wording that may be suitable may be put in; but there should be an entry which refers to the protection of children and youth from exploitation and abandonment. I hope Dr. Ambedkar will kindly accept this.

The Honourable Dr. B. R. Ambedkar : I have told my friend that if I find that the purpose which he has in mind is not covered by any of the other entries, I will do my best to introduce some such entry. I have given him that assurance.

Dr. P. S. Deshmukh : This is a question to which I and at least some Members of the House attach very considerable importance. It is only a quarter past eleven now and we have got a lot of time. If the learned Doctor would take half an hour, there could even be a recess for half an hour and we can meet again, and he can say definitely whether there is need of such entry or not. We have been discussing various entries. We have an entry for labour welfare. Still we have put in an entry for vocational training for labour. If in this case. Dr. Ambedkar came to the conclusion that in spite of the entry "Labour Welfare" being there, it was necessary specifically to provide for the vocational and technical training of the same class of persons by an independent entry. I cannot understand why he should resort to far-fetched interpretation so far as children's care is concerned. I hope, Sir, no damage will be done if we have an entry like the one I have proposed in the case of children.

The Honourable Dr. B. R. Ambedkar : I will give my best consideration to the matter. I am in entire sympathy with its object. What more can I say ?

Dr. P. S. Deshmukh : I must content myself with this assurance. I hope ultimately an entry to this effect will be introduced.

Mr. President: There are certain other amendments. Dr. Deshmukh. No. 252.

Dr. P. S. Deshmukh: Sir, I move :

"That in List III, the following new entries be added :—

(i) Regulation, control and maintenance of public houses;

or alternatively

'Regulation and control of prostitution and regulation, control and maintenance of public houses'"

Either of these two may be accepted. I do not wish to take the time of the House.....

Shri R. K. Sidhva: I might mention, Sir, that even the provincial Governments have the power to do these things.

Dr. P. S. Deshmukh: I would like to refer to the speech delivered by my honourable Friend Mr. Brajeshwar Prasad where it was pointed out that there was no specific power with the municipalities because the provinces have not enacted any law of this sort. For the sake of uniformity, and also if any State really wants to prohibit or abolish prostitution, that sort of question would not be covered by leaving it only to the interpretation of other entries. Therefore, I would suggest to Dr. Ambedkar to accept this for inclusion. If he does not, I would not like to press this too strongly.

But, the next amendment I want to press as I attach considerable importance to it.

"That in List III, the following new entry be added :—

'Establishment, and maintenance of National Farms and Parks.'"

There is a mis-print here, it should be 'parks' instead of 'farms' where it occurs for the second time. It may be said here also that this is a sort of inherent power which can be utilised under this or that entry. I think we are coming to a stage where we attach more and more importance to nationalisation of various things There is ample waste land which could be taken over and which could be utilised for co-operative farms, for national farms and parks. National marks are now regarded as a necessity, not only for the sake of providing some healthy place for recreation and for other purposes, but it has several agricultural utilities also. Not only so far as farms are concerned, but parks also where we can teach the general public and the agriculturists how to stop erosion and other things. All these things are necessities in our modern life. If we go to Amercia or other civilised countries, we will find that there are extensive farms not only maintained by the State, but maintained by the Federal Government also and they are well looked after. I think a specific mention of this sort would not be in any way harmful and it would be desirable that this entry should be accepted.

Shri Mahavir Tyagi (United Provinces : General) : May I know if the honourable Member by controlling this wants to bring into existence some permit system ?

Dr. P. S. Deshmukh: No, Sir.

Shri Mahavir Tyagi: He says control and regulation of prostitution. I have heard of food control and house control by permits. Is it the meaning of this that permits will be issued by the Government ?

Dr. P. S. Deshmukh: Yes, Sir. That is the intention. There are licensed public houses where doctors periodically visit, by which alone the evil of venereal diseases can be controlled. This is not a novel thing; this has been done

[Dr. P. S. Deshmukh]

already in many countries. If prostitution has to be there, it is necessary that it should be under State control. There should be medical examination and there should be licensing of these houses so that the evil does not spread throughout the country and extend to almost every house or to every section of society. By controlling and licensing it is intended not to allow it to expand and spread to others. I think my friend had not had the opportunity of going to France, otherwise he would have been much wiser than he appears to be.

Shri Mahavir Tyagi: I must congratulate you for your experience!

Shri Brajeshwar Prasad: Mr. President, Sir, I feel that the gravity of the situation has not been realised. As one who had to do with books but having no practical experience of France or other countries, I am in a position to say that it is such a vital thing of national concern that the Government of India must do something in this matter if the youth of the country is to be protected from moral abandonment. My Friend Shri Deshmukh spoke in the vein that probably it can be abolished or abrogated altogether. I do not agree with him on that point. Prostitution is a very old institution—as old as the hills and it cannot be abolished. The roots of this institution lie deep in our human nature. The only thing that we can do is to regulate it. The idea that there should be licenses is a perfectly scientific one and if the youth of the country is to be protected, we cannot depend upon Provincial Governments alone. I had an occasion to table a resolution similar to what Shri Deshmukh has tabled today in this House, while I was a member of the Gaya Municipality in 1938. It was ruled out of order by the President of the Board on the ground that the matter did not lie within the jurisdiction of the Municipality, and that it was a matter which required specific law empowering the Municipality by the Provincial Government.

An Honourable Member: Does the honourable Member suggest that all licenses will be issued from Delhi?

Shri Brajeshwar Prasad: When we are placing this power in the Concurrent List, it means the Centre has power to plan, regulate and see that the Provincial Government act accordingly; and if the Provincial Governments fail then the Centre steps in. The Provincial Governments have not done much in this direction. Therefore the Centre must take the responsibility on its shoulders.

Shri R. K. Sidhva: Mr. President, I was rather surprised at the attitude of Shri Brajeshwar Prasad. He says this institution is centuries old and it cannot be abolished. Prostitution in India is a disgrace and shame to us and it is regrettable that Shri Brajeshwar Prasad should advocate its continuance. I am sorry that the Provincial Governments, despite the powers that are vested in them, have not yet abolished prostitution. I know in some Provincial Governments; they have enacted acts. If the other provinces have not done, it is their fault. To say that the prostitution should be allowed on licenses is also bad. Licences are issued even today but that is not the point. It is a disgrace and shame to society that this kind of thing should be allowed to continue, I would say that the Provincial Governments must take immediate steps and I support the amendment of Dr. Deshmukh. I, however, say there is no justification for this amendment because the powers are today vested with Provincial Governments; but if Dr. Ambedkar feels there is no power, then certainly I will support it because it is an entry which really goes to improve the morality of a class of people. It is not that that class wants it but under certain circumstances this institution has remained in existence and it is high time that this is abolished and should not be encouraged. I know some provincial Governments have taken steps and some class of prostitutes have come to Government saying that they had been living on this and have been deprived of their live-

lihood. Even today I learnt that in Pakistan the Government are contemplating abolishing prostitution and I know under what conditions and in what places in the heart of the city this trade exists.

Shri Brajeshwar Prasad: Probably he is not aware of the scientific ideas on this subject. If you abolish the whole thing will go underground.

Shri R. K. Sidhva: My Friend may understand the scientific methods. He is welcome to it. I do not want he talks—about venereal diseases etc. My point is that this thing should be stopped. It is a disgrace and shame. I, therefore, state that if the powers are not complete—if Dr. Ambedkar says that —then I support this amendment. Otherwise I know the Provincial Governments do possess this power as I know there are Acts actually enacted in some of the provinces.

Seth Govind Das: (C. P. & Berar: General): *[Sir, the speech delivered by Shri Brajeshwar Prasad has been to me one of the most surprising events in my life. At a time when we are directing our efforts to raise the moral standard of society and want to create a new social order based on morality, I am surprised to find that there are even now persons amongst us who want to retain the institution of prostitutes. We, who have worked under the leadership of Mahatma Gandhi for the last thirty years, had formed new ideas about the standard of morality and had expected that under the new Constitution to be framed after independence, we would try to create a new moral order in which such institutions as prostitutes, bars and gambling would become extinct. But I am surprised to find that even today there are persons amongst us who favour the retention of these institutions. I would like to request Dr. Ambedkar to ensure that whatever items we pass here shall be such as are rooted in morality and therefore possess survival value. He should also see to it that the new social order which we are going to create may serve as a model not only to us but to the whole of the world.]

Shri Brajeshwar Prasad: On a point of personal explanation.

Mr. President: It is not necessary. We all understand what you said Everybody has put his own interpretation on that.

Mr. Nazirnddin Ahmad: Sir,....

An Honourable Member: Closure.

Mr. President: I have already called Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: One speaker has just now given out that prostitution should be entirely prohibited. With regard to the point of sentiment behind it, not only my humble self but the whole House will agree; but the question is, is it practical and is it desirable?

The Honourable Dr. B. R. Ambedkar: Is this a question which we need debate? The only question is whether there is power with the State or with the Centre or should it be Concurrent. How the power is to be exercised whether to permit partially or prohibit completely is a matter for each Legislature, which we must leave to the legislature.

Mr. Naziruddin Ahmad: My submission is that it is relevant. The amendment provides for "regulation and control of prostitution." One honourable Member says you must entirely stop prostitution and regulation and control are undesirable. I submit this is neither undesirable nor impracticable. You cannot stop prostitution. You can only regulate and control. You cannot prohibit and if you do it, you close a safety valve for society. The objection is

*[ ] Translation of Hindustani speech.

[Mr. Naziruddin Ahmad]

due to impractical idealism. I suggest that there is nothing inherently or practically wrong in the amendment. That was the reason why I spoke.

Shri V. I. Muniswamy Pillay (Madras : General) : I wish to speak, Sir.

Mr. President : Closure has been moved. The question is :

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, there is enough power given to the State under these entries to regulate these matters, namely, either for dealing with public houses or having some large-scale farming. If my Friend, Dr. Deshmukh were to refer to List II, entry 1, which deals with public order, and entry 4 which deals with police and the Concurrent entry which deals with criminal law, he will find that there is more than enough power given to regulate these matters. If he were to refer to entry 24 dealing with land, entry 21 dealing with agriculture in the State List, he will find that there is more than enough power in the States to have State farms or whatever they like.

Therefore, the only question that remains is this, whether this subject relating to the creation of farms and the regulation of public houses should be in the Concurrent List. In my judgment, the criterion to decide whether this matter should be in the Concurrent List or in the State List is whether these matters are of all-India concern or of purely local concern. In my judgment prostitution, the regulation of public houses, and creation of farms are matters of local concern and it is therefore better to leave them to be dealt with by the States. They have got more than enough power for that. I do not know how the Centre can do the job. The Centre has not got any agricultural land. If the Centre wants to establish a farm, the Centre has to acquire the property from the farmers. The same thing could be done by the State. I do not see what purpose would be served by having these entries in the Concurrent List; and it must also be remembered that our States which we call States are far bigger than many States in Europe.

Shrimati G. Durgabai : Will Dr. Ambedkar make one point clear ? The entry speaks of regulation or prohibition of prostitution. I do not understand the meaning of "regulation" here, and I think it should be complete prohibition.

The Honourable Dr. B. R. Ambedkar : The States can regulate them and also prohibit them. The States can do it.

Mr. President : Then I put the amendments. The question is :

"That in List III, the following new entries be added :—

(i) Regulation, control and maintenance of public houses."

The amendment was negatived.

Mr. President : Then I put the second new entry—

"(ii) Regulation and control of prostitution and regulation, control and maintenance of public houses"

The amendment was negatived.

Mr. President : Then I put the third new entry—

"(iii) Establishment, maintenance of National Parks and Farms."

The amendment was negatived.

Mr. President : Next is amendment No. 253 of Sardar Hukam Singh.

(Amendments Nos. 253 and 325 were not moved.)

These are all the new entries of which I have notice, and so we complete the Third List.

New Entry 88-A

Mr. President: The House will remember that a question of order was raised with regard to an entry, and we had to pass over it, the other day. The question has been raised whether an entry in List I of Schedule VII to the following effect is in order, namely,

'88A Taxes on newspapers including advertisements published therein

It has been argued that this entry, being inconsistent with article 13 which lays down that all citizens shall have the right to freedom of speech and expression, is out of order. It is argued that the only limitation to this fundamental right is the one laid down in clause (2) of article 13 and the proposed entry not coming under that is out of order. Reliance has been placed in support of this view on a decision of the Supreme Court of the United States in Alice Lee Grosjean *V* American Press Company, which laid down that an Act of the Legislature of Louisiana levying a licence tax of 2 per cent. of the gross receipts of revenues obtained by newspapers, magazines and periodical publications having a circulation of more than 20,000 copies per week was invalid as violating the Federal Constitution, and abridging the freedom of the press The question which I have to decide is whether an entry in Schedule VII, List I or for that matter in any of the lists of the nature mentioned above is in order I am not concerned with the question as to whether a particular legislation based on that entry is *ultra vires* as violating the rights given in section 13 That will be a matter for courts to decide. The entry proposed only gives the right to the Union Legislature to impose a tax on newspapers including advertisements published therein. Article 13 does not lay down anywhere that newspapers including advertisements published therein shall not be taxed. The entry therefore, appears to be not inconsistent with article 13. Provision for taxation has to be considered independently and on its own merit apart from the question of the fundamental right to speech and expression. Even the decision of the Supreme Court of the United States on which reliance has been placed does not exclude all taxation. It expressly lays down "It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the Government. But this is not an ordinary form of tax but one single in kind with a long history of hostile misuse against the freedom of the press". Further the judgment says—"The tax here involved is bad not because it takes money from the pockets of the appellents. If that were all a wholly different question would be presented. It is bad because in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees". The particular tax was levied on papers having a circulation of more than 20,000 copies per week. There was a competition between such papers and others having a smaller circulation, and the judges held that this discrimination against newspapers having circulation of more than 20,000 operated as restraint in a double sense. First its effect was to curtail the amount of revenue and second its direct tendency was to restrict circulation. It will be a question in any particular case, if it arises to be decided, whether a particular tax operates as a curtailment of the right of freedom of speech and expression and it cannot be laid down that there can be no tax on newspapers or advertisements published therein. The entry as proposed is therefore in order.

We shall take up that entry now.

Shri Deshbandhu Gupta (Delhi) : Sir, in view of the fact that the matter is now under the consideration of the Drafting Committee, I request it may be taken up later.

The Honourable Dr. B. R. Ambedkar : I am prepared to accept the amendment moved by the 58 gentlemen.

Shri Mahavir Tyagi : May I inform you, Sir, that a large section of the House would like the deletion of the entry and so you might kindly agree to hold over the item for further consideration of the Drafting Committee ?

The Honourable Dr. B. R. Ambedkar : Sir, if the mover of this amendment cares to move it, I am prepared to accept it.

Shri Ramnath Goenka (Madras : General) : Sir, the other day, you requested Dr. Ambedkar to be ready with his alternative proposal.

The Honourable Dr. B. R. Ambedkar : He did not say anything of that kind.

Shri Ramnath Goenka : This item will take some time, Sir.

The Honourable Dr. B. R. Ambedkar : Sir, the amendment is here.

Shri Ramnath Goenka : What I suggest is that we could get in touch with the Drafting Committee and come to a formula acceptable to all.

The Honourable Dr. B. R. Ambedkar : This is a formula which you have proposed.

Shri Ramnath Goenka : We will have the benefit of consultation with you.

The Honourable Dr. B. R. Ambedkar : Sir, I am prepared to accept entry 88A if they move it.

Shri S. Nagappa : it has been moved.

The Honourable Dr. B. R. Ambedkar : It has not been moved yet. That was entry 88A in List I—not in the State List. Objection was taken that it was not in order and it was not moved. Therefore, if Mr. Goenka wishes to move it.....

Shri Deshbandhu Gupta : Sir, I formally move that the matter be held over.

The Honourable Dr. B. R. Ambedkar : Why ? We tried to finish the whole list. That is why we hurried up, not allowing many Members to speak to the extent they used to. Now that we have got a clear-cut amendment signed by many people I do not see why it should be held over.

Shri Deshbandhu Gupta : It is not in a clear-cut form as Dr. Ambedkar himself saw something objectionable in the draft and was prepared to help us with a better draft.

Mr. President : As I understood Dr. Ambedkar the other day, the only question was whether it should be in List I or List II. He said the question of policy had to be decided.

The Honourable Dr. B. R. Ambedkar : If you want to put it in List I, I am prepared to accept it.

Mr. President : So far as the particular place where this entry will go, that is to be left to the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : The whole trouble is this. This entry was originally in List II. Their objection was that it should not be in List II but it should be in this form in List I. I am prepared to accept that if they want it.

Shri V. I. Muniswamy Pillay : Sir, may I move the amendment ? I beg to move :

"That with reference to amendments Nos. 3552 and 3588 of the List of Amendments after entry 88 of List I the following new entry be inserted :—

'88A Taxes on newspapers including advertisements published therein.'"

I do not think many words are required from me on this amendment since my honourable Friend Mr. Goenka has made the whole position clear. Sir, I move.

Shri Deshbandhu Gupta: Sir, on a point of information, may I inquire as to what will happen to entry No. 58 in the second List which was held over yesterday ?

Mr. President: It would go.

Shri Deshbandhu Gupta: It was held over yesterday because these two go together.

Mr. President: It was held over because there was an amendment which wanted to transfer this to List II and if it is passed in List I then that amendment will be out of order.

Shri Deshbandhu Gupta: There are two amendments. There is one that this may be transferred to List I and there is another defining the scope of entry 58. The amendment was held over yesterday because this matter was not before the House at that time. They must go together.

The Honourable Dr. B. R. Ambedkar: I am not bound to accept it. They do not go together. I refuse to accept that.

Mr. President: There was an amendment, No. 122, consideration of which was held over because of this amendment. If the amendment which has been just moved is accepted then in that case amendment No. 122 becomes out of order, and the only proposition before the House will be Dr. Ambedkar's proposition namely amendment No. 121.

Shri Ramnath Goenka: Will there not be a consequential amendment in List II ? In the State List certain powers are given to the States for taxes on sale as well as on advertisement. If this is transferred to List I, then the consequential amendment of which we have given notice.....

Mr. President: The notice is that it be included in List I. If it is taken in List I then it goes out.

Shri Ramnath Goenka: But the exception will have to be provided for in List II in the entry; sale of goods excepting newspapers.

Mr. President: It is not necessary.

The Honourable Dr. B. R. Ambedkar: It is not a consequential amendment at all. Both the amendments are quite independent. One amendment is that the entry should be expanded by the addition of a new entry to be called 88-A. Then there is another amendment which is amendment to my amendment to entry 58 in List II dealing with sales tax. That amendment says that the word "goods" should be so qualified as to exclude newspapers. That will be dealt with on its own merits. The immediate question we have to deal with is whether List I is to be expanded by the addition of entry 88-A in terms as moved here.

Shri Ramnath Goenka: The position is this. We have proposed an entry in List I that taxes on newspapers including advertisements therein, should be transferred to List I and that the Provinces should not have the authority to levy any taxes on newspapers. Therefore the amendment No. 57 is a consequential amendment to the amendment No. 122 in entry 58 in List II. So

[Shri Ramnath Goenka]

both these amendments will have to be taken together. Yesterday when this question of entry 58 in List II came before us, you put it off until you gave a ruling and said a decision could be taken together on these entries.

The Honourable Dr. B. R. Ambedkar: Take them one by one. Let both the amendments be put one after the other.

Shri Ramnath Goenka: May I suggest, Sir, that we put entry 58 in List II first and then 88-A?

The Honourable Dr. B. R. Ambedkar: You can have it in any way you like, but I want to tell you that voting in a particular manner on the second amendment would be inconsistent with voting on the first in another manner. It will be open to the House to accept the one and reject the other.

Shri Ramnath Goenka: I would like to have your ruling on this matter. If you transfer the taxes on newspapers to List I then it cannot have any place in List II also. If it has a place in List I then it necessarily goes out from List II.

The Honourable Dr. B. R. Ambedkar: It will go out of List II only so far as taxes are concerned. But so far as the sale of goods is concerned it would remain. You want to get that out also? Your object, if I understand, is two-fold, namely, that the newspapers should not be liable to any duty and should not be liable to any tax under the Sales Tax Act also. I am not prepared to give you both the advantages, to be quite frank.

Shri Ramnath Goenka: May I request you, Sir, to hold this matter over till Monday morning so that we can put our heads together and come to you, because whatever the interpretation, what is said, is the object of our amendment. If that object is not carried we will have to put in other amendments. But that is our intention. We are only laymen and we will be guided by Dr. Ambedkar. The entire taxation should be taken away from the Provinces to the Centre. If that purpose is not being carried out I am afraid some other amendment will have to be moved which will have the effect of carrying out our intentions. These are our intentions.

Mr. President: Dr. Ambedkar, will you object if the matter is held over?

The Honourable Dr. B. R. Ambedkar: I will be quite frank about it. I have a mandate to accept entry 88A. I am prepared to follow that mandate and accept entry 88A. I have no such mandate with regard to the other thing (amendment No. 122). I am sure that it will be difficult to accept it. To have a complete exemption from any kind of taxation on newspapers is to me an impossible proposition.

Shri Ramnath Goenka: It is not so. I want taxation to be left to the Centre and not the Provinces. If I may tell Dr. Ambedkar, the mandate was that it should be taken away from the Provinces.

The Honourable Dr. B. R. Ambedkar: You are not to interpret the mandate for me. I know what it is. It is quite clear to me.

Shri Ramnath Goenka: As it is, I am interpreting it to you. (*Interruption.*)

Shri Deshbandhu Gupta: Since Dr. Ambedkar has referred to the mandate I may make it clear that when this question was taken up with the authority which gave the mandate, it was absolutely clear that the two amendments went together. We wanted this tax to remain a Central tax and not a Central as well as a provincial tax.

The Honourable Dr. B. R. Ambedkar: It is not right to refer here to matters discussed elsewhere. But, as I said, I am quite prepared to abide by that mandate. The other matter was brought in surreptitiously by our friends after

they heard what I said in another place as to what a mess they had made by bringing in this amendment.

Shri Ramnath Goenka: As Dr. Ambedkar suggests that we have made a mess we want a way out of the mess.

(*Interruption.*)

Mr. President: I find there is much feeling in the matter. So we had better take it up on some other day when the feelings are a bit cooler.

I was asked by some honourable Members in the morning to let them know when we are likely to take up the question of language. Yesterday I gave the programme up to Friday, the 9th September. And according to the provisional programme which we had made, articles dealing with Property and Language were allotted three days, 10th, 12th and 13th. It was only provisional. If Members have no objection to these dates we may stick to them.

Seth Govind Das: Sir, You have said just now that they are provisional dates. May I take it that if on these dates the question of Language is not taken up it will be taken up at least in this session and that people will be informed accordingly of the dates beforehand so that they may be present on those occasions?

Mr. President: There is no question of the thing not being taken up. It is going to be taken up. Unless the House has any objection, as I said, I have fixed these dates. I said they are provisional only in the sense that I had fixed them and it is open to the House to ask me to fix some other dates. But if the House has no objection, I shall take these items up on 10th, 12th and 13th.

Shri M. Ananthasayanam Ayyangar (Madras: General): May I ask you to have it on 12th, 13th and 14th instead of on the 10th. 12th and 13th?

The Honourable Pandit Ravi Shankar Shukla (C. P. & Berar: General): May I suggest that the discussion of articles 264-A, 265 and 266 be taken up either on the 10th or after the 13th, because most of the members and Premiers who are interested in this are not here and may not be able to come on the 6th when these articles are likely to be taken up. So I suggest that the discussion of these three articles may be taken up after the language question so that everybody will have notice and have time to be present here.

Mr. President: I have fixed the order of business with reference to the drafts which the Drafting Committee is preparing. The drafts of these particular articles are ready and therefore they have been allotted first. The drafts of the other articles are not ready. Then the members will begin to complain that they have not had time after the circulation of the draft proposals to give notice of amendments. As I have already said, this order has been fixed with reference to the drafts which are ready. And I should expect that Members should come back. There is still time. We announced it yesterday.

The Honourable Pandit Ravi Shankar Shukla: I want to know whether the draft is finally ready for discussion in the House.

Mr. President: I understand it is.

Shri K. M. Munshi (Bombay: General): The drafts of these articles are ready and I suppose whatever discussions have to be carried on could be finished tomorrow and the matter brought up before the House. It is necessary that we should go on with the scheduled programme day after day. If we postpone any matter, it will lead to a great deal of difficulty in the future. These drafts are ready: only some Premiers want a revision of one or two provisions which

[Shri K. M. Munshi]

could be done tomorrow. There is otherwise no work for Monday. Day after tomorrow there will be no work for the House if these drafts are kept back. We have a few articles left which, unless we go on from day to day, it will be very difficult to finish in time.

Mr. President: We have fixed Fifth and Sixth Schedules for Monday. I hope they will be finished that day and, if not, we shall go on to the next day

The Honourable Pandit Ravi Shankar Shukla: Unless we have sufficient notice of the programme it will be inconvenient for some of us.

Mr. President: I announced yesterday that this will be taken up on Monday

The Honourable Pandit Ravi Shankar Shukla: We are living in places far away from the Capital.

Mr. President: Now-a-days it is not difficult to reach any place in a few hours' time.

The Honourable Shri Purshottam Das Tandon (United Provinces: General). Mr. President, in regard to the language question, may I know what dates you propose to fix for discussion?

Mr. President: I have just announced that we have fixed three days for the discussion of the property question and the language question. The dates are the 10th, 12th and 13th September.

The Honourable Shri Purshottam Das Tandon: May I take it that the language question will be taken up on those days after a decision has been reached on the question of property?

Mr. President: Yes.

The Honourable Shri Purshottam Das Tandon: May I take the liberty of suggesting that you may, as 10th is a Saturday and 11th is Sunday, fix the 12th September for taking up the language question?

Mr. President: I take it that the language question will really be begun on the 12th, because on the 10th we are going to discuss the property question

The Honourable Shri Purshottam Das Tandon: The language question, instead of being left to chance, may be considered on the 12th—that is all I request.

Mr. President: Nothing will be lost if discussion of the language question is taken up on the date fixed, *viz.*, the 10th. If we finish the property article early on the 10th, we shall begin the discussion of the language question. But I do not anticipate that it will end on the 10th. It will be continued till the 12th.

Mr. Naziruddin Ahmad: I have one point to suggest. We are proceeding on the assumption that the drafts will be made available to us in time. Up to this time however no draft has been made available. Our programme must therefore be conditional upon the drafts being made available to Members in sufficient time to give notice of amendments. These questions relating to language and property are important and complicated ones.

Mr. President: So far as Monday is concerned, the two draft Schedules for consideration have been circulated.

Mr. Naziruddin Ahmad: Yes. They have been circulated already.

Mr. President: Then, for Tuesday's programme, article 263, etc in draft form will reach honourable Members today

Shri Brajeshwar Prasad: The draft of the 6th Schedule has not been distributed to us.

Mr. President: It will be distributed today.

Mr. Nazimuddin Ahmad: I was speaking of the draft articles relating to property and language.

Mr. President: I do not know about the draft article on language.

Shri K. M. Munshi: I have already submitted the draft Notice has been given about it and it will be circulated straightway

Mr. President: We shall circulate it tonight

Shri L. Krishnaswami Bharathi (Madras : General): Sir, you have allowed only two days for the consideration of the article about language. I may submit that this is a most vital and important question affecting all of us. It is therefore likely that most of us would like to participate in the debate, and two days, in my view are hardly sufficient We may require four or five days for its consideration

Mr. President: If necessary we shall sit twice on both the days and thus make two into four.

Shri L. Krishnaswami Bharathi: More days are required That is all my submission

Mr. President: Everything will depend upon the progress of the discussion.

The House is adjourned till Nine of the Clock on Monday, the 5th September.

The Assembly then adjourned till Nine of the Clock on Monday, the 5th September, 1949

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 5th September, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair

DRAFT CONSTITUTION—(Contd.)

Fifth Schedule

Mr. President: We will take up the Fifth Schedule.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move:

That for the Fifth Schedule, the following Schedule be substituted:—

"FIFTH SCHEDULE

[Articles 215-A(a) and 215-B(1)]

PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

Part I

GENERAL

1. *Interpretation.*—In this Schedule, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I or Part III of the First Schedule.

2. *Executive power of a State in scheduled areas.*—Subject to the provisions of this Schedule, the executive power of a State extends to the scheduled areas therein.

3. *Report by the Governor or Ruler to the Government of India regarding the administration of the scheduled areas.*—The Governor or Ruler of each State having scheduled areas therein shall annually, or whenever so required by the Government of India, make a report to that Government regarding the administration of the scheduled areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas

Part II

ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. *Tribes Advisory Council*—(1) There shall be established in each State having scheduled areas therein and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom as nearly as may be, three-fourths shall be the representatives of the scheduled tribes in the Legislative Assembly of the State:

'Provided that if the number of representatives of the scheduled tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the scheduled tribes in the State as may be referred to them by the Governor or Ruler, as the case may be.

(3) The Governor or Ruler may make rules prescribing or regulating as the case may be—

(a) the number of members of the Council, the mode of their appointment and the appointment of its Chairman and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

5. *Law Applicable to scheduled areas*—(1) Notwithstanding anything contained in this Constitution the Governor or Ruler, as the case may be, may by public notification direct

[The Honourable Dr. B. R. Ambedkar]

that any particular Act of Parliament or the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification

(2) The Governor or Ruler, as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a scheduled area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the scheduled tribes in any such area,

(b) regulate the allotment of land to members of the scheduled tribes in such areas,

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the scheduled tribes in such areas.

(3) In making any regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question

(4) All regulation made under this paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.

(5) No regulation shall be made under this paragraph unless hte Governor or the Ruler making the regulation has in the case where there is a Tribes Advisory Council for the State, consulted such Council.

Part III

SCHEDULED AREAS

6. *Scheduled Areas.*—(1) In this Constitution, the expression "scheduled areas" means such areas as the President may by order declare to be scheduled areas.

(2) The President may at any time by order—

(a) direct that the whole or any specified part of a scheduled area shall cease to be a scheduled area or a part of such an area;

(b) alter, but only by way of rectification of boundaries, any scheduled area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of a scheduled area, and any such older may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order

Part IV

AMENDMENT OF THE SCHEDULE

7. *Amendment of the Schedule.*—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for purposes of article 304 thereof."

I would like very briefly to explain the principal changes which have been made in the Fifth Schedule as amended and put forward before the House. The first important change is in paragraph 4 which deals with the creation of the Tribes Advisory Council. As the paragraph originally stood in the Draft Constitution, it was obligatory to have a Tribes Advisory Council in every State where there were scheduled areas or scheduled tribes. It was felt that there was no necessity by the Constitution to create an Advisory Council for a State where there were some members of the scheduled tribes living in some part of the State but which had no scheduled area. It was felt that if there was a necessity for creating an Advisory Council for the purposes of the scheduled tribes who are not living in a scheduled area, it would be better to leave that

matter to the President whether or not to create an Advisory Council. Consequently the words "and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council". In the case of scheduled areas there is an obligation to create an Advisory Council. In the case of scheduled tribes it is not obligatory by the Constitution to create an Advisory Council but it is left to the discretion of the President

The other paragraph which has undergone an important change is paragraph 5. Paragraph 5 deals with the applicability of the laws made by Parliament and by the local Legislature to the scheduled areas. Paragraph 5, as it originally stood, required that if the Tribes Advisory Council directed that the law made by Parliament or made by the local Legislature should be made applicable to the scheduled areas in a modified form, then the Governor was bound to carry out the order or the decision of the Tribes Advisory Council. It was felt that it would be much better to let the Governor have the discretion in the matter of the application of the laws made by Parliament or by the local Legislature to the scheduled areas and that his discretion should not be controlled absolutely, as it was proposed to be done by the original provision contained in paragraph 5

The other important thing to which I should like to call the attention of honourable Members is to paragraph 6. Paragraph 6, as originally drafted, set out a schedule of what are to be scheduled areas. This provision has become necessary particularly because it is not possible at this stage to know what are going to be the scheduled areas in States in Part III. It is felt that both for meeting the difficulty to which I have referred as well as to make the provisions elastic, it would be much better to leave the power with the President rather than to have a definite part dealing with the scheduled areas.

Another important amendment to which I should like to draw attention is paragraph 7 which is included in Part IV and which deals with the Amendment of the Fifth Schedule. Originally, as the paragraph stood, there was no provision for the amendment of the Fifth Schedule. It is now provided that Parliament may amend this Schedule and I think it is desirable that Parliament should have the power to amend this Schedule. It is no use of creating a sort of a State within a State and it is not desirable that this kind of special provision under which certain tribes would be excluded from the general operation of the law made by the legislature as well as Parliament and the provision contained in sub-paragraph (2) of paragraph 5, where, so to say, 'the Governor is constituted a law-making body for making regulations of certain character which are mentioned in (a), (b) and (c) and which are to have overriding powers in so far as they relate to these matters over any law made by Parliament or by the legislature, should not be stereotyped for all times and that it should be open to Parliament to make such changes as time and circumstances may require. Consequently, it has been provided in the new Paragraph 7 of Part IV that Parliament shall have such power to make such amendments as it finds necessary and any such amendment of the Schedule shall not be deemed to be an amendment of the Constitution, but shall be made by the ordinary process of law.

I may mention that the Drafting Committee in putting forth this new Schedule had discussed the matter with the representatives of the provinces who are concerned with this particular matter, namely of scheduled areas and scheduled tribes. We had also taken into consideration the opinion of my honourable Friend, Mr. Thakkar, who knows a great deal about this matter and I may say without contradiction that this new Schedule has the approval of all the parties who are concerned in this matter, and I hope that the House will have no difficulty in accepting the new Schedule in place of the old one.

Mr. President: I have got a large number of amendments to the original Scheduled and there are some amendments to the new Schedule also. I think it is no use taking up the amendments to the old Schedule, because the old Schedule has not been moved at all. So we shall take up only the amendments to the new Schedule as proposed by Dr. Ambedkar now. I will take them one by one.

Shri R. K. Sidhva (C.P. & Berar : General) : May I say that in view of the fact that Dr. Ambedkar had said that all the parties are agreed on this matter, only those amendments which have some principal change should be taken up ?

Mr. President: We shall see to that as we go on with the amendments.

Mr. Naziruddin Ahmad: (West Bengal : Muslim) : Mr. President, Sir, I wish to move amendment No. 154 after omitting the first part. That change is only of a drafting nature. May I have your permission to do that ?

Mr. President: You may do that.

Mr. Naziruddin Ahmad: Sir, I beg to move my amendment No. 154.

"That in amendment No. 20 of List I (Seventh Week), for paragraph 2 of the proposed Fifth Schedule, the following be substituted :—

'2. The executive power of a State shall extend to the Scheduled Areas within the State subject to the provisions of this Schedule'."

I also move my next amendment in this connection. Here also I omit the first part. Sir I move :

"That in amendment No. 20 of List I (Seventh Week), in paragraph 2 of the proposed Fifth Schedule—

(a) for the word 'extends' the words 'shall extend' be substituted;

(b) for the word 'therein' the words 'within the State' be substituted"

Sir, I submit that these amendments are of a drafting nature and I draw the attention of the Drafting Committee to the changes suggested. In paragraph 2 I think the better words to be "shall extend" because this is the manner in which it is expressed in paragraph 3 of the original amendment. There it is said "the executive power of the Union shall extend". In paragraph 2 in question the wording is that, "the executive power of the State extends". Instead of the word "extends" it should be "shall extend."

(Amendments Nos. 156 and 157 were not moved.)

Mr. President: As the amendments moved by Mr. Naziruddin Ahmad are of a drafting nature and as he proposes to leave them to the Drafting Committee, I do not suppose it is necessary to put them to vote. The Drafting Committee will take them into consideration. We now pass to para 3.

(Amendments Nos. 158, 159 and 160 were not moved.)

Paragraph 1

Mr. Naziruddin Ahmad: May I suggest, Sir, that the paragraphs may be put and adopted one by one.

Mr. President: Yes. I shall put paragraph 1.

Shri A. V. Thakkar: (Saurashtra) : Sir, I want to make a few general observations with regard to the whole Schedule. When shall I make them ?

Mr. President: I shall give an opportunity in connection with one of the amendments; you may make your general observations and you may cover the whole thing.

Prof. Shibban Lal Saksena (United Provinces : General) : May he not be allowed to make his general observations ? We may have a general discussion

Mr. President : It will take two hours and we shall be going over the same ground. I do not want to take that much time of the House.

Shri Amiyo Kumar Ghosh (Bihar : General) : May I suggest that all the amendments be moved first, then have a general discussion and thereafter the amendments be put to vote one by one ?

Mr. President : The amendments will be put one by one. The question is :

"That Paragraph 1 of the Fifth Schedule stand part of the Schedule"

The motion was adopted.

Paragraph 1 was added to the Fifth Schedule.

Paragraph 2

Mr. President : I do not put the amendments moved by Mr. Naziruddin Ahmad to paragraph 2 as they are of a drafting nature. The question is :

"That paragraph 2 stand part of the Schedule."

The motion was adopted.

Paragraph 2 was added to the Fifth Schedule.

Paragraph 3

Mr. President : Amendment 161 is also of a drafting nature.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I ask you, Sir, what is the procedure that you are following ? Are you going to allow the Members to discuss the provisions generally or not ?

Mr. President : I will allow that.

Pandit Hirday Nath Kunzru : If each paragraph is put to the vote and carried, will there be an opportunity for a general discussion ?

Mr. President : If there is any amendment which lends itself to a general discussion, in that connection I will allow the whole thing to be discussed.

Pandit Hirday Nath Kunzru : So far, the procedure that you have adopted has been to allow a discussion on the article generally after all the amendments have been moved. Is that procedure being departed from now ?

Mr. President : I am not preventing any discussion. If there is no amendment to an article, there is nothing to be said. If any Member wishes to speak about any article, I will permit him.

Shri T. T. Krishnamachari (Madras : General) : May I suggest, Sir, that we may take up one paragraph for purposes of general discussion. I suggest para. 4 may be taken. There are some amendments. It, really, is the crux of the whole problem, you may allow the House to discuss that.

Mr. President : We shall take up general discussion in connection with paragraphs 4 and 5.

Babu Ramnarayan Singh : (Bihar : General) : Even if there is no amendment to any paragraph, that paragraph may require some observations.

Mr. President : I am not preventing that. If any Member wishes to speak about any paragraph, I will permit that.

Babu Ramnarayan Singh: Observations may be allowed to be made on the Schedule as a whole.

Mr. President: That may be done in connection with paragraph 4.

Prof. Shibban Lal Saksena: I suggest, Sir, that all the amendments may be moved first and then there may be a general discussion allowed.

Mr. President: I will call every paragraph. If any Member wishes to speak, he may do so.

Pandit Hirday Nath Kunzru: May I venture to make a suggestion, Sir? If you permit, as has been suggested by Professor Shibban Lal Saksena, all the amendments to be moved, you will still have the right to put each paragraph to the vote separately. This procedure will give such Members as wish to make general observations not merely on one paragraph, but on two or three, an opportunity to express their opinion. No additional time will be taken by such a procedure.

Mr. President: Do you suggest that all the amendments be moved and then paragraph by paragraph be put to vote?

Pandit Hirday Nath Kunzru: Yes.

Mr. President: Very well; I can do that.

Pandit Hirday Nath Kunzru: Before they are put to the vote, I take it that such Members as wish to make general observations will have an opportunity of doing so.

Mr. President: I will allow that, I have already put paragraph 2. We will take up paragraph 3.

Mr. Naziruddin Ahmad: This will lead to a great deal of complication and the House may be confused. It is far better to allow discussion of a general nature within reasonable limits, and then dispose of the amendments paragraph by paragraph. Otherwise, the amendments will get confused.

Mr. President: May I know how many Members wish to take part in the general discussion?

(About twelve Members rose in their places.)

Mr. President: It is at least three hours programme. Twelve Members; it means three hours. I was thinking of economising time. If the Members do not wish to finish the second reading before the Dusserah, I can allow that. At this rate, we may not be able to finish before the Dusserah. The whole programme may be upset later on.

I think I had better allow all the amendments to be moved and then we can have a general discussion.

The Honourable Shri Binodanand Jha (Bihar: General): That procedure will be more welcome.

Mr. Naziruddin Ahmad: Mr. President: I beg to move:

"That in amendment No. 20 of List I (Seventh Week), in paragraph 3 of the proposed Fifth Schedule, for the words 'the executive power of the Union shall extend to the giving of directions', the words 'the Union Government may give directions' be substituted."

The expression in the context is roundabout. There would be economy of words if this amendment is accepted.

Sir, I beg to move :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 4 of the proposed Fifth Schedule, for the words 'There shall be established' the words 'The Governor or the Ruler, as the case may be, shall establish' be substituted."

Sir, I also move :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 4 of the proposed Fifth Schedule, for the words 'twenty members'.

(a) the words 'twenty members appointed by him' be substituted"

I do not move part (b).

I also move :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 4 of the proposed Fifth Schedule, for the words 'advise on such matters', the words 'advise of the Governor or Ruler on such matters', be substituted."

Sir, I also move :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 4 of the proposed Fifth Schedule, for the words 'by the Governor or Ruler, as the case may be,' the words 'by him' be substituted."

That exhausts my amendments as to paragraph 4. With regard to paragraph 4, there are a few points to which I wish to draw the attention of the House, specially of the Drafting Committee. The para, begins with the expression, "There shall be established in each State having scheduled areas therein and..., a Tribes Advisory Council". Instead of saying "there shall be established", we should say that "the Governor or Ruler shall establish".... etc. I want to say that the 'Governor or Ruler shall establish'. That would place the matter beyond any doubt instead of saying 'there shall be established'. Then instead of the expression 'twenty members and so forth' I wish to make it 'twenty members appointed by him'. It would be far better to make it quite clear here that the 'Governor or Ruler will appoint or establish etc... Then with regard to another amendment to para. 2 there is the proviso 'that the Tribes Advisory Committee to advise'. I submit that it should be 'to advise the Governor or Ruler'. That would make it complete. Then the last amendment is that instead of 'by the Governor or Ruler, as the case may be' the words 'by him' be substituted. In sub-para. (3) there is a drafting amendment. In sub-para. 3(a) there is the expression 'Members of the Council'. In every case where the Council is mentioned, the full expression Tribes Advisory Council is used. Nowhere the contraction "the Council" has been used. In order to keep to the general trend of the draftsmanship the expression 'Tribes Advisory Council' should be written in full.

With regard to amendment 162, I ask the Drafting Committee to consider the matter or Dr. Ambedkar to reply or it may be—if you so think fit—left over to the Drafting Committee.

Shri Brajeshwar Prasad : (Bihar : General) : I would like to make a few general observations on para. 4. If I am given that opportunity, I will not move any amendment.

Mr. President : You will get the opportunity.

Mr. Naziruddin **Ahmad :** Sir, I beg to move.

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (3) of paragraph 4 of the proposed Fifth Schedule, after the words 'Governor or Ruler' the words 'as the case may be' be inserted."

This is purely drafting.

[Mr. Nazıruddin Ahmad]

Sir, I beg to move :

"That in amendment No. 20 of List I (Seventh Week), in clause (a) of sub-paragraph (3) of paragraph 4 of the proposed Fifth Schedule, for the word 'Council' the words 'the Tribes Advisory Council' be substituted"

I beg to move :

"That in amendment No. 20 of List I (Seventh Week), in clause (b) of sub-paragraph (3) of paragraph 4 of the proposed Fifth Schedule, for the words 'its procedure' the words 'the procedure to be followed' be substituted."

Sir, with regard to the last amendment 170 I wish to point out that the original para, as moved by Dr. Ambedkar requires some improvement. I think the wording I have suggested would be more fitting in the context.

Sir, I then move :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, for the words 'any particular Act of Parliament or of the Legislature of the State' the words 'any particular existing law or any law that may be passed by the Parliament or by the Legislature of the State' be substituted"

This is more important.

Prof. Shibban Lal Saksena : Sir, I have an amendment to paragraph 4.

Mr. President : I will take them up later.

Mr. Nazıruddin Ahmad : Regarding 172 I may say that in para. 5 sub-para. (1) it is stated that the "Governor or Ruler may by public notification direct that any Particular act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof etc." I submit that I would rather leave amendment 20 for consideration of the Drafting Committee.

I then move :

"That in amendment No. 20 of List I (Seventh Week), in paragraph 5 of the proposed Fifth Schedule :—

(a) 'in sub-paragraph (2), for the words 'may make' the words 'may, after previous consultation with the Tribes Advisory Council, make' be substituted;'

(b) sub-paragraph (5) be deleted."

This is necessitated by consideration of the text. I then move :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, for the words 'any area in a State which is for the time being a scheduled area' the words 'any scheduled area' be substituted."

In this connection we have defined the expression 'scheduled area' and I submit that the use of the expression 'scheduled area' would be sufficient.

I then move :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, the brackets and figure '(3)' be inserted before the sentence beginning with the words 'in particular and without prejudice etc.' and the remaining sub-paragraphs be renumbered accordingly."

Now the original amendment has been worded in a roundabout fashion. I put it in a more simple form but the point is this that in para. 5 sub-para. (2) there is another sub-para. 'in particular and without prejudice and so on'. All that I desire is that this should be separately numbered and should not be left as part of sub-para. (2). It is an independent sub-para. and the object of

my amendment is to number it independently and to renumber the other sub-paras. accordingly. Similar clauses or propositions in all other places are numbered separately and there is no reason why this should not be given a distinctive number.

Sir, I then move :

'That in amendment No. 20 of List I (Seventh Week), in clause (c) of sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, for the words 'carrying on of business as money-lender by persons who lend money' the words 'business of lending money' be substituted.'

The expression in the context is extremely roundabout. It says "carrying on the business of money-lender by persons who lend money". I fail to see how a man can be a money-lender unless he is a man who lends money. So 'carry on the business of money-lender by persons who lend money' would be rather too long and the expression 'business of lending money' would be quite enough and should be acceptable.

Then I move my amendement No. 178 and I may submit that I have made a slight verbal alteration here and there which I shall notify to the office; they are, however, of an immaterial nature. Sir, I move :

"That in amendment No. 20 of List I (Seventh Week), for sub-paragraph (3) of paragraph 5 of the proposed Fifth Schedule, the following new sub-paragraph be substituted :—

'(3) The Governor or Ruler, by regulation made under sub-paragraph (2) of this paragraph, may, notwithstanding anything contained in any other part of this Constitution, direct that any existing law or any law that may be passed by the Parliament or by the Legislature of the State shall not apply, or shall apply with such modifications and changes, to any scheduled area or part thereof."

I think I should explain the reason why I have moved this amendment. Coming to sub-paragraph (3) of paragraph 5, it says :

"In making any regulation as is referred to in sub-paragraph (2) of this paragraph the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question."

The principal object of my amendment is to avoid the words "repeal or amend any Act of Parliament or of the legislature". What is intended by the sub-paragraph is not to allow the Governor to repeal or amend any Act of Parliament or of the local legislature and what power is being given to the Governor is to make such changes and adaptations as would bring them really applicable to the tribal areas. Therefore, I submit that the expression "repeal or amend" any Parliamentary Act or any Act of the State would be rather improper. In fact, he does not repeal any Act. That he cannot do. Repeal of an Act has a technical meaning. The Governor of a State does not repeal any Act. All that he does is to see that a Parliamentary Act or law does not really apply to the tribal area, or that he so modifies it and applies that Parliamentary law in a modified form. So I think the power to repeal or amend, would be inapplicable to the circumstances of the case. He can modify or say that the law does not apply. So I think the amendment should be acceptable to the House.

Then, I move my amendment No. 179

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (3) of paragraph 5 of the proposed Fifth Schedule—

(a) for the word 'regulation' the word 'regulations' be substituted

(b) for the words 'as is referred to' the word 'under' be substituted

(c) for the words 'repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question' the words 'direct that any existing law or any law that may be passed by the Parliament or by the Legislature of the State, shall apply with such modifications and changes as he thinks fit' be substituted."

[Mr. Naziruddin Ahmad]

Sir, this is in a way an analysis of amendment No. 178, and even if No. 178 is not acceptable, the different parts in this amendment No. 179 may be accepted separately.

Sir, then I move my amendment No. 182.

"That in amendment No 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, for the words 'shall be submitted forthwith to the President and until assented to by him shall have no effect' the words 'shall be valid on receiving the assent of the President' be substituted."

With regard to this amendment, I have to say that the text of sub-paragraph (4) as modified by Dr. Ambedkar's amendment says, that as soon as regulations are made, they shall be submitted forthwith to the President. But I fail to see the real purpose of or the import of the word "forthwith" here And then it says, "until assented to by him, shall have no effect". All that is indicated is presumably the normal procedure, that the regulation will have effect if assented to by the President. The condition that it shall be submitted to him forthwith is absolutely pointless. The regulation may be submitted to the President in due course. There is no hurry about it. If there is any urgency, the Governor will certainly submit it forthwith. But to lay it down as a condition that he must submit the regulation to the President forthwith is absolutely unnecessary, and it is totally unwanted All that is intended is, as in the ordinary case of a Bill, the assent of the President makes it law. If we say that it shall be valid on receiving the assent of the President, instead of unless assented to, it is not valid, it is quite enough.

Sir, then I move my amendment No. 185.

"That in amendment No 20 of List I (Seventh Week), in the heading of Part III of the proposed Fifth Schedule, for the word 'Areas', the word 'Area' be substituted"

I also move No. 186:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 6 of the proposed Fifth Schedule, for the word 'areas' wherever it occurs, the word 'area' be substituted"

Sir, with regard to this series of amendments, I find that in sub-paragraph (1) the word "areas" is defined in the plural. But in sub-para. (2) it is in the singular. I think only one form—plural or singular—should be used thoughout I think the singular word would be proper and it includes the plural also

Then I move my amendment No. 187:

"That in amendment No 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 6 of the proposed Fifth Schedule for the words 'as appear' the word 'as may appear' be substituted."

That exhausts my amendments. I fully concede that most of these amendments are of a drafting nature and they are intended to draw the attention of the Drafting Committee to these points.

And then, Sir, may I with your kind permission refer to a still smaller matter, namely, that the expressions "Scheduled Castes", "Scheduled Tribes" and "Scheduled Areas" whether they should be capitalised or should begin with the small letter. This may be very insignificant looking, but to people of my way of thinking, they are important. We have capitalised the word in the case of "Scheduled Castes", but in the case of "scheduled tribes" we have tried to make them insignificant. There is no doubt that while it represents a community or class of people, the expression should be capitalised. But when referring to the "scheduled areas" also, there is the importance, and I think the expression should be capitalised there also. They refer to definite tracts of the country or the States. We

described the "Non-regulated provinces" with capital letters. In order to give them due importance and grammatical symmetry, I think the expression "Scheduled Areas" should also be capitalised by the Drafting Committee before the Third Reading.

Shri Jaipal Singh (Bihar General) : Mr. President, I beg to move.

"That in amendment No 20 above, in paragraph 3 of the proposed Fifth Schedule, after the words 'scheduled areas' wherever they occur, the words 'and scheduled tribes' be inserted; and the words 'or whenever so required by the Government of India' be deleted"

General observations I would rather reserve to the general discussion, but in moving my amendments, I would like to state briefly why I am moving them. I find that the heading of Part I is as follows :

"PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES"

but, in III, I find that "scheduled tribes" has been left out. I do not understand why exactly that has been done. Surely, the report of the Governor or Ruler to the Government of India should comprehend all the scheduled tribes, whether they are within the scheduled areas of the future or outside them If the report is to apply only to those tribes who are in the scheduled areas, it would simply mean that the Government of India would know very little about scheduled tribes as a whole and, there would be literally millions of them outside the scheduled areas. Without knowing how the scheduled areas are going to be demarcated, it is almost futile to argue whether or not the report will include all the scheduled tribes of a particular list. We do not know whether the whole of Bihar will be scheduled or not. Supposing, for the sake of argument, we were to say that the whole province of Bihar were to be declared as scheduled area, then, Mr. President, my amendment is not necessary. But, we do not know yet what the result of the Commission, which I suppose the President is bound to appoint to go into the demarcation of scheduled areas in the new setup, would be. Till that is done, I am bound to insist that, at this stage, there must be a definite and certain provision whereby the Governor will be constrained to report on what has been done for all the scheduled tribes and, for the matter of that, of the backward people in each State. I hope Dr. Ambedkar will accept this amendment and, if he does so, the paragraph will read as follows :

"The Governor or Ruler of each State having scheduled areas and scheduled tribes therein shall annually make a report to the Government of India regarding the administration of the scheduled areas and scheduled tribes in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas and scheduled tribes of the State"

Now, the second part of my amendment is for the deletion of the words "or whenever so required by the Government of India". This again, to me seems necessary; it should become statutory that an annual report should be submitted. I do not know how long the Schedule is going to last. Till I know that, I am bound to insist that the work of bettering the conditions of scheduled tribes be accelerated and that will not happen if the country is blind to what is being done or not done at all. Therefore, it is, I think, necessary that the emphasis should be on the word "annually". I certainly confess that I am not very particular about the second part of my amendment, because I do not see why I should be suspicious of the Government that it will sleep over it for ten years or whatever it is and, perhaps, ask for a report once in twenty years. I have no reason to be suspicious. I am not very particular about the second part of my amendment, but I would definitely insist that the scheduled tribes be included as a whole.

I shall move 33 also. I beg to move :

"That in amendment No. 20 above, for sub-paragraph (2) of paragraph 4 of the proposed Fifth Schedule, the following be substituted :

[Shri Jaipal Singh]

'(2) It shall be the duty of the Tribes Advisory Council generally to advise the Governor or Ruler of the State on all matters pertaining to the administration, advancement and welfare of the Scheduled Tribes of the State'."

I think my amendment is quite clear. This amendment favours the original draft and I hope Dr. Ambedkar will accept it.

Then, I shall move 47 also. I beg to move :

"That in amendment No. 20 above, in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, after the words 'as the case may be' the words 'if so advised by the Tribes Advisory Council' be inserted."

I find that this new proposed Fifth Schedule has, somehow or other, perhaps without meaning it, emasculated the Tribes Advisory Council. The whole pattern of the original draft was to bring the Tribes Advisory Council into action. It could initiate, originate things, but, somehow or other, the tables have now been turned. The initiative is placed in the hands of the Governor or Ruler of the State. I regret that that is a situation I cannot accept, and, while I say this, Mr. President, I would like to state it is a matter of regret I have to tell the House that, for the last days secret talks and conferences have been going on among certain people. I have not been consulted. It cannot be said that all parties were consulted. I certainly was not brought to any of those conferences. Suddenly a bomb-shell is thrown by way of the new proposed Fifth Schedule. I do not grumble about the Fifth Schedule. But what I say is there is plenty of scope for improving the Fifth Schedule. I as an Adibasi had and must have the first claim to be consulted in the proposed change.

Then my last amendment is No. 50. I beg to move :

"That in amendment No. 20 above, in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, the words 'in any such area' be deleted."

The idea behind this amendment is similar to what I have already said before and it is that any benefits we might want to confer on the scheduled tribes should not be limited or circumscribed by the areas, that they should extend to the entire State or wherever the scheduled tribes may be.

Then there is one more amendment, No. 52.

I beg to move :

"That in amendment No. 20 above, in sub-paragraph (5) of paragraph 5 of the proposed Fifth Schedule, for the word 'consulted' the words 'been so advised by' be substituted."

Here again I want that the Tribes Advisory Council should be effective and have a real say in what is being done. I would not, for one moment, deny the Governor or the Ruler his powers in initiating things, but, at the same time, I do feel that the word "consulted" is not the right word there. If my amendment is accepted, it will read : "No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has in the case where there is a Tribes Advisory Council for the State, been so advised by such Council".

As I have already stated, there are only two principles involved in my five amendments : first, that the Scheduled Tribes, all of them, should be benefited by the provisions of the Fifth Schedule and, secondly, that the Tribes Advisory Council should be a reality and not a farce. Let us not give it a big name, without any powers to do things.

Shri Yudhisthir Mishra (Orissa States) : Sir, I move :

"That in amendment No. 20 above, in sub-paragraph (1) of paragraph 4 of the proposed Fifth Schedule, the words 'if the President so directs' be deleted."

I have just heard the Honourable Dr. Ambedkar and he told us that where there are Scheduled areas in any State it is obligatory on the part of the President to constitute a Tribes Advisory Committee, but where there is no Scheduled area in any State it is left to his discretion as to whether he would think it proper to set up a Tribes Advisory Council.

Now, Sir, the purpose of the amendment which I have just moved is to do away with these discretionary powers and also to do away with the distinction which has been sought to be introduced into the proposed Fifth Schedule Sir, the Scheduled tribes are backward and therefore deserve the special attention and care of the Government both in the Centre and the provinces and I think it is for this reason that some areas are specified as Scheduled areas and some tribes have been described as Scheduled tribes. If we are going to set up a Tribes Advisory Council in a state where there is a Scheduled area, should we not also for the same reason provide a Council for the tribes where there is no scheduled area? If it is left to the discretion of the President, he will have to depend upon the advice of the executive authority of the Centre and the provinces and it may so happen that the Provincial Governments may not like the existence of such a Council. I, therefore, submit that for the benefit of the tribal people it should be made incumbent on the Government to set up a Tribes Advisory Council even in the States where there is no Scheduled area.

Then I move amendment No. 32.

"That in amendment No. 20 above, for sub-paragraph (2) of paragraph 4 of the proposed Fifth Schedule, the following be substituted :—

'(2) It shall be the duty of the Tribes Advisory Council to advise the Government of the State on all matters pertaining to the administration of the scheduled areas and the welfare and advancement of the scheduled tribes in the State'."

Now, the proposed Fifth Schedule in sub-paragraph (2) of paragraph 4, provides that the Tribes Advisory Council should advise the Government of a State on matters relating to the welfare and advancement of the Scheduled tribes as may be referred to them by the Governor or Ruler, of a State as the case may be. In this amendment I propose to provide, firstly, that the Tribes Advisory Council should, instead of advising only for the welfare and the advancement of the scheduled tribes, also advise for the administration of the scheduled areas and secondly that the advisory power of the Council should not be limited by the whims and fancies of the executive authority. If the Advisory Council is to advise only on those matters which will be referred to it, then the very purpose of the Fifth Schedule will be defeated. Sir, it may happen that a particular matter may affect the tribal people, but still the Government may not refer the matter to the Advisory Council, and therefore in those matters the Advisory Council will be powerless and will not be in a position to have any say. Sir, we have already provided in article 215-B that the provision of Fifth Schedule shall apply to the administration and control of the scheduled areas and the tribes. But according to the proposed Fifth Schedule the Advisory Council will have no power to advise in the administration of the scheduled areas. The advisory council is for all practical purposes only an advisory body. The Governor is not bound to accept the advice tendered by the Council. We will thus be making the Council a nonentity.

Then, Sir, I move amendment No. 46 :

"That in amendment No. 20 above, in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, after the words 'as the case may be' the words 'on the advice of the Tribes Advisory Council' be inserted."

[Shri Yudhisthir Mishra]

If the above amendment is not acceptable to the House, my amendment No. 51 may be taken into consideration. Sir, I move :

"That in amendment No. 20 above, in sub-paragraph (5) of paragraph 5 of the proposed Fifth Schedule, after the word 'No' the words 'notification or' be inserted."

Now, Sir, the purpose of both the amendments is that if a notification is to be issued under the sub-paragraph (1) of paragraph 5, then, the Tribal Advisory Council should be consulted. Now, a distinction has been made between a notification to be issued and a regulation to be promulgated by the Governor or Ruler of a State. In the case of a notification, the Tribes Advisory Council may not be consulted but it has been provided in sub-paragraph (5) of para. 5 that no regulation can be made under this paragraph unless the Governor or Ruler, as the case may be, has consulted it. Therefore I would submit that even in the case of issuing notifications, the Tribes Advisory Council should be consulted. It may find a place either in sub-para. 1 or sub-para. 5. Sir, I move :

"That in amendment No. 20 above, in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, after the words 'scheduled area', the words 'and also the scheduled tribes' be inserted."

An amendment to that effect has been moved by Mr. Jaipal Singh, and in moving this amendment I submit that it is the duty of the Government to issue a notification or regulation for the advancement and welfare of the scheduled areas and also for the welfare of the tribes. If it is proposed to retain para. 5 of the Fifth Schedule, then the Governor is not bound to direct that any particular Act of Parliament or of the Legislature of the State shall not apply to that particular tribe.

The special purpose for moving this amendment is that there are areas in Orissa and the C.P. States which may not be specified as scheduled areas but there are certain Scheduled tribes among which certain kinds of land-laws are prevalent. For example, in C.P. and Orissa States, it is not permissible on the part of a non-aboriginal to acquire the lands of an aboriginal without the sanction of the Government. Now, Sir, in that case, supposing according to paragraph 5, the Governor or the Ruler of a State does not make any regulation and retains the same provisions applicable to non-aboriginals with respect to the transfer of lands; then I shall submit that there will be no use in saying that the Government is prepared to safeguard the interests of the tribal people.

Sir. I move :

Mr. President : Are you moving amendment No. 49 ?

Shri Yudhisthir Mishra : Sir, I move :

"That in amendment No. 20 above, in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, after the words 'for the time being a Scheduled area' the words 'and also for the welfare and advancement of the scheduled tribes' be inserted."

It carries the same meaning as amendment No. 48.

Mr. President : So far as I can see, there is no other amendment to the Fifth Schedule as now proposed.

Prof. Shibban Lal Saksena : I have some amendments.

Mr. President : Coming at the last moment, these amendments have not been circulated to Members. They came in at 8-58 this morning.

The Honourable Dr. B. R. Ambedkar : I have no idea about them. These should not be allowed.

Mr. President: If you have any amendments, you may make your observations. I may tell the House that I have a set of new amendments sent in by Prof. Shibban Lal Saksena and Dr. Deshmukh.

The Honourable Dr. B. R. Ambedkar: We have no copies. We do not know what they are talking about.

Mr. President: Dr. Deshmukh's amendment came in at 9-20 in the morning. Prof. Saksena's came in at 8-58 in the morning. Technically you are just before the commencement of the session but I think it is very inconvenient to the other Members.

Dr. P. S. Deshmukh (C.P. & Berar: General): My amendments are of a drafting nature.

Mr. President: Very well, they will be handed over to the Drafting Committee. I do not think there is any substance in any of your amendments, Prof. Saksena?

Prof. Shibban Lal Saksena: Yes they are essential.

Mr. President: Under the rules Members are entitled to give notice of amendments before the commencement of the session, and it is just before the commencement of the session that Prof. Saksena's amendments came in.

Prof. Shibban Lal Saksena: I thank you very much for allowing me to move my amendments. I may say that these amendments are conceived with one purpose. Sir, the existence of the scheduled tribes and the Scheduled areas are a stigma on our nation just as the existence of untouchability is a stigma on the Hindu religion. That these brethren of ours are still in such a sub-human state of existence is something for which we should be ashamed. Of course, all these years this country was a slave of the British, but still we cannot be free from blame. I therefore think Sir, that these scheduled tribes and areas must as soon as possible become a thing of the past. They must come up to the level of the rest of the population and must be developed to the fullest extent. I only want that these scheduled tribes and scheduled areas should be developed so quickly that they may become indistinguishable from the rest of the Indian population and that this responsibility should be thrown on the Union Government and on the Parliament. Of course the States' Governors and Rajpramukhs will have to do their work but I want that the responsibility for their welfare, and their advancement must be laid on the Central Government only. Therefore my amendments only pertain to putting the President of the Parliament in place of the Governor/Ruler wherever these words occur. I move:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (3) of Paragraph 4, and in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, for the words 'Governor or Ruler' the words 'President in consultation with the Governor or Ruler' be substituted."

As it stands, "the Governor or Ruler" may make rules prescribing or regulating as the case may be (a) the number of members of the Advisory Council, etc." This Council is a very important body. This will administer the areas and will advise about their advancement. Its constitution, the number of members in it and other things connected with it are made the responsibility of the Governor. I want it to be the responsibility of the President in consultation with the Governor or Ruler. I also want it in paragrap 5 too. There it is said:

"Notwithstanding anything contained in this Constitution the Governor or Ruler, as the case may be, may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification."

[Shri Shibban Lal Saksena]

Now, here you will find that under 5(1) 'Notwithstanding anything contained in this Constitution the Governor or Ruler may by public notification' abrogate an Act of Parliament in regard to a scheduled area. All that I am proposing is that for the words "Governor or Ruler" we should substitute "President in consultation with the Governor or Ruler." Such a substitution will be democratic and proper. It should not be possible for the Governor or the Ruler to abrogate an Act of Parliament.

Sir, my second amendment is this :

"That in amendment No 20 of List I (Seventh Week), in sub-paragraph (4) of paragraph 5 of the proposed Fifth Schedule, after the word 'All', the words 'notifications and' be inserted"

This is necessary because in sub-paragraph (1), we are empowering the authorities to direct this or that 'by public notification'. I want that these notifications also should be issued with the consent of the President.

Again, Sir, in sub-paragraph (5) of paragraph 5, I propose—

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (5) of paragraph 5 of the proposed Fifth Schedule, after the word 'No' the words 'notifications or' be inserted."

My intention is to see that all notifications are issued only after consultation with the Advisory Council.

My amendment in respect of paragraph 6(1) is .

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 6 of the proposed Fifth Schedule, for the words 'President may by order' the words 'Parliament may by law' be substituted."

It is not proper to leave these things to the President. Parliament should have the power by law to declare an area 'a scheduled area'.

Sir, the rest of my amendments to this paragraph are consequential to the above amendments.

The first of these is :

"That in amendment No 20 of List I (Seventh Week), in sub-paragraph 6 of the proposed Fifth Schedule (2) for the words 'such order may' the words 'such law may' be substituted."

In view of the fact that 'such order' concerns the rectification of boundaries of 'scheduled areas', it is important that this should be done by law made by Parliament, and not by a President's order. I am next proposing that :

"(b) for the words 'to the President' the words 'to the Parliament' be substituted."

This is merely consequential upon the earlier amendments.

Then I come to the last important amendment of which I have given notice. It reads :

"(c) the words 'but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order' be deleted, and the words 'any such law may contain such provisions as are considered by Parliament to be necessary' be added."

My object in moving this is that the existence of a huge population in sub-human conditions is a stigma on our country. By the end of ten years they should be no more a separate sub-human group. I want Parliament to have this stigma removed and enable these people to become assimilated with and part of the general population of the country.

Mr. President: Now all the amendments have been moved.

An Honourable Member: I have an amendment to move

Mr. President: That refers to the old Schedule. I am not allowing amendments to the old Schedule to be moved. The whole of it has been changed.

Now that all the amendments have been moved, we can discuss the Schedule as well as the amendments together.

Shri Kuladhar Chaliha: (Assam: General): I was not able to send notice of any amendment to this Schedule because the List reached me only at 10 p m. last night.

Mr. President: There can be no amendments to amendments.

Shri Kuladhar Chaliha: These amendments reached me only at ten last night.

Mr. President: They were distributed on Saturday. The Fifth Schedule was distributed on Friday The List that was circulated last night was the consolidated list of all the amendments.

Shri Kuladhar Chaliha: The Sixth Schedule was distributed last night.

Mr. President: The Sixth Schedule was distributed on Saturday.

Shri Brajeshwar Prasad: Sir, I rise to support the schedule as moved by Dr. Ambedkar While doing so, however, I would like to point out that I am not in full accord with some of the provisions included therein. I had a few days ago advocated on the floor of this House that the best form of Government for the tribal people would be to make all the tribal areas Centrally-administered areas.

Mr. President: May I suggest to the honourable Member that it is no use saying: 'I rise to support the Schedule proposed' and in the sentence following it, adding 'I am not in agreement with the provisions'. There must be some consistency in the speech at least.

Shri Brajeshwar Prasad: Sir, I was saying that I have accepted the Schedule because it has been agreed to. After all, in a democratic organisation one has to abide by the decision of the majority of the people whatever may be his own individual opinion about that decision. It was in that light that I made that observation. I accept the observation that it is not logical and proper and it does not look well to make a statement which sounds contradictory.

Sir, the 'Statesman' in its editorial dated 4th September 1949, Delhi Edition, made the following observations:

> "Recently the House agreed to reservation of seats for aboriginals in the Federal and State Lower Houses for ten years. With that decision few will quarrel; but its value will depend on the mode of choosing these representatives, whether as trusted spokesmen of their tribes or because of party allegiance. The evils of political strife among peoples ill-fitted for it by temperament and intellect have perhaps been too little appreciated in the provinces"

Sir, it proceeds to say:

> "In Delhi, however, some observers have discerned a new awareness of danger Recent aboriginal outbreaks and evidence of reversion to old barbaric practices have caused disquiet. Re-examination of the entire aboriginal problem is desired. In this may lie assurance that, though they will follow with sympathetic interest the democratic experiment in the scheduled areas, Republican India's President and State Governors will continue to regard themselves as the especial custodian of the tribes constitutionally entrusted to their care. If they endeavour to bring to this duty the tact and understanding shown by the late Sir Akbar Hydari in Assam not much can go wrong."

[Shri Brajeshwar Prasad]

I have no other comments to make in this direction. I am not in favour of the Tribes Advisory Council. This is merely side tracking the issue. What the tribals want is not a Council but a guarantee by the Constitution that means of livelihood, free education and free medical facilities shall be provided for all tribals. This is not an impossible demand which I am making. I am not making this demand for all the citizens of this country but for only twenty-five million people. The provinces being weak in economic resources are not in a position to shoulder this responsibility. Hence I plead that the Centre should take command of the tribal areas. The Government of India has no right to exist if it cannot undertake to guarantee means of livelihood and free educational and medical facilities even for such a small number of people. The Centre can do all these things without divesting in any way the authority of the provincial governments in other spheres of administration. Of course the ideal form of government would be to bring all tribal areas under the sole jurisdiction of the Centre. There is only one obstacle in the way of the achievement of this goal. It is the lust for territorial aggrandisement that stands as a stumbling block to economic prosperity and cultural advancement of the tribal people.

The people of India will not stand to lose in any way if tribal areas becomes Centrally administered areas. If there is any interest of any province which is not in accord with the interest of India as a whole, I for one will stand with India and not with the province. The interests of India can never be opposed to the interests of its component parts. If there is any interest which seems to be in conflict with the interests of India as a whole, that interest must be opposed and liquidated. It is absurd to talk of any provincial interest which can ever come into conflict with the interests of India.

There is one other point with regard to this paragraph 4 to which I would like to draw the attention of the House. The Tribes Advisory Council should consist of all the members representing the tribes in the Legislative Assembly of the State. The largest number of tribal members will be in Bihar, where they will be about fifty-five in number. Surely this number is not too large. The Tribes Advisory Council has got only advisory powers. It is not vested with any executive and legislative powers. If it would have been otherwise, then it would not have been desirable to provide representation for fifty or fifty-five members. There ought not to be any objection in providing seats for all these fifty persons in the Tribes Advisory Council, since it is purely an advisory body having no legislative or executive functions.

Then in regard to paragraph 5, two things ought to have been provided for in this paragraph. The passing away of lands from the hands of the tribals to non-tribals ought to have been prohibited by the Constitution itself. I demand this on humanitarian grounds. Failure to do this will also lead to political consequences of which we do not seem to have a proper appreciation. It will embitter the relation between the tribals and the non-tribals. It will promote the growth of fissiparous tendencies in tribal regions.

I want, Sir, that no land in the scheduled areas belonging to an Adibasi should be allowed to be sold or mortgaged even to tribals without the permission of the Deputy Commissioner. Such a provision exists in Santhal Pargana. I am not at all in favour of dispossessing those non-tribals who have got lands or property in the scheduled areas, but no further lands should be given to non-tribals. This protection is needed in the interests of the tribals. It is also in consonance with the demands of the tribal leaders. This concession will generate a feeling of loyalty in the hearts of the tribal peoples. Loyalty is the product of social circumstances. Unlike the Divine soul it is not inborn. If it would have been a part and parcel of our existence, the question of disloyalty would not have arisen at all. Instead of delivering sermons to the minorities to be loyal and

faithful to the country, we must remove those conditions which breed a feeling of disloyalty and of extra-territorial sympathies. Sir, there was an apprehension in our minds that a small section of the tribal people would fall in line with the Muslim League on the issue of the creation of a separate Islamic State. Happily that danger is over now. If we want that such a contingency should never confront us in the future, we must go even out of our way to allay the apprehensions of the tribal people. A discontented minority is a source of grave danger to the stability of the State. The minorities have shattered Europe to bits. At the critical moments when the nation is confronted with some catastrophe, the minorities can tilt the balance one way or the other. It is absolutely necessary that the Nation should stand solidly behind the State if it is confronted by enemies abroad. If at such a critical juncture the discontented minorities choose to light the fire of rebellion, no State can survive the onslaught. I plead once again that the power should not be vested in the hands of the Governor to prohibit or restrict the transfer of land. The Constitution itself should prohibit the transfer of land into the hands of the non-tribals.

Secondly, I demand that no moneylender should be allowed to carry on his nefarious trade in these regions. It is wrong to permit an institution which flourishes on the exploitation of the poor and the illiterate tribals. It ought to be the duty of the State to perform the functions of a moneylender in the tribal zone. The expulsion of the moneylender must be guaranteed by the Constitution itself.

Shri Lakshminarayan Sahu (Orissa : General) : *[Mr. President, I have worked among the aboriginals and as such I would like to make some observations regarding the provisions that are going to be included in the Draft Constitution in respect of the Adibasis.

I would like to point out that it has not been clearly stated as to who are to be included in the terms 'Scheduled tribes'. We should duly consider which tribes should be included in this term. We have used the term 'scheduled areas' and in respect of this term also we should duly consider as to what areas should be included in it. Under the proposed article, the President will have the powers to declare as to what areas are covered by the term 'Scheduled areas.' It will not be proper to vest this power in the President. As has been suggested by my Friend Mr. Shibban Lal Saksena, this power should belong to the Parliament. If this power is not vested in the Parliament, there may arise strong agitation when the areas are re-distributed. Therefore, I submit that this power should be vested, not in the President, but in the Parliament.

I would like to submit one thing with regard to the Tribal Advisory Council. It is true we are going to constitute a Tribal Advisory Council consisting of 20 membeds, three-fourths of whom will be taken from the tribal people, but there is no mention as to who will be taken in for the remaining one-fourth of the places. I want that this one-fourth should consist of representatives of the organisations that are working in these areas. Almost all the Governors will be aware of the requirements of the Tribal people. Some may argue that some of the organisations that are working in these areas belong, some to Christians and some to Hindus, and that it may lead to evil consequences. In my opinion there need not be any fear of this. The organisations that are working in these areas have done and are still doing much good work for the welfare of the aboriginals. And moreover the final authority is going to be vested in the Governor. In view of all these considerations, representatives of the organisations that are working in these areas should be taken in the Advisory Council for the remaining one-fourth of the places.

Some problems may arise in future in regard to the scheduled tribes and I may point out in this connection that many of the tribes that have been

*[ ] Translation of Hindustani Speech

[Shri Lakshminarayan Sahu]

recorded as scheduled tribes are politically very advanced. For example, in Orissa there are two tribes named 'Dambi' and 'Pani' who are politically quite advanced. They have been included in scheduled tribes. When we take up the question of that area, we should exclude them from the scheduled tribes. Otherwise, the scheduled tribes or the 'Adibasis' will not be able to benefit from the provisions that we are including in the Constitution for their welfare. Therefore, I suggest that the 'Dambi' and 'Pani' tribes of Orissa, should be excluded in due course from the scheduled tribes. We cannot get any indication from the provisions of this schedule as to what would be the character of the rules framed for the administrations of these areas and tribes. This creates some misgivings in my mind. I would suggest that it should be made clear by Dr. Ambedkar by an amendment that, as provided in a previous article which states that "provided that where such Acts relates to any of the following subjects, that is to say marriage, inheritance of property and social customs of the tribes etc., etc." the rules also would not be making any change in regard to marriage, inheritance of property and social customs.

Lastly, I submit that their life is gradually changing. There is a tribe in Orissa known as "Shabar Tribes"; formerly they were Adibasis, but now they have adopted the Hindu way of life and have become Hindus. Some of the customs of the aboriginals have crept into Hinduism and some of the useful customs of the Hindus have found place in the life of aboriginals. This interchange is gradually going on among Hindu and aboriginals. If a few non-aboriginals are not included in the Advisory Council, it may develop a belief among the Adibasis that they are separate from us and in course of time, it may develop separatist tendencies among them. Perhaps this amendment, that the provisions will operate only for ten years, has been moved in view of these considerations. I think we should not bother about the period, whether it be ten years or twenty years, for the Adibasis are so backward that the period of ten years prescribed here may be safely extended to twenty years. We need not worry about this. The main thing that we should be anxious about is that we do not forcibly bring them into our fold. Some of us advocate that we should force them to come into our fold. It is very improper. It is only by a gradual process of creating closer relations that they should be absorbed amongst us.

With these words I conclude my observations.]

Babu Ramnarayan Singh (Bihar: General): Mr. President, Sir, I shall not take much time of the House, because I am keeping generally silent these days. My honourable Friend Babu Brajeshwar Prasad is very fond of Central administration. I ask him to study the situation obtaining in centrally administered areas and for that he will not have to go far....

Mr. President: That remark need not taken seriously because he has not moved any of his amendments of which he has given notice.

Babu Ramnarayan Singh: Thank you, Sir. I think he should study the situation here in Delhi where there is a Central Government and where he himself lives and he should go and see how the administration is going on here in Delhi itself. Sir, I have come only to remind you, the Honourable House and the whole country as regards this subject, of our previous commitments, acts and advocacy; it is under the instruction of our Indian National Congress that we have all along advocated in the Central Legislature that there should be no discriminatory administration in any part of our country. We wanted that there ought to be one and one administration only in every part of the country. We were ashamed of such things as backward tract or excluded area or partially-excluded areas. Now, Sir, it pains me and I think it must be paining everybody in this country to find that we have begun to do things now

against which we have protested so long during the British rule. During the British rule, we did not want that there should be such a thing as backward tracts or excluded areas, but now we are going to have such a thing as a Scheduled area. There will be administration different from that in other parts of the country. During the period of British rule here they kept the area separate from other areas so far as administration went, but they did nothing for the real benefit of the people. I thank the Missionaries, the Christian Missionaries who have done a lot of improvement to the people.

Here, I must say one thing: I should not be misunderstood as speaking against anything that the people of the backward areas may require, may demand. I wish they should have all they demand. I know and everybody knows that there are backward people in every part of the country, in every village, in every town, even in the city of Delhi. The remedy does not lie in separating one part or area and doing something here and there. I know that the Government will not be able to do much by separating any part of the country as a scheduled area or anything like that. As it was said during the days of the British rule, there are certain people in the country, as honourable Members know, who require special treatment. Let the Government bind themselves to do three or four things. Let the Government educate all the children of the aboriginal people and other backward people in this country entirely at the cost of the Government. This education should also include military training. After having imparted education, let these people be given preference in Government appointments. Next, I suggest let the Government give every aboriginal man and every backward people some land. Having done all these things, then, I feel there will be no distinction in social status, the people will have their own way and the general level of the well-being of the people will be one, and there will be no such thing as backward people or aboriginal people.

Then, Sir, there is one thing. What is our aspiration for the future ? Our aspiration is this. Unfortunately, the country has been divided into so many classes and communities. We should proceed in such a way that all the different communities may vanish and we may have one nation, the Indian nation. If we proceed as the British did, with this class and that class, with this area and that, we shall fail in the future. I am glad that this amendment of Dr. Ambedkar is less pernicious. I have not much to say against this or the original provisions. But, I feel that such a thing should not have come up for discussion in this House.

Shri Jadubans Sahay (Bihar : General) : Mr. President, Sir, I have taken my stand here in order to congratulate Dr. Ambedkar and those associated with him for having brought about this redrafted Schedule V. I congratulate them because Schedule V as originally drafted was too rigid as has been observed by Dr. Ambedkar.

The problem, or rather the treatment of the problem of the tribal people is a very difficult and delicate one, and hence in dealing with these problems we have got to see that we should not tie down the hands of those who want to do good to them. It is true, and we are all, each one of us, here and outside, determined and agreed that this problem of the tribals is not of recent making. Their exploitation, their poverty, their economic backwardness, their social backwardness, all the things deserve the special attention not only of the provincial Governments, but also of the Central Government. But, in this, as has been rightly pointed out by Babu Ramnarayan Singh, we have got to depend upon the State legislature and the provincial Governments. We should have faith in the provincial Governments as also in those non-official institutions who are working in order to ameliorate the conditions of the tribal areas. Here, I cannot withhold not only my thanks, but the thanks of all those

[Shri Jadubans Sahay]

workers who are working among the aboriginals, to Shri Thakkar Bapa. We know, even in this old age, he has been touring those areas. I need not say here that if we go by his advice, and if he is given to us for another ten years, we shall be able to do not only something concrete to show to this House or to Parliament, but also which will bring real happiness, and economic, educational, social advancement to the tribal people.

I wish to make one observation so far as Mr. Jaipal Singh's amendment is concerned. His first amendment is that not only with regard to the tribals living in the Scheduled areas, but also of all the tribal people, living in the province, the report of the Governor should be submitted to the President. I think Dr. Ambedkar will consider over this matter. Because it is none of our wish nor this that a report on only the scheduled tribes in the Scheduled areas should be submitted to the President. We know that the tribals living outside the proposed Scheduled areas are more backward, less organised and there are very few people to care for them. Therefore, if it be possible, this amendment of Mr. Jaipal Singh may be accepted.

There is another matter to which I wish to draw your attention. It has been said that so far as the Advisory Council is concerned, they should be invested with more powers, powers of trying cases and all those things. But, I submit, Sir, that this Advisory Council should be entrusted, as has rightly been done, with the work of welfare and advancement of the tribals. If we tie down this Advisory Council with work of a political nature, then, what would happen to the councils formed by the tribal people? Even our village Panchayats in some places, as you may know, have become a ground for political rivalry and political bitterness. If we really want the advancement of the tribal people, this Advisory Council should not be, as has been rightly done in the new draft, rather burdened with the task of trying cases and all those things regarding land, etc. So far as land is concerned, it is not our intention, nor of the provincial Governments where the tribals live—provincial Governments have made laws to see that land should not pass out of the hands of the tribal people; in our province, the Chota Nagpur Tenancy Act was modified and altered long long before 1937 in order to see that no land should pass out of the hands of the tribal people. But, there were various difficulties in the original schedule; that land should not be settled by the Government to any one except the tribal people. In the Scheduled areas, there are not only the tribal people; there are Harijans also; there are other castes also who are equally backward, if not otherwise, at least economically, as the tribal people. Is it, then, Sir, our wish that in those areas where the Harijans and other backward people remain, land should not be settled by the Government to them also? Of course, the tribal people should have the preference as well as the Harijans living in those areas. If these things are made elastic, we should have nothing to say on this point. But, the Government should see and in the future we also should see that preference is given to the tribal people and if they have no land, the landless tribal people should have the first priority.

Then, Sir, regarding the other provisions, it is not here for us to debate I have come here to congratulate the Drafting Committee. I think Sir, in the future, when the question of scheduled areas comes up, the Provincial Governments will give a correct advice to the President to whom has been entrusted the formation of the Scheduled areas. At present, among the Scheduled areas, there are various areas which should not have been kept there. Take the case of Latehar Sub division from which I have been returned. There are a large number of tribals no doubt, but the non-scheduled tribals are in a majority but these things are not to be taken up here. I will only say that by leaving all these for the full consultation of the Provincial Government and other leaders of the country who are entrusted with the work of the tribals and also of tribal leaders, nothing will be lost.

Shri A. V. Thakkar: Mr. President, Sir, It gives me very great pleasure to support Dr. Ambedkar's revised Schedule No. 5, because of two reasons. One is that it is very very abridged. Abridgment does not take away anything from that except one or two small points, but I welcome it in respect of inclusion of the tribals of the Indian States which have formed themselves into Unions as well as those that have merged in the provinces. Those tribals that existed—that live at present in the wilds of Rajasthan in the Central India States of Madhyabharat, also in the Vindhya Mountains, also in the Himachal, also in the Western Ghats of Travancore and Cochin—they were all neglected upto now and now they come into the picture for the first time in this revised Schedule. They were not included in the original Schedule. That is a great improvement which will affect not only lakhs but millions of tribals residing in the Indian States.

The other thing is that the Tribal Advisory Councils come into the picture for the first time in the history of India. Even in the Scheduled classes and the movement of Gandhiji for the amelioration of the Scheduled Castes, the Scheduled Caste Councils were never formed. They are now being formed for the tribal areas. That is a welcome and that is a very great advance. Not only that but the Tribal Advisory Committee will consist of three-fourths of tribal members. They can take the greatest advantage of the ameliorative measures as well as in the conduct of every-day affairs of the Scheduled tribes as well as Scheduled areas, but I am afraid our tribal friends are too shy yet. They have to be brought out not only from the plains of the country but also from the hills and hilltops, from the distant Himachal, from the distant Vindhyachal, from the Hills of Chota Nagpur, from the hills of Travancore and Cochin. Even there there are places on the hills where even the Christian Missionaries have not yet reached, and I am glad to say that some of our new social workers are reaching them even in the hills of Travancore and Cochin. Let me say that this question is very little known to all of us. I will give you only one instance of that. When I went with the Assam Tribal Committee to tour in the areas of Assam with the Chairman Mr. Gopinath Bardoloi and the prominent Minister Rev. Nichols Roy all the members of the Committee, one and all, went for the first time to the Lushai Hills and Naga Hills in the year 1947. Even the Premier of Assam had never visited the Lushai Hills and Naga Hills, much less a man like me. Therefore the more we are able to know of these tribes the better it is for the country as a whole and to assimilate those tribal people as fast as we can in the whole society of the nation as we are now.

The other day my honourable Friend Dr. Kunzru was telling me "Thakkar, why don't you arrange a tour for me to go into the outside areas of Assam where tribals live—those in Balpara areas and Sadia areas and Tirip areas." I say in reply to this House that if the Government can arrange a trip of 40 or 50 members of this Assembly to tour in all the tribal areas of the country it will be a very great knowledge gained and it will solve the problem a good deal. Even my friend Mr. Jaipal Singh does not know anything about the tribals outside Bihar—his own province. He does very little touring in other parts. I would wish him to do that. I would see that he is provided with money to tour everywhere, wherever he likes to go in the tribal areas or other parts of the country than Bihar. Bihar is not India. There are so many Bihars in India and let him take care—if he likes—of all the remaining provinces where there is great necessity, more necessity of doing tribal welfare work than in Bihar. The tribes of Bihar as a whole are much advanced, comparatively speaking. I will give only one instance. There are Oraons and Mundas. These are the main tribes of Ranchi District which is the centre of Bihar tribals. Take the nearest State of what was called the Sarguja District of C. P. The Oraons

[Shri A. V. Thakkar]

of Surguja are twenty times more Jungly than the Oraons of Ranchi District. I have been reading recent papers obtained from those places from friends and co-workers and from the staff of the C.P. Government who are engaged in the welfare work, and I find that the Oraons of Sarguja District will not come down, for anything that you will give them, from the hills to the plains. Such is the difference between Oraons of one province and Oraons of the adjacent district of Sarguja. Another thing is people have very little idea of what progress we have made in the matter of amelioration of the condition of the tribals during the last two years only. I would say two years only from 1947 to 1949, the Governments of Bombay, C P., Bihar etc. have made wonderful progress. I am using the word purposely. Very few people have any idea. I am not giving you a secret if I say that Dr. Ambedkar was asking me a week ago 'Has any Government been doing practical work for the amelioration of the tribal'? I said 'Yes, Dr. Ambedkar, you are not aware of the things that are going on in the provinces'. I am running to those places occasionally and also giving some guidance to the social workers there. The Bombay Government has recently introduced a system of backward class inspectors in 11 or 12 districts where the tribals predominate. The Government of C.P. has done the same thing on a much larger scale. Let me say that as the C.P. is said generally to be a backward province compared to Madras or Bombay. There a large number of States have been merged in the Province and the States contain a much larger proportion of tribals than the Province proper. There even they are spending money like water—if I may say so. Have you ever heard of one Department working for the welfare of tribals in one Province been given a sum of fifty lakhs per year. That the C.P. Government is doing today. I do not know whether my friend the Honourable Premier Shri Ravi Shankar Shuklaji is here or not but it is really so, and it is a thing on which the C.P. Government may be congratulated. One word more, Sir, the President has already ruled that this suggestion of Shri Brajeshwar Prasad for making the tribal areas centrally administered, need not be taken seriously. But he said that all the tribal areas should be maintained by the Centre as Centrally Administered areas. But has not the Centre any other work? Has the Centre too little work? Is not the Centre saddled with so many new responsibilities so that they should be given additional burden of so many centrally administered areas? Already many States are being centrally administered. Then why this additional charge on them? Tripura, Cooch Bihar, Manipur and Bhopal and other States are being centrally administered. So, why throw this additional burden on the Centre?

And moreover, this is the work of the Provinces really, if I may say so. Of course, the directive must come from the Centre, as well as money; a good part of the money must come from the Centre. But this is work which can only be done by the Provinces and not by the Centre. The Centre has already enough responsibilities, such as the international field, the question of war and peace as well as directing the provinces. Therefore it will be a sin to saddle the Centre with more responsibility. It is often complained that the Centre is taking all powers to itself, by this Constitution that we are making, and so many people find fault with it. Then why ask the Centre to take up this additional responsibility, especially when it is a responsibility which cannot be undertaken by the Centre. It is a work for which so many agencies are required. And it has to be done in the course of ten short years. After ten years, the whole system of reservation of seats will be abolished. Of course, with it the department of welfare will not be abolished, I am sure of that. But the reserved representation of the tribals that we have promised them today, on adult franchise system, will be abolished ten years after, and therefore, they

will not come in as large numbers as they will now. Therefore this short period of ten years has to be utilised to the utmost and that must be done by several agencies, and not by the Centre or by the Government of the Union alone.

Sir, I have very great pleasure in saying that I support amendment No. 20 of Dr. Ambedkar that has been put forward. Not only has it been abridged, but it has widened the scope of its application. The total population is two and a half crores, all the tribal people in the Provinces as well as in the States. If we had not gone in for the States being included in this Schedule Five, then about more than one third of their population would have been neglected, especially those tribals of the States, coming for the first time into human knowledge, if I may say so. Nobody cared for them; nobody was allowed to go into them. Therefore, this is a very great improvement, and I hope the Government of India will vote ample funds for this work. That is the crux of the whole thing. I know the financial tightness under which the Centre is at present suffering. But that is a thing which will pass off in a year or two. After that, the Centre should give not less than a crore of rupees per year as help to the Provincial Governments, not only provincial, but also to the States, I would say, and more is needed for the Indian States than for the Provinces.

Shri Muniswamy Pillay (Madras : General) : Mr. President, Sir, at the outset, I must say that great credit is due to the Tribal Committee which went round the country and saw for themselves the great disabilities under which these tribal people are living. I think great credit is also due to the Drafting Committee for so ably bringing forward this Fifth Schedule which goes a long way to improve the conditions of the tribal people. Sir, coming as I do from a province and region which is inhabited by many varieties of tribes and aborigines, I feel that this is opening up a new chapter in the history of the elevation of the depressed and oppressed communities of this great land. I feel proud that in the new set-up the people who have been neglected for centuries, find a place and chance for progress.

Sir, I do not want to take the time of the House. But I would like to refer to one or two points in the Schedule. My friend Mr. Jaipal Singh has brought in an amendment to item 3 whereby he wants the Schedule Tribes to be added along with the Scheduled Areas. Sir, there are several tribes in the provinces who are scattered in many places and the population there do not count for representation of these communities in the Legislatures. According to adult franchise, one seat will go to every 75,000 of the people. But as these people are scattered, I do not think these people will be able to find enough place in the Assemblies. I know, as a matter of fact, in the Madras Legislature there is only one man representing the tribes, out of 215 members. Now, this Part II envisages to have Advisory Council or Committee, the composition of which will be three-fourth of the members from the Assembly. Unless a scheme is adumbrated whereby special representation for the scattered tribes is made, it will not be possible for these tribes to come in large numbers to take part in the Legislative Assemblies and also to take part in the Tribes Advisory Committee. So I think some way must be devised whereby it will be possible for these tribes to get into the Advisory Council.

A second suggestion has been made whereby if it is not possible to get members of the Assembly for this Advisory Council, members could be co-opted to the Council. I only say that care must be taken that only persons who have sympathy for the tribals and also people who have been working in the field of elevation of the tribals must find a place in this Tribes Advisory Council.

I know, in the south there are many tribes, such as the Todas, the Puliyas who are already dwindling in population. Recently Prince Peter of Greece who happened to be in the Nilgiris went into the question of the Toda uplift and

[Shri Muniswamy Pillay]

he has made certain suggestions to the Government of Madras designed to better their lot. My Friend Thakkar Bapa has said that it is not the Government alone who should work in this field, but all who feel for the elevation of the depressed and oppressed communities must take a keen interest in suggesting ways and means for their elevation.

Sir, it is said that the Tribes Advisory Council will be only advisory. I feel that some provision must be made that whatever recommendations are made by this Council, must be mandatory, and the Government, without overriding the recommendations of the Advisory Committee, must give effect to them. If this is done, I think the new set-up for the elevation of the tribes will go a long way.

Sir, it has been argued that reservation for the Scheduled tribes also must be for ten years. I am not in agreement with Thakkar Bapa who has great credit for having worked for the Adibasis and aborigines and other tribes. Their condition is so bad that it will be impossible for any Government or people to uplift them in the course of ten years. So I think that period of ten years for everything must disappear from our minds.

With these remarks, Sir, I strongly support the Fifth Schedule that has been brought by the Drafting Committee.

Shri Jaipal Singh: Mr. President, Sir: At the outset, it is rather unfortunate that I should have to talk about myself and my travels for the edification of my venerable Friend Mr. Thakkar. Only a few minutes ago, he said that I knew my Bihar and little outside. He hinted that I did not travel about much, that he would enable me by his own personal courtesy, as also perhaps with powerful financiers that are behind him, to go all over India, to the outposts of North East India and elsewhere, so that I may become the wiser by those travels. I thought he knew me well enough. It seems he does not. Let me tell him that I have lived for several years in the C.P. and there is not a single State there that I have not visited. Let me also tell him that I lived in Bengal for about five years and it was part of my job to go to the most inaccessible parts of even Eastern Bengal. Western Bengal, where there is a large Adibasi population, is almost next door to my own home district. For seven years, I lived in Jamshedpur, which attracts a good many Adibasis from Western Bengal and elsewhere. Assam—Mr. Thakkar went with the Sub-Committee only two years ago. May I enlighten him that I have been to every tribal tract in Assam not only once, but a dozen times? Madras is not unknown to me. Nor is Bombay. I am not one who advertises my itinerary as he or somebody else does. I go about quietly, moving about among my own folk, and I try to understand them and I do not come to hasty conclusions. I have for the last eleven years tried my best to educate non-tribal people to appreciate the self-respect, the imponderables of Adibasi culture. For a couple of years, it was my privilege to under-study some foreign anthropologists. I do not know how many Adibasi languages Mr. Thakkar actually knows.

Shri A. V. Thakkar: None.

Shri Jaipal Singh: I am glad he is honest enough to admit he knows not a single Adibasi language.

Shri A. V. Thakkar: Except of Gujarat.

Shri Jaipal Singh: Even in the evening of his life, I would venture to suggest that if his workers were to learn the language of the people—be they Adibasis or any other backward groups like the Scheduled Castes—their work could be more valuable. If, for example, his team who are in Southern Bihar and the

Chota Nagpur Plateau were to learn Santali, Uraon of Mundari—all of which I can speak—they would be treated with less suspicion than they are now. Adibasis are very very suspicious of non-tribals. Quite rightly, because the role of non-tribals has in the past been one of Dikus. That word 'Diku' is not something I have coined, as some Ministers in Bihar are so fond of alleging. Diku has been in the record of rights for the last eighty years, long before I was born. The non-Adibasi has played a very damaging role in the past. The generality of non-Adibasis have.

I will be the first one to acknowledge the sterling services a few of them, like my honourable Friend Mr. Thakkar, have rendered amongst these helpless people. I am not here to sing my own praises, but I would only like the House to know that I am not as untravelled in India or elsewhere as my honourable Friend. I do not know how many times Mr. Thakkar has been round the world. I have gone round twice at least. I have lived in Africa for five years. I have seen the aborigines of Polynesia. I have been elsewhere also. I have tried to understand the Adibasi problem as it confronts us today and, as it confronted the previous alien regime, from a scientific angle, not through the eyes of the politician as a great many of the people in this country are inclined to do. It is much better that we should try and probe deeper into it, try to get behind the mind of the Adibasi as to how we can make him do the work which we intend should be done for him. We cannot obviously carry 24.8 million Adibasis in our laps. Surely, that cannot be done. There, again, Mr. President, I have to correct my venerable friend that the figure is not 2½ crores. It is 24·8 million. It is more than 2½ crores. I do not want to argue about it.

Mr. President: 24·8 million is actually less than 2½ crores!

Shri Jaipal Singh: Never mind. There is a silver lining in the speech of my honourable Friend I am particularly gratified that he has risen above party politics and tried to present a case that should be worthy of him and his antecedents. I have been much worried by some of the amendments he had tabled against the original draft. Fortunately for him, he has dropped all of them and has forgotten all about them. This has required courage in him and I do admire his statesmanship.

It is quite true that the revised form of the Fifth Schedule is more comprehensive than the original draft. That is as it should be and it is to that end that I have tabled all my amendments and I hope Dr. Ambedkar and his Drafting Committee will produce their own mantar and, somehow or other, incorporate the ideas I have tried to put forward in my five amendments. There has been a tremendous change in the whole scene. Not only freedom, but the merger of the States has brought about a change in the entire aspect of the aboriginal problem. Numerically, the aboriginals need not be so helpless everywhere. Orissa will perhaps have the most difficult problem not because the problem is difficult, but because there are things which cannot be tackled unless the wherewithal is forthcoming. With the best of intentions in the world, Orissa will not be able to do much for its backward people, Adibasis and the other depressed classes, unless specific funds, *ad hoc* funds, are placed at its disposal by the Central Government. So is the case in regard to Assam. I am very glad that my Friend the Honourable Pandit Ravi Shankar Shukla has started in a humble way. To my mind Rs. 50 lakhs is not such a colossal figure that one can enthuse over it. Anyway he has made a beginning and I am very glad about it. But if he can add one more zero at the end of the amount that he has set apart, then I can, congratulate him. Funds will be needed and that is why I am somewhat cynical about the time limit some people have indicated. I would much rather that no date were

[Shri Jaipal Singh]

specified at the end of which these provisions should come to an end. Would it not be very much better that during these ten years, or twenty years, we should be on trial and at the end of that, the President should see to it that a Commission was appointed to investigate as to the extent to which the ameliorative measures had succeeded and as to whether a further period was necessary. I think some review is necessary. Let us not live in a fool's paradise and think that we will be able to work wonders within ten years. It will take much longer than that. It will take ten years to persuade the Adibasis to come out into the open to co-operate with us. The atmosphere of suspicion which exists at present has to be removed. Let us, therefore, be realists. For that reason, Mr. President, I would rather that the position were reviewed, say, at the end of ten years and we ourselves and the rest of the country will be in a position to know what we have been able to do. Then we can decide as to whether or not provision has to be made for a further period of another ten or fifteen years. I am strongly opposed to any idea of fixing a limit say of, ten years, at the end of which these safeguards should come to an end.

Sir, if my Madras friends will permit me, I would like to say a few words in Hindi, the Hindi that I have learnt in Bihar.

*[Mr. President, Sir, I heartily congratulate the Drafting Committee as they have accepted the new provisions and the new schedule. I would only request that your translation Committee should not translate Scheduled tribes as "Banjati". The word 'Adibasi' has not been used in any of the translations made by the several Committees. How is it? I ask you why it has not been done. Why has the word 'Adibasi' not been used and the word 'Banjati' has been used? Most of the members of our tribes do not live in jungles. You may go to Western Bengal. You will find that there are no jungles, near about the places where these members of these tribes live, nay not even is there any trace of trees. How can they be appropriately, termed as Banjati or forest tribes—tribes which live in forests? I wish that you should issue instruction to your translation Committee that the translation of Scheduled tribes should be 'Adibasi'. The word Adibasi has grace. I do not understand why this old abusive epithet of Banjati is being used in regard to them—for till recently it meant an uncivilised barbarian. This is the first point I would like to lay emphasis upon.

Another matter to which I would like to draw your attention is this. There are many Members of this House who like the world to believe that their hearts are full of sympathy for the Adibasis. They ask us to forget the past. They tell us that for the future they are determined to risk even their lives in order to promote the interests of the Adibasis. At election time, manifestoes full of such pledges are issued.]

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General): May I interrupt the Honourable Member for a minute? Now we are not using that word at all. We have discarded it.

Shri Jaipal Singh: Which word?

The Honourable Shri Ghanshyam Singh Gupta: The word to which you were just now referring—"vanajati." Our difficulty is that we are translating and not improving.

Shri Jaipal Singh: I am very glad that you have become wiser.

Sardar Bhopinder Singh Man (East Punjab: Sikh): What is the new word?

*[ ] Translation of Hindustani Speech

The Honourable Shri Ghanshyam Singh Gupta: We are using the word "janajati."

Mr. President: There is another expression which is being used in connection with an organisation which is working in Bihar; that is "adimjati".

Shri Jaipal Singh: [Whatever that may be, you have heard my views. In my opinion, it should be Adibasi. If you go towards C. P. and Bombay you will find many places where "Adibasi Seva Mandals" have been working. This word has been in use for a long time. All Adibasis understand it. I can never accept therefore that the use of this is likely to create any misconceptions. In my opinion it should be Adibasi. I am an Adibasi. I call myself an Adibasi. I cannot understand why you wish to give us another name. The fact is that the name 'Adibasi' would be most welcome to us.

Sir, I was speaking of the zeal which several people of this House profess to have for promoting the interests of Adibasis. I would like to tell all such friends in the House or those outside it that they should talk less and work more. I would like to emphasise that such friends should bear in mind that unless they have a genuine respect for the people whom they propose to serve, they would not have earned the right or acquired the capacity to serve. If, however, your mission of amelioration of the lot of the Adibasis is of the kind that the British professed to have, coming to India over all this distance of six thousand miles, I would ask you mercifully to leave us alone, and quit the Adibasi regions. I would remind such people of the adage "Physician, heal thyself". Please put your house in order before you think of reforming others. Mr. President, there are a few other matters.....]

Mr. President: *[But why are you continuing your speech in Hindi? I thought that you wish to say in Hindi something particular to some Madrasi friends here.]

Shri Jaipal Singh: Sir, I would like to say a few words in Madrasi also.

Mr. President: [Not necessary. They would admit that you know a number of languages.]

Shri Jaipal Singh: I was going to end my speech with a few words in my own, the most ancient language of this country. The country belongs to my most ancient group and we are very glad to have Mr. Munshi. I am very sorry to disappoint him that, in supporting the Fifth Schedule, I did not dress in my bows and arrows, the loin cloth, feathers, ear-rings, my drum and my flute. I have disappointed him I know. But I shall be very glad to educate the organization, of which he is the prime mover, next cold weather. He has invited me to take a group of dancers to Western India and then I will show him what it is that Adibasis can teach the rest of the country.

Shri Biswanath Das (Orissa: General): May I know whether the Honourable Member has ever put on clothes like that?

Shri Jaipal Singh: What makes Mr. Das think I never wear the clothes that my people wear? There has to be reciprocal co-operation. That distrust, that fear that existed before must be made to vanish from both sides. The non-Adibasi must go to the Adibasi as his friend, and, similarly, the Adibasi in his turn should take his proper place, the role of honour that is accorded hereafter in the national life of this country. I know Adibasis will respond.

*[ ] Translation of Hindustani Speech

[Shri Jaipal Singh]

As you said during the last general election campaign at Chakradharpore, Mr. President if I may remind you, you said that for the last six thousand years Adibasis had been struggling stubbornly for their *izzat* and for their self-respect. For eternity hereafter they will see to it that the honour of India does not in any way get impaired I have great pleasure in supporting the amendments to the Fifth Schedule

Mr. President: Do we require many speeches?

Shri Biswanath Das: I contested the election of 1937 after signing the Congress pledge to break the Constitution of the 1935 Act. After the elections we were called upon to play the role of iconoclasts. The second stage came when we came into the Provincial Ministries with the object of breaking the Constitution framed under the Act of 1935. It is a painful surprise to me to see that today we are too much wedded to that Act Nay, as if all that was not enough, we are happy to have the partially excluded areas that we had under the 1935 Act Therefore, this comes to me as a very unhappy brooding whether the step we had taken was unwise. The present step, with repetitions of vast portions of the 1935 Act, I shall leave to future generations for judgment I must frankly state that I am not at all happy for the way in which we have been proceeding, copying in most cases important portions of the Act of 1935 With the greatest difficulty, after a fight of forty years, we have been able to remove the communal virus introduced into the body politic of India, officially and statutorily after the Act of 1909, known as the Morley-Minto Reforms as also of the Acts of 1919 and 1935. We had to fight against that but not without difficulty and not without serious loss to India and ourselves That was the partition of India into Pakistan and India.

What are we doing now? We are creating another virus, a racial virus, by bringing in Tribes Councils, Scheduled areas and the rest. Sir, whom does this benefit? We have tried our best to meet the situation as far as possible. We have tried to stand for our ideals to the best of our capacity. The Congress has been said to be the greatest anti-imperialist institution in the world. It is the greatest institution that is fighting against the colour bar in the world.

The Negroes in America, after more than a hundred years of fighting, have not yet been fully enfranchised to the extent that a citizen in America is today, what to speak of other States wherein they are undergoing immense sufferings! We have declared at the top of our voice that every person in India, be he male or female, irrespective of class, creed or community or race, shall be equal and shall have equal citizenship rights. Not being satisfied with what we have done, we have enfranchised quickly millions nay crores of people who never thought that they would be enfranchised. Sir, we have conferred franchise on all the tribes and peoples of India by a system of universal suffrage. We have not only done this but have also proceeded further in safeguarding the minimum rights and privileges, essential and necessary for human beings in the Constitution by what is known as Fundamental Rights. After having done all this, are we, I appeal to you, justified in creating cleavage and gaps with partially excluded areas and Tribes Councils and the rest? Though it has been thought wisdom for over a hundred years or more by British Imperialists to keep these tribal people and these Scheduled areas as museums for purposes of demonstration and exhibition before the world to justify their existence in India, what is the purpose today,—to perpetuate this evil? There is absolutely no purpose. We are committed to a programme of social regeneration. We are committed to a programme of civilizing and uplifting and raising up the standard of life of all people, including

the tribes. Where then is the justification for these tribal areas, Tribes Councils and the rest? I plead for reason.

My honourable Friend, Mr. Jaipal Singh, has spoken of conferences behind his back. There has been nothing of the kind. I appeal to him to shed this attitude of distrust of people who least deserve to be distrusted. Sir, they were trying their best how to satisfy all interests concerned, and at the same time they will have something which would be acceptable to one and all in this House and that explains why today my honourable Friend congratulates the Drafting Committee as well as Thakkar Bapa than whom I cannot find a more devoted man to the cause of the tribal people. Comparisons are odious but no option is left. I would not compare my Friend Mr. Jaipal Singh with Shri Thakkar Bapa. It would be ridiculous for me, and for the matter of that for anyone, to be taken anyone, howsoever great he may be, as the sole representative of the hill tribes. A person, from his residence in the second or third floor of the Hotel Imperial, ill compares himself with a person like Thakkar Bapa.

Mr. President: I would ask the Honourable Member not to refer to personalities.

Shri Biswanath Das: I know and I will not do so. But I must record my sense of resentment decrying Thakkar Bapa.

Sir, I may say that I would not very much congratulate the Drafting Committee for all that they have placed before us. But I must also recognise the serious difficulties, inconveniences and the hardships to which the Members of the Committee had been put to when they had to approach and satisfy persons, interests and classes from dawn to dusk and dance attendance on them and find agreements agreeable to them.

Sir, I am not satisfied that we are doing materially enough for the tribals under these Schedules. More benefits should be available to these people. I recollect the happenings in Orissa in 1940, the fituri which was caused by the differences between the Savaras and the Panas who are recognised here as Adibasis. This trouble led to a loss of hundreds of lives at a time when we were all clapped in jail and the Government of Orissa was carried on under section 93 of the Government of India Act. The result was that the converted classes (Panas) and the tribal people (Savaras) fought among themselves. The latter believed that the converted people were their exploiters who deprived them of their belongings, lands and wealth. This fight ultimately led to the imprisonment of thousands of Savaras. Are you going to confer benefits on all these people indiscriminately? The provision, that you have made, makes it very convenient for all sorts of people to claim themselves as Adibasis. A few days back a gentleman from Bihar approached me with a complaint against the registering (election) officer of his areas saying that he did not record him as an Adibasi.

Shri Brajeshwar Prasad: May I know the name of this Harijan friend of my honourable Friend?

Mr. President: It is not necessary.

Shri Biswanath Das: From this instance the House can see how the bait is thrown. The way is left open for such claims by non-Adibasis to be enrolled as Adibasis. My friend need not worry himself. What I am submitting is that the provision made here makes it possible for others than Adibasis to prefer claims to be treated as Adibasis.

My honourable Friend Mr. Jaipal Singh referred to history six thousand years ago. I have not come here to discuss history with him. But is it far wrong to suggest, knowing as we do also history and Puranas that he talks of theories long exploded. But we should not leave this question of Adibasis and

[Shri Biswanath Das]

non-Adibasis for exploitation of politicians. Sir, there are a class of Brahmins in Orissa who call themselves Aranyas, meaning jungle Brahmans. Are you going to treat them as Adibasis or as non-Adibasis? Sir, why not save the country from the troubles arising from the distinctions between Adibasis and non-Adibasis? I have pleaded with Shri Thakkar Bapa to save the country from this unfortunate expression 'Adibasis'. As long as you recognise such terms you keep on fanning differences and find very many people like the Aranyas or Jungle Brahmins seeking to come under this category. I am therefore pleading with Mr. Jaipal Singh and Shri Thakkar Bapa not to perpetuate these distinctions tending to encourage separatist tendencies in our land. It is this curse that has kept India divided so long.

Sir, myself I claim to be an Adibasi and an original inhabitant of the country as Mr. Jaipal Singh. If you want lands, by all means have them. Ask for it. Let those who want lands have them. If you want development schemes, have money from the Government of India. I would appeal to the Government to sanction any sum that is required for the development of the depressed and oppressed classes. That is no reason why we should go on harping upon oppression, past or present, and at the same time perpetuate this separateness. I would appeal to Mr. Jaipal Singh and all those who think with him to utilise their influence for the good of the country and save her from this separatist tendency.

One point more, Sir. Having said so much in support of the provisions contained in the Schedule, I now come to offer a few comments on it. We have today got not only Governors nominated by the Centre, but also Rajpramukhs, hereditary and irremovable governors or heads of States. By virtue of their wealth and position, by virtue of their lifelong existence as irremovable rulers, they enjoy a prestige and influence which cannot be ignored. With these powerful agents you are leaving very important powers. You give them an opportunity to add to their influence by collaboration with the Adibasis. When I say this, I am not casting any aspersion on any Rajpramukh. I am only speaking from my own experience in my own province of Orissa. Some of them have tried to combine with the Adibasis and create a platform against the Government and the Congress, by exploiting the situation and by exploiting their racial and communal feelings. Therefore the powers which you give now to the Rajpramukhs are capable of immense mischief. You might say that there is the approval of the President; as such no harm can be expected on that score. Having secured the approval of the Tribal Council, it will be difficult, if not impossible, for the President to undo the recommendations. Under these circumstances I feel that it is not fair to leave such important weapons in the hands of the Rajpramukhs.

Sir, now I know in my own province, they have made the existing law very stringent for non-aboriginals with regard to the transfer of lands. That being so, *viz.*, the Ministers who are the representatives of the people having taken definite and important steps with regard not only the transfer of land but also regarding the ownership of lands in the interests of the protection of the hill tribes, why provide in the body of the Constitution a clause to interfere even with the existing Acts? Why should you do it? I plead again with the Drafting Committee that this is unnecessary, undesirable and uncalled for. Under these circumstances, Sir, I have no other option but to oppose the motion, however much I may sympathise with certain portions.

Shri K. M. Munshi (Bombay General): Mr President, Sir, I would not have intervened in this debate but for a couple of remarks of my friend, Mr Jaipal Singh. He complained that when some of us who are interested in this problem met at a conference he was not consulted. He will agree that it is not a fair charge. Three times my friend, Mr Jadubans Sahai from Bihar was sent to invite him. He said he was coming but did not come.

With regard to the other remark of his that I was disappointed that he did not appear with bows and arrows, in his Adibasi dress, I agree I was disappointed, though not for the reason that he did not appear in his Adibasi dress; I was disappointed because he could not give his unequivocal and wholehearted support to the new draft of the Schedule which, I think, is a considerable improvement on the old one. Several members of this House including Ministers of some provinces who are carrying on large-scale reforms as pointed out by Thakkar Bapa felt that the old draft was unsatisfactory. It was therefore found necessary to revise the Schedule for two reasons. The first reason was that we had produced one uniform stereotyped code for the whole country, while the problem of the Scheduled tribes differs from one province to another it would have certainly been prejudicial to the interests of the tribes, whose problems differ from one province to another, sometimes even from district to district. The second reason was that the States in Part III are coming into the scheme. The old draft of the Schedule only related to the provinces. Therefore, it was necessary to have one kind of scheme for the whole country applying to all the scheduled tribes.

The policy behind this, as has already been pointed out, is the same which my friend, Mr. Jaipal Singh, has at heart, viz that these Scheduled tribes in course of time might be raised to the level of other Indians in the Provinces and might be absorbed in the national life of this country. With regard to that policy, we are all one, but I can realise why my friend, Mr. Jaipal Singh, was not pleased to attend the conference to which he was invited. The method by which he seeks to achieve the aim is absolutely different from the one which this House, and the Congress have adopted. My friend's attitude is based on two factors. The first is a question of fact on which there is complete disagreement between us. The second is difference in outlook. I will take the first factor.

He thinks that all these tribes, sometimes thirty to fifty in each province, which he called Adibasis collectively form part of a single community. Now, that is—I know something about my own province—an entirely incorrect statement of fact. Each province has many scheduled tribes of its own. Each of these tribes is different from the other ethnically as mellas from the point of view of language, from the point of view of social and religious customs. There is nothing in common between one tribe and another. In my own province there are five tribes, who are scheduled tribes under this Constitution, Dublas, Bhils, Kolis, Bardas and Gonds. I know something about them. They are completely different from one another. I am sure no one would agree with the view that the Santals of Bihar, the Gonds or Bhils of Bombay and the Nagas of Assam are members of the same ethnic, religious or social group. They belong to different types of civilisations and different geological periods and it is necessary that different considerations should be applied for bringing them up to the level of the rest of the country. To call them all Adibasis and group them together as one community will not only be an untruth in itself but would be absolutely ruinous for the tribes themselves. Therefore it is necessary that in order to give them a proper place in society, different sets of activities would have to be adopted. This is the cardinal difference between the attitude of my friend Mr Jaipal Singh, and the rest of us. The Adibasis are not one conscious, corporate, collective whole in this country so

[Shri K. M. Munshi]

that somebody can speak in its name or can lead a movement combining them into a single unit. It would be fatal to the tribals themselves if such a policy is followed in this country.

The second point on which we differ cardinally is this: We want that the Scheduled tribes in the whole country should be protected from the destructive compact of races possessing a higher and more aggressive culture and should be encouraged to develop their own autonomous life; at the same time we want them to take a larger part in the life of the country adopted. They should not be isolated communities or little republics to be perpetuated for ever. The amendments which Mr. Jaipal Singh has moved will show that his object is to maintain them as little unconnected communities which might develop into different groups from the rest of the country. The result would be exactly to frustrate the common aim Mr. Jaipal Singh and ourselves have that these tribes should be absorbed in the national life of the country.

One of my honourable Friends amendments says (amendment No. 27) that after the words "Scheduled areas" wherever they occur the words "and Scheduled tribes" be inserted. That would mean that any member of any scheduled tribe, even if he comes to a city and has been more or less absorbed in the life of the city, must still be regarded as a different individual from the rest of the community and must have a tribal committee to look after him. This will destroy the whole object which he says he has in view.

In his next amendment No. 33 he wants to add in sub-paragraph (2) of paragraph 4 the following words: "It shall be the duty of the Tribes Advisory Council generally to advise the Governor or Ruler of the State on all matters pertaining to the administration, advancement and welfare of the scheduled tribes of the State." Now the word "administration" has been purposely omitted for the reason that administration would include the appointment of a Collector and of some Inspector or Superintendent of Police; it means the administration of the forests; it means the administration of law and order. Surely on all these matters, it is not suggested that the Advisory Council should be consulted by the Governor. All that we are concerned with here is the welfare and advancement of the tribals only with regard to those matters the Tribes Advisory Council have to be consulted. If you add the word 'administration', as my honourable Friend wants to do by his amendment No. 33, the result will be that nothing could be done in a small scheduled area in a district without consulting the Advisory Committee. That position, I submit, is entirely unwarranted.

The third set of amendments which my honourable Friend, Mr. Jaipal Singh, has moved (amendments Nos. 47 and 52) and Mr. Yudhishthir Mishra's amendment No. 46, are to the effect that the Tribes Advisory Council should be miniature senates with power to aid and advise the Governor in all matters falling within the purview of this schedule; there should be a kind of responsible Government with regard to these matters under which the Governor should accept the advice of not of a ministry but an assembly. That is an utter absurdity. Take the first case; an Act of the Parliament or an Act of the State would straightaway apply to the Scheduled area, but if the Governor thinks that in the interests of the tribals, certain sections of such an Act should not apply, he should be free so to decide. Is it possible for each Tribal Advisory Committee of a small tribe to come to a common conclusion with regard to an elaborate Act of Parliament as to what provisions of it should or should not apply. Under the draft as it stands all that the Governor has to do is that they should be consulted with regard to regulations. In regard to notifications when he thinks that certain provisions of the Central Act or

the Act of the State should not apply in the interests of the tribals, no previous consultation will be necessary because after all the sacred trust in respect of this step is placed on the Provincial Government. Further, with regard to the regulations of transfer of land and other things relating to the welfare of the tribes the tribal assembly will have to be consulted. Naturally their interests will be placed before the Government in the course of consultations. But to make the decision depend upon the advice of this assembly would in the end lead to disaster to the tribes themselves. It may be that after consultation the Governor may feel that their advice is not correct. Take for instance, money-lending. It is such difficult subject and I am sure some of the tribals on my side, would not be able to understand the implications of Money-lenders' Act, and if their advice is sought, I am sure, they would say that they do not understand a word of it. The word "consulted" therefore has been put in the place of "advice" purposely.

The last amendment of Prof. Shibban Lal Saksena leaves it to the Central Parliament to declare a scheduled area. I do not think it is right. The problem, as I said, varies not only from province to province but from district to district and it would be impossible for Parliament by law to do it. Therefore, I submit that the whole Schedule, as it is in the interests of the tribals themselves and I hope the House will accept it.

Mr. President: I wish to close the discussion now. Does Dr. Ambedkar wish to say anything?

The Honourable Dr. B. R. Ambedkar: Mr. Munshi has said everything that was needed to be said and I do not think I can usefully add anything.

Mr. President: Then I shall put the amendments to vote now.

Mr. Naziruddin Ahmad: My amendments need not be put to vote, but they could be considered by the Drafting Committee.

Shri K. M. Munshi: Some of them are very valuable.

Mr. Naziruddin Ahmad: But they will be rejected by the House.

Mr. President: We have already passed the first two paragraphs. I come to paragraph 3. The first amendment is by Mr. Jaipal Singh, No. 27.

Mr. President: The question is:

That in amendment No. 20 above, in paragraph 3 of the proposed Fifth Scheduled, after the words "scheduled areas" wherever they occur, the words "and scheduled tribes" be inserted; and the words "or whenever so required by the Government of India" be deleted.

The amendment was negatived.

Mr. President: The question is:

"That the proposed paragraph 3 stand part of the Fifth Schedule."

The motion was adopted.

Paragraph 3 was added to the Fifth Schedule.

Paragraph 4

Shri Yudhisthir Mishra: I beg leave to withdraw amendments Nos. 31 and 32.

Amendments Nos. 31 and 32, were by leave of the Assembly, withdrawn.

Shri Jaipal Singh: I accept Mr. Munshi's explanation and would like to withdraw amendment No. 33.

Amendment No. 33, was by leave of the Assembly, withdrawn.

Mr. President: The question is :

That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (3) of paragraph 4, and in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, for the words "Governor or Ruler" the words "President in consultation with the Governor or Ruler" be substituted.

The amendment was negatived.

Mr. President: All the other amendments are not put to vote. I think these are all the amendments relating to paragraph 4. The question is :

That the proposed paragraph 4, stand part of the Fifth Schedule.

The motion was adopted.

Paragraph 4 was added to the Fifth Schedule.

Paragraph 5

Shri Yudhisthir Mishra: I beg leave to withdraw amendments Nos. 46, 48 and 51 standing in my name.

The Amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is :

"That in amendment No. 20 above, in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, after the words 'as the case may be' the words 'if so advised by the Tribes Advisory Council' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 20 above, in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, the words 'in any such area' be deleted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 20 above, in sub-paragraph (5) of paragraph 5 of the proposed Fifth Schedule, for the word 'consulted' the words 'been so advised by' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (4) of paragraph 5 of the proposed Fifth Schedule, after the word 'All' the words 'notifications and' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (5) of paragraph 5 of the proposed Fifth Schedule, after the word 'No' the words 'notification or' be inserted."

The amendment was negatived.

Mr. President: The others are amendments moved by Md. Naziruddin Ahmad. I think he does not want them to be put to vote. The question is :

"That the proposed Para. 5 of the Fifth Schedule stand part of the Schedule."

The motion was adopted.

Paragraph 5 was added to the Fifth Schedule.

Paragraph 6

Mr. President: Amendments 185, 186 and 187: I think Mr. Naziruddin Ahmad does not wish them to be put to vote. The question is:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 6 of the proposed Fifth Schedule, for the words 'President may by order' the words 'Parliament may by law' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph (6) of the proposed Fifth Schedule.

(a) for the words "such order may" the words "such law may" be substituted;

(b) for the words "to the President" the words "to the Parliament" be substituted; and

(c) the words "but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order" be deleted."

The amendment was negatived.

Mr. President: The question is:

"That the proposed Para. 6 of the Fifth Schedule stand part of the Schedule."

The motion was adopted.

Para. 6 was added to the Fifth Schedule.

Paragraph 7

The proposed Para. 7 was added to the Fifth Schedule.

Mr. President: The question is:

"That the Fifth Schedule as moved by Dr. Ambedkar stand part of the Constitution."

The motion was adopted.

Fifth Schedule was added to the Constitution.

Sixth Schedule

Mr. President: We now go to the Sixth Schedule.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in sub-paragraph (1) of paragraph 1, before the words, 'The tribal areas' the words 'Subject to the provisions of this paragraph' be inserted."

Originally, the draft merely said that the Tribal areas were those which were included in the table attached to this Schedule. There was no power given to define the boundaries of those areas included in the Table. It is felt that it is necessary to give the Governor the power to define the boundaries of those areas included in the Table. In order to provide for this power for the Governor, it is necessary to add the words which are contained in this amendment.

Mr. President: Amendment number 99 also relates to paragraph 1.

The Honourable Dr. B. R. Ambedkar: May I move that?

Mr. President: Yes.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

That for sub-paragraph (3) of paragraph 1, the following sub-paragraph be substituted:—

"(3) The Governor may, by public notification—

(a) include any area in Part I of the said Table,

[The Honourable Dr. B. R. Ambedkar]

(b) create a new autonomous district,
(c) increase the area of any autonomous district,
(d) diminish the area of any autonomous district,
(e) unite two or more autonomous districts or parts thereof so as to form one autonomous district,
(f) define the boundaries of any autonomous district

Provided that no order shall be made by the Governor under clauses (b), (c), (d) and (e) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule."

In this amendment, the new things to which attention must be drawn are included in sub-clauses (e) and (f) of sub-paragraph (3). That is necessary because it may be required, in any particular state of affairs, that two or more autonomous districts may be united together. The power contained in sub-clause (f) is also necessary because it may be desirable to define the boundaries in case there is any particular dispute between the different tribes.

The proviso introduces a change. By comparing the proviso with the original provisos, it will be seen that there were two provisos to sub-paragraph (3). In the first proviso, the Governor could act under clause (b) or clause (c) on the recommendation of a Commission. But, if he wanted to act under clauses (d) or (e) he was required to have a resolution of the District Councils of the Autonomous Districts concerned. It is felt that this distinction made by the two provisos for the different parts of sub-paragraph (3) is not necessary. It is better to make it uniform by requiring the Governor to act after consideration of the report of a Commission which is proposed to be appointed under sub-paragraph (1) of paragraph 14 of this Schedule.

Mr. President: As regards this Schedule, as the Schedule as a whole has not been changed but only certain amendments to some of the paragraphs have been suggested, I propose to take this paragraph by paragraph. Regarding the first para, these are the two amendments which have been moved on behalf of the Drafting Committee. I will now take the other amendments of which notice has been given. There are some printed in the second volume of the list of amendments.

(Amendments 3489, 3490 and 3491 were not moved.)

There is one amendment that paragraphs 1 to 16 be deleted. I do not know whether to take it.

The Honourable Dr. B. R. Ambedkar: That need not be taken.

Mr. President: Yes. The Member can vote against each paragraph. It is not necessary to take it now.

No. 101 Shri Brajeshwar Prasad.

Shri Kuladhar Chaliha: I have No. 100. Sir, I want both the provisos to be taken out but here one proviso has been taken out but the other remains in the next paragraph. If you look at para. 14 you will find this:

"provision of educational and medical facilities and communications in such districts;

the need for any new or special legislation in respect of such districts; and

the administration of the laws, regulations and rules made by the District and Regional Councils."

But you do not find mention of these subjects in paragraph 3. It mentions something else. Unless para. 14 is modified or amended, I do not think it would cover these subjects. As such my object is that we should delete this entirely so that there will be no necessity of having a Commission and the Governor may by public notification can do these.

Shri T. T. Krishnamachari: If he reads Amendment 134 tabled by the Drafting Committee, he will find the answer to his query. It covers these.

Shri Kuladhar Chaliha: I have read 134. It covers to a certain extent but I do not want that it should be done by a Commission. A Governor means of course the Cabinet. I do not want a Commission. The Governor would have the power in consultation with his Cabinet to discuss these things and if it is be left to a Commission there will be obvious delay. You have also not decided as to the composition of the same and who will be members, whether the legislature will be represented in it or whether there will be only selected members from the autonomous districts. None of the Plains areas which are somehow or other by fluke included in the Hills will ever be excluded. Unless it is definitely stated that the members of the Legislature will be represented, it will have no effect. As such I feel that para. 14 as drafted will not satisfy. You should declare what will be the composition of this Commission. Unless that is decided properly, the defect remains there. As such I submit that this proviso should be deleted. I therefore move:

"That with reference to amendment No. 3487 of the List of Amendments (Volume II), the provisos to sub-paragraph (3) of paragraph 1 be deleted"

Shri Brajeshwar Prasad: There are three amendments and I would like to know whether I should move also 188, 190 and 191.

Mr. President: You can move them. 101 and 102 are the same as Mr Chaliha's.

Shri Brajeshwar Prasad: I will move 103. I move:

"That the following be added at the end of paragraph 1 —

'The functions of the Governor under this paragraph shall be exercised by him as the agent of the President'"

or alternatively.

"The functions of the Governor under this paragraph shall be exercised by him in his discretion."

There are other amendments. I move:

"That in sub-paragraph (3) of paragraph 1 for the word 'Governor' the word 'President' be substituted."

I also move:

"That the two provisos to sub-paragraph (3) of paragraph 1, be deleted."

Mr. President: It is the same as Mr. Chaliha's.

Shri Brajeshwar Prasad: Then it may not be taken as moved. The effect of these amendments, if approved by the House, will be to place the administration of the tribal areas in Assam under Central jurisdiction. I am very serious when I suggest that it is necessary in the interest of the country that these areas should form part of the Centre. I have tabled 49 amendments in this Schedule VI and I had similarly tabled 49 amendments in Schedule V. It was not due to any lack of seriousness on my part that I did not move those amendments.

Sir, it was in accordance with the wishes expressed on the floor of the House that the time at our disposal is short and that we wanted to finish this work before the commencement of the Dusserah vacation, that is why I did not move them. But, if the criterion of seriousness is the moving of amendments, I am prepared to move all these 49 amendments.

[Shri Brajeshwar Prasad]

Well, Sir, I am opposed to handing over the administration of the tribal areas into the hands of the provincial government, because Assam is on the border of five or six foreign States. I am referring to China, Tibet, Burma and Pakistan. Sir, in Assam, the conflicts between the Ahoms, and the Assamese, the Bengalies and the Muslims and the Mangoloid races have assumed proportions of which probably we the members of the House are not fully aware and so do not realise the gravity of the situation with which the Government of Assam is confronted. Sir, infiltration on a mass scale is going on from East Bengal and the Government of Assam has not been able to check it, and I understand that in spite of a request that the Government of Assam made to the Centre to provide facilities to enable it to check this, somehow or other, no facilities were given to the Government of Assam and the result has been mass infiltration of fifth columnists and subversive elements, not only from East Bengal, but from all those States which I have mentioned a few minutes back. Sir, the conflict between the Bengalees and the Assamese in Assam, the conflict between the Hindus and the Muslims and the conflict between the tribals and the non-tribals, these are the problems with which the Government of Assam is confronted. About 72 per cent. of the budget of the province is swallowed up in the form of salary bills.

Therefore Sir, is it right, is it safe, is it strategically desirable, is it militarily in the interests of the Government of Inda, is it politically advisable, that the administration of such a vast tract of land should be left in the hands of the provincial government, especially in a province where there is no element of political stability? Sir, I love this country more than provincial autonomy. I know the problems in Assam are too complicated and are beyond the economic resources of the province to tackle, they are much too complicated and large to be tackled by the Provincial Government of Assam. Therefore these problems should be left into the hands of the experts, social workers, doctors, teachers, engineers, psychologists, professors, philosophers, and sociologists, and no politicians should be allowed to meddle in this affair.

Mr. President: Mr. Chaliha, then I take it that your amendment is also moved?

Shri Kuladhar Chaliha: Yes, Sir.

Mr. President: I do not think there is any other amendment to this paragraph. Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar: Sir, there are just two points which have been raised in the course of the remarks made on these amendments which call for reply. The first question is the one, which was raised by Mr. Chaliha. I must say I was somewhat surprised at the amendment tabled by Mr. Chaliha, because like the Fifth Schedule the Sixth Schedule also has arisen, so to say, out of an agreement between the Drafting Committee and the Premier of Assam, my Friend Mr. Nichols Roy and at which conference Mr. Chaliha also was present, and he accepted the new schedule as amended by the Drafting Committee. However, it cannot take long to dispel the doubt he has in his mind as to who would constitute this Commission, who would be its members, and all matters relating to the Commission. I think if Mr. Chaliha had only read carefully the wording of the Sixth Schedule he would have seen that in appointing the Commission the Governor is not going to act in his discretion. There is no discretion left in the Governor. That being so, it is quite obvious that in constituting the Commission, and defining its terms of reference, the Governor would be guided by the advice of the local ministers, and I do not think, therefore, there need be any fears such as the one that he has expressed.

Now, with regard to the amendment of my Friend Mr. Brajeshwar Prasad, this is the one amendment I think in which so far as I am concerned, I feel that he has urged some serious argument. He says that the whole of the tribal area should be lifted from the Province of Assam and should be made a Centrally administered area, because there cannot be any other effect of the amendment which he has put forward except the one which I have suggested. It means practically constituting the area as a Centrally administered area. But he seems to have forgotten two things. The first is this. Although we have constituted autonomous districts for the purpose of the satisfaction of the tribal people living in those areas that they will have, at any rate for the first ten years, autonomy in the matter of the government of their areas, we have nowhere provided that the autonomous districts shall not constitute part of the province of Assam. That being so, it is very difficult to leave part of the Province to be governed by the Governor of the province and part of the province to be administered as a Centrally administered area.

The second point he has forgotten is this. He has forgotten to take note of the fact that even in constituting the autonomous areas, the Drafting Committee has not forgotten that there are what are called certain "frontier areas", bordering on the autonomous districts. It has been provided in this Schedule that so far as the administration of these frontier areas of Assam is concerned, the Governor would be acting under the President. Consequently whatever strategic importance, the frontier areas may have, the Centre would certainly have ample jurisdiction to see that none of the disturbing factors to which he has made reference will find any place there. I therefore, think that all these amendments are unnecessary and out of place.

Shri Kuladhar Chaliha: Is amendment No. 139 accepted?

The Honourable Dr. B. R. Ambedkar: *I cannot say off-hand now.* I am only dealing with your amendment and the amendment of Mr. Brajeshwar Prasad, and I think they are unnecessary.

Mr. President: And amendment No. 139 has not been moved at all. It deals with paragraph 14.

The Honourable Dr. B. R. Ambedkar: We shall deal with it when we reach paragraph 14.

Shri Kuladhar Chaliha: But it is connected with this, practically.

Mr. President: We cannot take up paragraph 14 now. So now I put the amendments to vote. First I put No. 98 of Dr. Ambedkar—The question is:

"That in sub-paragraph (1) of paragraph 1, before the words 'The tribal areas' the words 'Subject to the provisions of this paragraph' be inserted."

The amendment was adopted.

Mr. President: Then I put amendment No. 99. The question is:

That for sub-paragraph (3) of paragraph 1, the following sub-paragraph be substituted:—

"(3) The Governor may, by public notification—

(a) include any area in Part I of the said Table,

(b) create a new autonomous district,

(c) increase the area of any autonomous district,

(d) diminish the area of any autonomous district,

(e) unite two or more autonomous districts or parts thereof so as to form one autonomous district,

(f) define the boundaries of any autonomous district:

[Mr. President]

Provided that no order shall be made by the Governor under clauses (b), (c), (d) and (e) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule."

The amendment was adopted.

Mr. President: I think the other amendments, which relate to the deletion of the proviso, do not arise after this has been passed. There is only one amendment which now remains, the one moved by Mr. Brajeshwar Prasad. I put it to the House. The question is

That the following be added at the end of paragraph 1 —

"The functions of the Governor under this paragraph shall be exercised by him as the agent of the President"

The amendment was negatived

Mr. President: Then there are two other amendments moved by Mr. Brajeshwar Prasad

Mr. President: Amendment No 188—

The question is

"That in sub-paragraph (2) of paragraph 1, for the word 'Governor' the word 'President' be substituted '

The amendment was negatived.

Mr. President: Amendment No. 190—

The question is:

"That in sub-paragraph (3) of paragraph 1, for the word 'Governor' the word 'President' be substituted"

The amendment was negatived.

Mr. President: I now put paragraph 1 as amended by Dr Ambedkar's amendment.

The question is:

That paragraph 1, as amended, stand part of the Schedule.

The motion was adopted.

Paragraph 1, as amended, was added to the Sixth Schedule.

The Assembly then adjourned till Nine of the Clock on Tuesday, the 6th September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 6th September, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Sixth Schedule— (*contd*)

Paragraph 2

The Honourable Dr. B. R. Ambedkar (Bombay. General). Sir, I beg to move :

"That in sub-paragraph (1) of paragraph 2, for the words 'not less than twenty and not more than forty members' the words 'not more than twenty-four members' be substituted."

This amendment is introduced because it was felt that the original number forty might be too large

Sir, I move :

"That sub-paragraph (2) of paragraph 2 be deleted."

The reason why the deletion is made is because we propose to leave the delimitation of constituencies to rules rather than provide it in the Constitution itself.

Sir, I move :

"That after clause (d) of sub-paragraph (7) of paragraph 2, the following clause be added :—

'(dd) the term of office of members of such Councils,' "

This was omitted from the rule-making powers.

Shri Kuladhar Chaliha (Assam. General). Sir, I move.

"That with reference to amendment No. 3487 of the List of Amendments (Vol. II), at the end of sub-paragraph (5) of paragraph 2, the following be added :—

'subject to such directions as may be given by the Governor or by the Legislature of the State.' "

Para. 2 sub-para. (5) reads :

"Subject to the provisions of this Schedule the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the district council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region."

If you allow this sub-para. as it is there will be injustice done to us, unless this proviso is there, *viz.*, "subject to such directions as may be given by the Governor or by the Legislature of the State."

The Nagas are a very primitive and simple people and they have not forgotten their old ways of doing summary justice when they have a grievance against anyone. If you allow them to rule us or run the administration it will be a negation of justice or administration and it will be something like anarchy.

[Shri Kuladhar Chaliha]

If you see the background of this Schedule you will find that the British mind is still there. There is the old separatist tendency and you want to keep them away from us. You will thus be creating a Tribalstan just as you have created a Pakistan. The ultimate result will be that you will create a Communistan, and hence it is that I am suggesting this amendment "subject to such directions as may be given by the Governor or by the Legislature of the State.

There are so many people of our country, so many Assamese, Punjabis and Sikhs—all people of the country. You cannot consign them to mis-rule, to a primitive rule. It is impossible that they should remain such. It is said that they are very democratic people, democratic in the way of taking revenge; democratic in the way that they first take the law into their own hands. And it is threatened by some that they are so democratic that they will chop off our heads. They have not been able to chop off our heads for the last three thousand years and till 1948 they have not been able to do anything, and we are not afraid that they will chop off our head if they are not given independence of administration. It is a threat which is useless and worthless. We should not be frightened by these threats of some people who say that they will come down on us. This is intended to be imposed on us by the threats of some people and we should be aware of these interested persons. There is no need to keep any Tribalstan away from us so that in times of trouble they will be helpful to our enemies.

In the subsequent provisions of this Schedule you will find that an Act of Parliament cannot be imposed on them unless they consent to it. Have you ever heard that an Act of Parliament cannot be applicable to any people unless they agree to it? Such a thing is impossible and therefore I say that this Schedule has been conceived in a way the background of which is to keep them away from us and to create a Tribalstan. And the result will be that there will be a Communistan there. The Communists will come and they will have a free hand, as in Manipur one of the Ministers was already a Communist. Your Governor will not be able to act, your Parliament will not be able to act. If you go on like this we will have no government there. The whole Schedule is conceived in a way which is a negation of government. As such I commend this to the consideration of the Drafting Committee. I commend this to Dr. Ambedkar who should think over again and not conceive it in the way they have conceived this schedule.

Mr. President: You may move No. 257 also.

Shri Kuladhar Chaliha: Sir, I move:

"That in amendment No. 105 of List I (Seventh Week), in sub-paragraph (1) of paragraph 2, for the words 'not more than twenty-four members' (proposed to be substituted), the words 'not more than fifteen members' be substituted."

The Naga Hills contain only a lakh and seventy thousand people and it contains about ten tribes. If you give them for every district twenty-four members it will be too much. They will quarrel among themselves. The less the number the better. Therefore I have suggested in my amendment fifteen for twenty-four and one-third will be nominated by the Governor. In order to make a proper proportion ten will be elected and five will be selected by the Governor. Therefore I commend this amendment to the House. It is no one having twenty-four. It is much too many. There are ten tribes having a population of about 1,70,000 and the villages or tribes will be about from 1,000 to 2,000 per ten tribes. They ought not to have so many members. It will be only giving cause for trouble. As such the number should be less. I should

say that the number should even have been five It should not be so much, as it will lead only to interminable quarrels and trouble to the Governor and trouble to us.

(Amendment No. 3493 was not moved.)

Mr. President: Nos. 109, 110, 111 and 112 are based upon 3493. They do not therefore arise now.

Shri Brajeshwar Prasad (Bihar . General): This can very well fit in as an independent amendment as well. I will move only 110 and make a few general observations.

Sir, I beg to move :

"That in amendment No. 3493 of the List of Amendments (Volume II), for the proposed new sub-paragraph (7-A) of paragraph 2, the following be substituted :—

'The functions of the Governor under sub-paragraph (7) shall be exercised by him as the agent of the President.' "

I am thoroughly opposed to paragraph 2 I am opposed to the division of India into Provinces. I can never be a party to dividing Assam into a large number of sub-Provinces. This is exactly what sub-paragraph (4) of paragraph 2 does. I am opposed to the District Councils and Regional Councils because they will lead to the establishment of another Pakistan in this country. I stand second to none in my enthusiasm for social, educational and cultural advancement in the tribal areas of Assam. For it is on the achievement of these objectives that the security of the State can be guaranteed. But the step that we have taken is neither in accord with the general well-being of the tribals nor with the interests of the people of India as a whole.

The responsibilities of parliamentary life can be shouldered by those who are competent, wise, just and literate. To vest wide political powers into the hands of tribals is the surest method of inviting chaos, anarchy and disorder throughout the length and breadth of this country.

I may be confronted with the question "What will you say to the tribals if they come and tell you that they want political autonomy and all the powers that have been vested in the District and Regional Councils ?" I will never concede this demand. I am not in favour of the principle of self-determination. I believe in the principle of the greatest good of the greatest number. I will not jeopardise the interest of India at the altar of the tribals. The principle of self-determination has worked havoc in Europe. It has been responsible for two world wars in my life-time. It led to the vivisection of India, arson, loot, murder and the worst crimes upon women and children. It led to the assassination of Mahatma Gandhi. I do not find myself equal to the task of supporting the formation of these District and Regional Councils on the ground that the principle of self-determination must be supported by all Let those who believe in political shibboleths support the provisions of paragraphs 2. I am strongly opposed to it.

The argument may be raised that we are doing nothing new in vesting powers into the District and Regional Councils.

Democratic institutions exist in the tribal areas. Paragraph 2 only gives constitutional recognition to the existing state of affairs. Sir, I am not impressed by these arguments. If there is an evil it must be suppressed, however old it may be.

[Shri Brajeshwar Prasad]

Another argument may be advanced that the Scheduled areas and the reforms that have been incorporated are based upon the report of the Tribal Committee of which Shri Thakkar Bapa was the Chairman and that it had the support of the Premier of Assam. I hold the view that the political implications of that report have not been grasped. We are doing a great disservice to the people of this country as a whole. Frankly stated, my own view is that you should be appealed to direct the Drafting Committee to reconsider this Schedule. We are jeopardising the interests of the whole country. This is not a question in which the people of Assam only are concerned. This is a question which affects the whole of India. This question affects the defence of the country as a whole. I hope my friends from Assam will rise to the occasion and treat the question in that light. I request you, Sir, to send back this Schedule to the Drafting Committee for re-consideration. This should be re-drafted on the lines of the Fifth Schedule. The existing Schedule Six bristles with difficulties and it may lead to anarchy and chaos later on unless it is suitably amended now.

Mr. President: Amendment No .192 standing in the name of Mr. Naziruddin Ahmad need not be moved. These are all the amendments to be moved

The Honourable Shri Gopinath Bardoloi (Assam: General): Mr. President, Sir, I did not want to participate in this debate. But it seems to me that many Members are not fully cognizant of the tribal situation in Assam, and what is more, many have not been able to appreciate the background of the recommendations of the Advisory Sub-Committee set up by the Constituent Assembly for the purpose of enquiring into the tribal situation in Assam.

I wish to state, Sir, that there are three categories of tribals in Assam. There are the plains tribals—men who were the original inhabitants and who have a culture and civilization of their own. They were gradually absorbed into the folds and the culture of other plains people, to put more appropriately the Aryan culture. These people have now been classed with the minorities, just as the Scheduled classes and they have been granted the same rights as the other minority community.

Then there are the hill tribes proper. These again can be divided into two clear categories. One such class of hill tribes is administered by the Governor as the Agent of the Governor-General of India and the other class, coming under the Sixth Schedule, is proposed to be administered as autonomous groups. We are not concerned with the first category in the Sixth Schedule except to extent of the provision contained in paragraph 17 which says that any area now administered by the Governor as the Agent of the Governor-General, can be brought under the category of autonomous districts in his discretion only under certain circumstances. For that purpose the Governor has been given power as mentioned by me under paragraph 17.

Now I would like to give this information to the House that in the Agency area these tribes have no self-governing institutions of their own at the present moment. The draft Constitution provides that these areas should be administered directly by the Governor without any restriction whatsoever. But the time may come when they may become fit to govern themselves. The proposal is that at that time they may be brought under the category of autonomous districts. These areas lie on the northern banks of the Brahmaputra on the foothills of the Himalayas. The others who come under the category of autonomous districts are those who inhabit the southern bank of the river bordering Burma and Pakistan. There are some six different types of tribes among them and the autonomous districts are envisaged for them.

Now I want to place before you the background in which this draft had to be formulated. It is not unknown to you that the rule of the British Government and the activities of the foreign Missions always went together. These areas were formerly entirely excluded areas in the sense that none from the plains could go there and contact them That was the position till 15th August 1947, when India became independent. The foreign rulers till then had in these areas power to send out of the place anyone they desired within 24 hours. Again, Sir, some of these areas were war zones During the war, the then rulers and officers developed in the minds of these tribal people a sense of separation and isolation and gave them assurances that at the end of the war they will be independent States managing their affairs in their own way They were led to believe that the entire hill areas would be constituted into a province and put under some irresponsible Governor. You might possibly have read in the papers that plans were hatched in England in which the ex-Governors of Assam evidently took part, to create a sort of a Kingdom over there.

Now, with this background, Sir, our investigation began early in 1946. People of this area were already fully suffused with these ideas of isolation and separation The most important fact that presented itself before this Committee was whether for the purpose of integration the methods of force, the methods of the use of the Assam Rifles and the military forces, should be used, or a method should be used in which the willing co-operation of these people could be obtained for the purpose of governing these areas.

Sir, it is necessary to mention here that there are certain institutions among these hill tribals which, in my opinion, are so good that, if we wanted to destroy them, I considered it to be very wrong. One of the things which I felt was very creditable to these tribals was the manner in which they settle their disputes. Cases which would go in the name of murder according to our Penal Code were settled by these people by the barest method of Panchayats decision and by payment only of compensation. Then, the democracy which prevails there—though limited in the sense it is confined only to the tribals of a clan or region—will rouse the admiration of any disinterested student. And again take the instance of their village administration. The district authorities have indeed very little to concern themselves with the way things go on there. Take again the case of Ao Nagas who distributed the entire functions of the society through certain age groups of people in their society. The boys would perform certain simple functions, leaving the sturdier functions of the State to the adults, while the elders would give their judgments in cases of disputes and order distribution of lands for jhuming and things of that kind. In other words, they are exercising a certain amount of autonomy which, I thought, and the members of the Tribal Sub-Committee thought, should be preserved rather than destroyed What is necessary for good government is already there.

It is true that some of these tribal people sometimes indulge in head-hunting, but it should be clearly understood that this is only when there is enmity of one clan against another. These people nurtured a spirit of collective hatred in them for generations. The point therefore that presented itself to us was whether we should raise in their a spirit of enmity and hatred by application of force or whether we should bring them up under the broad principle of government by good will and love. The Advisory Committee thought that the latter course was the course that should be adopted I myself am a firm believer in Gandhian principles. If therefore Gandhian methods are to be followed, there is no alternative but to adopt the course which we have thought was the best method. Now, with that background the draft was prepared and was placed before you. In the meantime, great changes have come in the

[The Honourable Shri Gopinath Bardoloi]

structure of the Government of India. More powers are being vested in the Centre today than it was contemplated then. Therefore those powers at present have to be put in the appropriate place. The trend of criticism on the amendments that have been submitted seems to indicate that we gave more powers to these autonomous Councils, perhaps very much beyond what the State Legislature of Assam could. I do not agree with this view. As a matter of fact, most of these provisions are nothing more than translating something which already prevails in the tribal societies, and therefore we are not giving too much as has been pointed out by some of my friends.

Then coming to the amendments which have been moved by Mr. Chaliha, excepting for what he was objecting to that a particular place Dimapur, has been included in the Naga Hills, the rest have all been accepted by the Drafting Committee. It is true that the area was included in the Naga Hills only for administrative convenience. The Drafting Committee have however provided for two things. First, that any area as a whole could be excluded from the autonomous district. Secondly it has also been provided that the men who are living there or similar area shall have the right of exercising their vote in a neighbouring general constituency.

I submit, therefore, that nothing has been proposed here which is not in line with the pattern and the structure of the Constitution which we are framing for the whole of India, and that wherever there was any anomaly, that anomaly has been removed. That is all that I have to say. I therefore request that the Movers of these amendments take into consideration the background of the draft and also the peculiar conditions which prevailed in the hills before.

Shri Rohini Kumar Chaudhuri (Assam: General): May I ask the honourable Member to refer to that provision of the new Constitution whereby the people —non-tribal people—living in a tribal area can exercise their choice in areas not included in the tribal area? In the first place the tribal areas as it now stand, are not final. The Governor is given the power of fixing the boundaries. Again 16(a) reads as follows :—

"Exclusion of areas from autonomous districts in forming constituencies in such districts.— For purposes of elections to the Legislative Assembly of Assam, the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district, but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order."

That is the amendment we shall be moving. It would be seen that we have done nothing wrong to anybody of the plains: but have recognized the autonomy of these areas to the extent that the tribes are capable of exercising them.

I hope, Sir, in the circumstances the amendments that had been given notice of are moved in an appreciative way and not in a spirit of destructive criticism.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, I have very carefully listened to the speech of the Honourable Mr. Gopinath Bardoloi. I do admit that we are not very much conversant with the conditions in the autonomous districts and therefore, I accept what he has said and I also want to assure him that the House will give him full opportunity to have the government of the area in the way in which he wants it. I do feel, however, that there must be some method by which these autonomous districts should at some later date at least be absorbed in and become part of the normal population of the whole province.

The Honourable Dr. B. R. Ambedkar: If you like, Sir, I would make a few observations at this stage and then probably many people may not find it necessary to speak and all these doubts, I think, would have been dispelled.

Prof. Shibban Lal Saksena: I only wanted to say that if this scheme of things is going to be put in a permanent Constitution that will mean that some areas of Assam shall remain beyond the control of Parliament for ever. I want that for ten years, fifteen years or for a fixed period of time this may be provided for together with whatever else you want for their welfare, but let us conceive of some time after which these people should become absorbed in and become part of the normal population of the province and it should not be necessary to have a separate province for them. I tried to study the whole Schedule, and I did not find any such provision in the amendments which are to be moved. Dr. Ambedkar has moved article 20 by which Parliament can amend the Schedule, but no method is indicated to bring in those areas into greater affinity with the rest of Assam. This separation will take a permanent character and it may lead to the division of the province itself. The honourable Mr. Gopinath Bardoloi has given us the background under which this has been done, but I do want that with that background, we must foresee the future and should try to amend this Schedule in such a way that after some considerable time, say ten or fifteen years, these Scheduled areas may not be necessary and that they may become part of the whole province of Assam.

Mr. President: Power is given to the Parliament under the paragraph 20 to repeal the whole of the Schedule, if it thinks necessary. What more do you want?

Prof. Shibban Lal Saksena: Sir, I have referred to this fact in my speech.

Mr. President: Does Dr. Ambedkar like to say anything at this stage?

The Honourable Dr. B. R. Ambedkar: If you like, Sir, now that honourable Members want to speak, let them speak.

***Shri Rohini Kumar Chaudhuri:** Mr. President, Sir, I have listened with great attention to the speech which has been delivered on the floor of this House on the question of protection of the interests of the tribal people. After having heard the opinion of the tribal Members themselves, after having seen the attitude which has been taken by the non-tribal Members of this House, who have very little information about the conditions obtaining in the tribal areas, the only reaction which has come to my mind is this : India, independent India, we were. It is on account of differences amongst ourselves that India was lost to the Mughals and Pathans. It is on account of a policy of appeasement that we had ultimately to lose some prosperous areas of this India to be lost entirely and to be converted into Pakistan. I want this House and through this House, the people of India to know that on account of the wrong information which the persons in authority have and on account of the want of information of among the persons not in authority, India is going to lose a great deal, and is going to lose entirely the whole of the tribal areas. In truth, Sir, I say I have no information worth the name about the tribal areas and at the same time, I shall say that none of my honourable Friends here, not even the Honourable the Premier of Assam, has much of an information about the tribal areas in India. (*Hear, hear*). The reason is not due to the negligence or indifference of the Honourable the Premier but is due to the state of things which existed before the independence of this country. The Honourable Premier when he was the Honourable Premier before Independence came to India had not the right to visit the tribal areas; he did not have free access to these areas and he could have gone there only with the permission of the Governor and not otherwise. That was the position. The Honourable Rev.

* Speech not corrected by the Honourable Member.

[Shri Rohini Kumar Chaudhuri]

Nichols Roy who was also one of the Ministers—he too could not have gone to any other tribal areas, except perhaps to Khasi Hills. As a matter of fact he never went anywhere except perhaps to Naga Hills on business. I do not know, but absolutely there was no means of knowledge either by himself or by anybody in the public or by anybody in the Ministry to know about these tribal areas. Sir, these tribal areas were kept as a close preserve by the British people. When the I.C.S. officers came to India, their first concern was to find out some territories in the Province of Assam where there were no mosquitoes, there were not lawyers and where there were no public men. That was the first aim of the officers there, and whatever rules they framed for the administration of justice in these hill areas, whatever rules they framed for the conduct of business, these rules were framed in order to keep these tribal areas exclusively as a different country from the rest of India, where Europeans could live as Europeans, enjoying the same climate, enjoying the same authority and enjoying whatever it pleases them to get in India. That was the whole object. That was the object. Therefore, none but the Christian missionaries, and missionaries of no other religion, were allowed to visit those areas. There was no provision in the rules and regulations that a man should be defended by a lawyer or any one of that kind, even in a most serious criminal case, because he had no right to be defended. He can get special permission to be defended; but he had no right to be defended; not to speak of civil courts. No lawyers were allowed to remain in these hills and practise there. No other people were allowed to migrate to these areas except with the permission of the authorities. The British wanted to keep the people of these areas as primitive as possible. I tell you, and the House will be surprised to learn that in the Naga Hills,—Naga means naked,—poeple used to go about naked in the past. There was a Deputy Commissioner who used to flog any Naga who was dressed in Dhoti. The British wanted the Nagas to remain as they were; they should not clothe themselves properly; they should not live like civilised men. That was the position, I may tell you.

Shri Kuladhar Chaliha: Dhoties were not allowed to be worn by the Nagas. That was the order of the Deputy Commissioner all the time.

Shri Rohini Kumar Chaudhuri: What is more, Sir, you will be surprised to learn that before the advent of the British, these Nagas were friendly with the Assamese. They had adopted the Assamese language. This was so till about ten years ago when the Roman script was introduced forcibly by the British officers. Even up to that date Assamese used to be the court language of the Nagas. During the last ten years, they have tried to substitute the ordinary Bengali by the Roman script. The same sort of rules apply to the Ballipara Frontier tract, the Sadiya frontier tract and all the Hill areas, including the Garo hills. In the Garo hills there are a large number of non-tribal people. Even in the Garo Hills, Assamese and Bengali used to be the court language before in the early days of the British occupation. The British gradually substituted these scripts and language and introduced English. That is how they were doing. I do most regretfully observe that what Dr. Ambedkar is doing in regard to this Schedule VI is that he is closely, absolutely closely, following, except in some cases, the British method. He is wanting to perpetuate the British method so far as the tribal areas are concerned. This action on his part is due more to ignorance than to intention. I would therefore respectfully submit to this House not to be impatient, to reconsider the whole question in its proper perspective. Let this Constitution about the tribal areas be worked out by persons who have a direct and intimate knowledge of the affairs in the tribal areas. None of these persons, I assert with all the emphasis that I can command, neither my honourable Friend Mr. Munshi, neither

Dr. Ambedkar, nor my honourable Friend the Premier of Assam, have any intimate knowledge of the affairs going on in the tribal areas. There are good reasons for this; I do not find fault with them. But, after the attainment of independence, they can acquire that knowledge, they can go about and find out Let a small committee of this House composed of people of tribals and non-tribals go round the areas, see the condition of things themselves and let them revise the whole Constitution, in this Schedule. That is the only course open now. Unless you wish to lose the entire tribal people, unless you wish to lose control over the tribal areas, the only course which is left open to this House would be to have a small committee consisting of persons in whom we can have confidence. Let them go round the tribal areas and let them revise the whole Constitution. That would be proper method.

We want to assimilate the tribal people. We were not given that opportunity so far. The tribal people, however much they liked, had not the opportunity of assimilation. So much so, that I living in Shillong cannot purchase property from any Khasi except with the permission of the Chief of the State or with the permission of the Deputy Commissioner. I have no right to purchase any property in the tribal areas. An Indian has no right to purchase lands in those areas without the permission of the Deputy Commissioner or the Chief of the State. That ridge is still continued. If this Constitution is adopted, those disabilities still continue. I am not allowed to associate with the tribal people; the tribals are not allowed to associate with me. Here comes our Friend Mr. Nichols Roy pleading for autonomous districts. Why do you want autonomous districts? My honourable Friend Mr. Bardoloi says that he wants autonomous districts in order to educate the tribal people in the art of self-Government. Why not give them local self-government itself? (*Interruption*) You will be surprised to learn that in none of these hills there is a municipality except in the Shillong administered areas. This Municipalities Act of Assam is not in force in any of the tribal areas. The Local Self-Government Act by virtue of which District Boards and Local Boards are formed is not in force in the tribal areas. If you really want to educate the people of the tribal areas in the art of self-government, why do not you introduce this Act in those areas? Why do you want autonomous districts for these Municipal purposes. Why not introduce the Municipalities Act? Then, they will themselves know the art of self-government. Why do you want to dissociate them from us by creating these autonomous districts which will remain autonomous? Do you want an assimilation of the tribal and non-tribal people, or do you want to keep them separate? If you want to keep them separate, they will combine with Tibet, they will combine with Burma, they will never combine with the rest of India, you may take it from me.

Shri Jaipal Singh (Bihar: General): Question.

Shri Kuladhar Chaliha: Mr. Jaipal Singh attends the British Club in Shillong.

Shri Rohini Kumar Chaudhuri: This autonomous district is a weapon whereby steps are taken to keep the tribal people perpetually away from the non-tribals and the bond of friendship which we expect to come into being after the attainment of independence would be torn as under. During the British days, we were not allowed to introduce our culture among those people. Even after the British have gone, we find the same conditions in the new Constitution of Dr. Ambedkar.

Shri A. V. Thakkar (Saurashtra): May I ask my honourable Friend if this cannot be changed by a change in the Constitution by a good majority, say a two-thirds majority?

Shri Rohini Kumar Chaudhuri: It can be changed. Therefore, I most respectfully request the Members of the House who do not belong to Assam to take more interest in this province of Assam. It is important that the honourable Members do so and agree to the formation of a Committee, an intelligent committee, to let them go round those areas and see things for themselves, speak to them and gain personal knowledge. You will find that this hatred on the part of the tribals is a thing invented by interested persons. Formerly, there were inter-marriages between the tribals and non-tribals. This hatred is being continued by interested persons.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, I would like to make a few observations with regard to this question. I had gone to Assam in 1938, not for travel but in connection with relief work. In that year, there had been devastating floods in Assam, I went there for flood relief work and toured every district, but could not go to the Naga Hills. The reason for my not going there would have been clear to you from the speeches so far delivered by other speakers. What was the cause? I would only like to say that the Nagas are head-hunters; we could not therefore get an opportunity to work among them. Certainly we have to be careful in enacting laws for these people. The regional councils we propose to set up for them, will, in my view, neither benefit these people nor us; for these people have got an organisation for each tribe, which is like our *panchayat*. They hold their Panchayat in every village. Their customs differ from village to village. The regional councils set up there would make uniform laws and these are likely to cause any number difficulties among the various villages. In view of this, I would say that the powers vested in us, the Centre and the States should be kept intact. For a moment let us consider the likely consequences if we delegated these powers to these councils. The result would be that these people would develop on their own lines without in any way being connected with us. It is quite on the cards that after they have developed in this splendid isolation for a period of, say ten years, their ideas would be of an altogether different character, and under the stress of their different ideas they would begin to fight amongst themselves, and with us asserting that they are absolutely free. It is therefore, absolutely necessary that we proceed in this matter with the greatest caution and circumspection.

I am working among Kangh people of Orissa, among whom there is a system of human sacrifice. That system has been abolished by law. These people also have considerably changed in this respect. But even these we have often to overlook cases of such sacrifice, because even now there are cases of human sacrifice. Human sacrifice is done in great secrecy. Even if we come to know of such a case, we do not arrest them. This is the right course to follow. But the people like Kangh tribe who still perform human sacrifice have been included by us in the Constitution. Then why should we free the Nagas at once? I understand that we cannot bring them very much under the provisions of law; still we should see that we are trying to unite India into a common bond-and as such we should not keep them aloof, out of fear. I therefore, wish that we should think over this and not hurry in the matter, for we can be strong only by doing so.

I would like to make one further observation. Mr. Rohini Kumar Chaudhuri has stated that he cannot purchase land in Khasi Hills, even though he lives in Shillong. We have got a similar law in Orissa and we wish that none should be able to take away land from the aboriginals since they do not understand their own economic interest. There should be an independent Act for the lands and we have therefore provided for it. We wish to make the law stricter

*[ ] Translation of Hindustani speech.

so that any outsider, who is not an aboriginal, should not be able to purchase land. Shri Rohini Babu has complained that he cannot purchase land. But this must be the case, because till those people acquire some capacity for judgment, we should protect them by law. I would therefore like that, despite these Acts, we should confer such powers on this Council, that it may have a beneficial effect on their customs and traditions. By doing so we would be able to bring Naga Hills in line with the rest of India, because we regard them as a part of us and we should try strongly to bring them into our fold; we should not leave them aloof, for after ten years some difference may be created between them and us. We should therefore take this into consideration and make some modifications, and the differences of opinion between Premier Bardaloi and Rohini Babu and Shri Kuladhar Chaliha, should be taken into consideration though our respects are due to them.]

Shri Jaipal Singh: Mr. President, Sir, I must confess that I have been shocked by the amount of venom that has been poured forth this morning by some of the Members against what they imagine the tribal people of Assam are going to do, if this or that is passed by this House. I wish that some of these Members were present when the Tribal Committee met when the Honourable Sardar Patel explained why he also had accepted the recommendations of the Tribal Sub-Committee for Assam. May I simply repeat what he said? It was after considerable difficulty and negotiations that the tribal people of Assam were persuaded to agree to the recommendations. There was a definite understanding on the part of the rest of India that those agreements, those understandings would be honoured. It was definitely on that understanding that the tribal people agreed, to do away with the agitation that had been inspired by the departing rulers. I wish people would talk with knowledge. The learned Ambassador in Moscow; the day he left, gave us two solutions for dealing with situations. One was the power solution, the other was the knowledge solution. The vehement language of some of our Members inclines towards power solutions. They want to force the tribal people of Assam to do things against their wishes and expressed will. I suggest that is no solution at all. If you do that you are certainly going to bring about what you fear. You are not going to obviate, but you are going to bring about a further dis-integration of India. It is useless now to blackguard the British for what they did and what their motives were in doing things in a certain way. What purpose does that blackguarding serve? Now, the whole matter is in our hands. Let us be statesmen-like in handling these problems. It does no one any good to suspect the intentions of the tribal people of Assam. Do my friends believe that the Naga is not a man of his word? Do they mean that the people of the Lushai Hills are trying to deceive us? What do they mean? There is the definite understanding between the leaders and the Tribal Sub-Committee that went round the place. Then why this doubt? I know there were difficulties in some of their trips. The Sub-Committee were prevented from going to some places, I know that. But all these obstructive tactics were inspired, we have got concrete evidence of that. And now the British are gone and it is for us to handle the situation. The idea of subjugating the tracts by requisitioning the Assam Frontier Rifles and so forth will not work. We must inspire confidence in our fellow citizens, in the hearts of the tribals of those hills. Let us do that, and let us do it genuinely and sincerely, and not try to run them down and think of them as though they were hostile to the Indian Union. They are not. My friends complain that they have not been into these tracts. That is exactly the reason why they should be a bit chary of talking about these tribes.

I wish the country, as a whole, would appreciate the difficulty of my friend, the Honourable Shri Gopinath Bardoloi, the difficulties that he and his colleagues have ahead of them in coming into the picture for the first time, as far as the

[Shri Jaipal Singh]

fully excluded areas of Assam are concerned. I do not think it is quite correct to say that it was altogether impossible for non-tribals to get into those tracts Certainly, the so-called agitators were precluded, and were prevented from entering those areas. That is perfectly true. But I do not think it can ever be said that social workers were also equally prevented. I do not think that can be said. Assam is a very difficult province. The inter-group hostilities are not confined to the hill tracts only. What about the hostilities that exist, shall we say, between the hills and the plains people? What about the hostilities that exist, say between the plains tribals and the hill tribals, I could go on. But it will be out of place now to harp on this sort of thing. But the hill people have agreed . . . .

Shri Kuladhar Chaliha: May I know from the honourable Member if he can mention any instance of hostility between the plain tribals and the hill tribals? Can he give one instance? There is no use making generalisations, unless he can give us instances.

Shri Jaipal Singh: I do not think, Sir, it is necessary for me to go into details. I do not think it is necessary. If the House wants to accept my statement, it is there for it to accept. But I do maintain that there are various kinds of hostilities. Fortunately, in the new set-up we have an opportunity to forget the past and to make a happy beginning, in the beginning of which the hill people have given us their assurance, and I am very glad that the Tribals Sub-Committee have gone as far as they can, to accommodate the wishes of those hill tribes. And the tribal people themselves, the hill tribal people themselves also have climbed down, if I may say so, to meet the wishes of the leaders of the Province. There is no question of keeping the hill tracts permanently in water-tight compartments. It is not good for them. It is not good for Assam, nor for the rest of India. That will not happen. The world is getting smaller and smaller every day whether you like it or not. India cannot isolate itself from the rest of the world, nor can the hill tribes. And more so after all these hill tracts have been occupied by the various warring forces in the last global war. They are no longer inaccessible. New ideas have penetrated the tracts, these mountainous tracts that were previously inaccessible. The position has completely changed. There is a new outlook. It is no good trying to think of the Naga as the eternal head-hunter. I wish people would read Haimendorf's *The Naked Nagas* and try to understand these people even if they have not been to the Naga Hills. Let them understand what are the ideas that work behind the mind of the Naga. There are several books on these people. I know some of my friends think that just because these books happen to be written by non-Indians, they are worthless. That is a kind of attitude for which I have absolutely no use. There have been scientists, there have been anthropologists and various others who have written books on the Assam hill tribes, and I would only wish that some of my friends had read some of them; and then they would have realised that the problems that my friend Shri Bardoloi and his colleagues have to tackle in the future are really immense, and I am indeed very glad that he has taken courage in his hands and he is confident the pattern of government, the pattern of administration that the sub-committee has recommended, while it may not be exactly all that he would like it to be, certainly gives him an opportunity to unite Assam, which in the past has been kept more or less in water-tight compartments. I would appeal to Members to be generous in what they say about the tribal people, to be generous to them and not think as if they were enemies of India. That seems to be the idea lurking in the minds of some here. They seem to think that they are going to get out of India and join Burma or join the communists or something like that. I am not so pessimistic. Indeed, I am very optimistic about the future of

Assam, particularly if the Sixth Schedule, even with all its shortcomings, is operated in the spirit in which it should be operated, in a spirit of accommodation and in the real desire to serve the hill people of Assam, as our compatriots, and as people whom we want to come into our fold, as people whom we will not let go out of our fold and for whom we will make any amount of sacrifice so that they may remain with us.

Shri A. V. Thakkar: Mr. President, Sir, I consider it my duty to speak on this subject, as I happen to be one of the members of the committee appointed to enquire into the tribal matters of Assam. Unfortunately, I was laid up for some of the time when the Committee was on tour, and therefore I could not visit all the parts that the Committee visited. But I can say that I have good knowledge, and I have visited the Lushai Hills, though not the Naga Hills But the Naga Hills were visited by me as early as the year 1926. I visited Kohima with the kind permission of our Friend Mr. Muhammad Sa'adulla who was one of the ministers then, and I was able to see Kohima, the headquarters, the capital of the Naga Hills. At that time I could see that the Nagas, were really naked Nagas, though perhaps now we may not be able to see them naked But I am very much ashamed at the ignorance we are all showing about the knowledge of the tribals, in Assam especially. (*Hear, hear*). Even of my Friend Shri Rohini Kumar Chaudhuri, I would say that.

First I will try to answer my Friend Mr. Lakshminarayan Sahu. He was talking about Orissa, but not of the current century, but of the last century, of the year 1846 when one Mr. MacDonald suppressed *maria* or human sacrifice ceremony. But why does he talk of things which existed one hundred years ago now in the year 1949? He was right in saying that at the present moment we do hear of complaints about human sacrifice being made even at the present day. But do not murders take place nowadays? Do not dacoities take place nowadays? Do not firings take place nowadays? Similarly, *maria* sacrifice that existed in the year 1850 does exist in the year 1949 or even 1950. Why compare that old state of things with the present state of things?

Talking of Mr. Rohini Kumar Chaudhuri's remarks, I am afraid he has brought Assam politics into this Constituent Assembly. Let me ask him, Sir, with your permission as to why he did not offer evidence before the Tribal Committee that was touring in Assam. It was open to him to do it, it was open to him to give all his views about autonomous districts or about regional councils or anything else that was contemplated. Not that he was not in the know of it—he could have easily known it from all the Members of the Committee who were friends of his and who were colleagues of his. He could have done that, but he did not care to do so.

Talking of Nagas, I was the other day talking with my honourable Friend the Rev. Nichols Roy. He reminded me of the fact that there were seven subdivisions amongst the Nagas each having a different dialect of its own. I had read this many years ago but had forgotten it, he reminded me of the same. And who does not know even at the present time of the system of head-hunting that prevails among the Nagas? They are so ill-developed, they are so much behind in civilization that they go and fight with their neighbouring villagers—not to speak about the fight with the plains tribes about whom our friend Mr. Jaipal Singh was speaking—but of one tribe of Nagas killing another tribe of Nagas, Ao Nagas and Sema Nagas, and cutting off their heads and putting them on the door tops as a momento of their victory. Even last year when a friend of mine visited the Naga hills, he said there were 150 cases being conducted in the court of law wherein 150 people were charged with head-hunting or taking part in it at the present day. Now, what do you say of such a thing as that? Why take no notice of such a state of things existing at the present

[Shri A. V. Thakkar]

day? The Committee, with its own difficulties, tried to inquire into the state of affairs not only of the Nagas but of all the tribal area people and came to this particular conclusion on which is based Schedule No. VI. The Nagas are a very difficult race to deal with, I know. We had a Naga member on the Committee, Mr. Imti was his name. He was a graduate of the Calcutta University. Somehow or other he worked with the Committee for some time but afterwards withdrew because he was persuaded by his other Naga friends not to work with the Committee, not to give his helping hand and not to be one of us. That was an unfortunate thing.

Shri Kuladhar Chaliha: Mr. Imti is a man of Golaghat, is a Christian and was brought up at Golaghat itself.

Shri A. V. Thakkar: Is he not a Naga?

Shri Kuladhar Chaliha: He is not. He was born and bred in Golaghat.

Shri A. V. Thakkar: But he is a tribal man, there is no doubt about that. I am sorry, my information is that he is a Naga—that is what he himself told me.

Shri Jaipal Singh: He is a Naga.

Shri A. V. Thakkar: He is a Christian, but what does it matter? He is an Ao Naga, that is what my other friends told me. If you like I will ask him by a special letter whether he is a Naga or a Mihir. But that does not change the question.

The Committee tried its best and put forward the proposal which was acceptable not only to the Committee but also to the various tribes themselves, —I mean this system of autonomous districts. When I heard first of the proposal of these autonomous districts, I myself too was surprised, let me tell you, because I had never heard of autonomous districts in any part of India elsewhere. But I came to know afterwards by the persuasion of friends that this is the only possible way there and that therefore the system of autonomous districts should be kept there for future modifications when the proper time comes for the same. There is no reason why we should fear this autonomous districts business and should not make the most of it, as if it were giving away or making States within States for or permanent period. It is not for a permanent period. All constitutions are changeable, all laws are changeable, and we can change the law, change the constitution, when you think the time is ripe for it. In the meantime let us all study the question of the tribals as best as we can.

The Honourable Rev. J. J. M. Nichols Roy (Assam: General): Mr. President, Sir, some of the aspersions that have been made here are really very unfortunate and they are based on a lack of knowledge of the conditions of the hills people in Assam. I wish that those honourable gentlemen, my friends who come from Assam, had visited these places, had mixed with the people and had known the feelings of these people, had known the desire of these people as expressed in meetings, in Committees and before the Sub-Committee also of which I was a member. Sir, the first principle for bringing about a feeling of reconciliation between people who are estranged from one another is that one must place himself in the place of another. I wish some of my friends who had spoken would place themselves in the place of these tribal people, place themselves in their conditions, study their views, realise what their ambitions and their aspirations are, and whether if they were in that place they would like those feelings and aspirations to be crushed to

pieces and themselves just cowed down by the sword, or whether they would like to be won by love and by association and by the gradual understanding of one another. The attitude manifested in the way that speeches have been delivered by some friends of mine here perhaps due to lack of knowledge, if kept up, would actually upset the good association between the hills people and the gentlemen who have spoken; but I thank God for a leader like the Honourable Mr. Gopinath Bardoloi who is known to be very kind and sympathetic to all these hills people and who has been respected by these hill tribes wherever he had been, and who has studied, very closely the position of these hill tribes.

I myself being a hillman, know what I feel. Being a Christian, I want universal brotherhood everywhere. I want this in the whole of India and in the fold of the tribal people also. Therefore, when I speak in this House, I speak with the knowledge of the feelings of hill tribes. I speak also with a sense of universality and brotherhood of mankind. I speak keeping in view the high ideal of raising all people to the same level.

It is said by one honourable gentleman that the hill tribes have to be brought to the culture which he said "Our culture" meaning the culture of the plainsmen. But what is culture? Does it mean dress or eating and drinking. If it means eating and drinking or ways of living, the hill tribes can claim that they have a better system than some of the people of the plains. I think the latter must rise up to their standard. Among the tribesmen there is no difference between class and class. Even the Rajas and Chiefs work in the fields together with their labourers. They eat together. Is that practised in the plains? The whole of India has not reached that level of equality. Do you want to abolish that system? Do you want to crush them and this their culture must be swallowed by the culture which says one man is lower and another higher. You say "I am educated and you are uneducated and because of that you must sit at my feet." That is not the principle among the hill tribes. When they come together they all sit together whether educated, or uneducated, high or low. There is that feeling of equality among the hill tribes in Assam which you do not find among the plains people.

Let me read some of the statements made by the Assam Government regarding the hill areas :

"The tribes are of Mongoloid stock found nowhere else in India and differing from most Indians than the latter do from Europeans Except for a few non-tribal shop-keepers and officials the population in any area is homogeneous. Thus a traveller in the Naga Hills would see no one but Nagas, in the Lushai Hills no one but Lushais and so on."

These people have come there from outside. They have never been under a Hindu or Muslim rule. They had their own rule, their own language, court and culture. To say that the culture of these people must be swallowed by another culture, unless it is a better culture, and unless it be by a process of gradual evolution, is rather very surprising to anyone who wants to build up India as a nation and bring all people together.

Then it is said here :

"The manifold languages belong to the Tibeto-Burman linguistic family with the exception of Khasi, which belongs to the Mon-Khmer family. None of these languages is spoken elsewhere in India."

"None of the tribes professes the Hindu religion or Islam, except a section of Kacharis in the North Cachar Hills, who practise a form of Hinduism. Tibetan Buddhism has been introduced in the Northern Hills and Burman Buddhism in the Tirap Frontier Tract, A considerable number of the tribesmen are Christians particularly among the Nagas, Lushais and Khasis. The rest of the tribesmen are Animist. There is no communal feeling between animists and others."

[The Honourable Rev. J. J. M. Nichols Roy]

The Hindus do not eat beaf but the tribesmen do. The Muslims do not eat pork but the Tribal people do. Therefore these people cannot be either Hindus or Muslims. The Government report is that the people of the hills have their own culture which is sharply differentiated from that of the plains. The social organisation is that of the village, the clan and the tribe and the outlook and structure are generally strongly democratic. There is no system of caste or purdah and child marriage is not practised.

So that is the culture of the hill tribes. India should rise to that feeling or idea of equality and real democracy which the tribal people have. They should not for a second think that these people should give up their democracy and equality and be swallowed up by another culture which is quite different from what they have been used to, and which is considered by them not at all suitable to their Society.

To say that these tribesmen will be inimical or they would raid Assam or go over to Tibet if this Sixth Schedule is introduced in these areas is rather surprising. This idea is based on wrong understanding of facts and a wrong psychological approach to the problem of bringing the hill folks and the plains people together. This schedule has given a certain measure of self-government to these hill areas but the laws and regulations to be made by the District Councils are subject to the control and assent of the Governor of Assam. What is more unifying than that? The sub-committe for the tribal areas in Assam recommended that these districts mentioned in this Sixth Schedule should have a sort of self-government, to rule themselves according to their culture and genius. The Congress principle has been to allow each group to grow according to their own genius and culture. If that be so, the sub-committee did the right thing by recommending this kind of local self-government for these hill areas but they will be subject to the control of the Governor of Assam. Even the laws and regulations which will be made by these district councils will be subject to the assent of the Governor. The Governor may withhold his assent. Where there is the Pakistanising influence there mentioned by certain speaker. The provisions of the Sixth Schedule satisfy these people to a certain extent and at the same time joins them to the rest of the province.

There is another point which must be considered in this connection. To keep the frontier areas safe these people must be kept in a satisfied condition. You cannot use force upon them. Human nature is such that when you use force to make a people do something they run to somebody else. If you want to win them over for the good of India you will have to create a feeling of friendliness and unity among them so that they may feel that their culture and ways of living have not been abolished and another kind of culture thrust upon them by force. That is why the sub-committee thought that the best way to satisfy these people is to give them a certain measure of self-government so that they may develop themselves according to their own genius and culture. That will satisfy them and they will feel that India is their home and they will not think of joining Tibet or Burma. But if you were to follow some of the ideas advanced by one or two honourable Members of this House, it will not be a unifying influence but an influence which will divide these hill tribes from India and that will be very unfortunate indeed. I was somewhat surprised at the statement made by one of my honourable Friends from Assam that even the Premier of Assam did not know the conditions of these people. I think that the honourable Friend did not visit these areas and does not know their conditions. The Premier of Assam visited these areas and knows their conditions. I know their conditions. I know their feelings. "We have met them in big meetings. We have met them in Committees and on several occasions. We have visited them, heard them, and many of them were

associates of our Sub-Committee which went round to find out the conditions of these hill tribes. And many people came to give evidence there and they expressed their feelings. The provisions of the Sixth Schedule are based on the recommendations of the sub-committee after considering the evidence given by these hill people, a few of whom were members of our sub-committee.

Someone spoke as if he is very much interested in the advancement of the hill tribes. I thank that gentleman whoever he may be, for his good motive in desiring the advancement of the hill tribes! But advancement cannot come by force. Advancement comes by a process of assimilation of a higher culture, higher mode of thinking and not by force. Advancement will be accepted by the people when you allow them to see something better than what they have. The hillmen realise that their own village councils, or what may be called village panchayats, are much better and more suitable to them than the regular courts and the High Court of Assam. To some of them, it is too expensive to go to the High Court. They have no money for that. Therefore among some of the hill tribes village courts are more suitable to them. The Assam Government is trying to introduce village panchayats even in the plains of Assam. Of course that will take away a very large number of law suits from some of the regular courts, but it will be better for the people themselves. The village councils in the autonomous districts and the District Councils will enable the hills people to rule themselves in their own way and to develop themselves according to their own methods. Why should you deprive the people of the thing which they consider to be good and which does not hurt anybody on earth? It does not hurt India. Why do you not want them to develop themselves in their own way? The Gandhian principle is to encourage village panchayats in the whole of India. Why then should any one object to the establishment of the district councils demanded by the hills people? This measure of self-government will make them feel that the whole of India is sympathetic with them and India is not going to force upon them anything which will destroy their feeling and their culture. I therefore think that unnecessary storm has been raised in this House, and it is not at all palatable, but I hope that a better study will be made of these problems.

I would like very much if Parliament will appoint a committee to see these tribal areas. Perhaps they will see that in some places they are so far advanced that the whole of India must follow their example. In those areas there is no difference between man and woman : the woman does work, goes to the bazaars and does all kinds of trade. And she is free. In the plains the woman is just beginning to be free now, and is not free yet. But in some of the hills districts the woman is the head of the family; she holds the purse in her hand, and she goes to the fields along with the man. Women and men are not ashamed of any kind of labour there. In the plains of Assam there are some people who feel ashamed to dig earth. But the hillman is not so. Will you want that kind of culture to be imposed upon the hillman and ruin the feeling of equality and the dignity of labour which is existing among them? Why talk of culture There is some kind of culture in the hill areas which is far better than what is obtaining in the plains. Therefore the Sub-Committee on the tribes of Assam has decided that this would be the best method of allowing these people to grow according to their culture and according to their genius and at the same time to become unified with the whole of India.

Shri Rohini Kumar Chaudhuri: Why do you make propaganda against our people? Do not we dig earth in our villages and raise houses? Why do you vilify our people?

The Honourable Rev. J. J. M. Nichols Roy: Many of them do not. I am not vilifying anybody. I am telling facts. The whole of Assam knows that some people in Assam would not dig earth.

Shri Kuladhar Chaliha: Please withdraw your remarks.

Mr. President: The honourable Member has not said anything which requires withdrawal. He is perfectly justified in saying what he has said.

The Honourable Rev. J. J. M. Nichols Roy: I am not vilifying anybody. Some people would not dig earth because of their feeling of superiority. But in the hill areas you do not find anything of that kind. That is a fact which is known throughout Assam. In my own Department—the Public Works Department—we have road earth works and we have to teach some of the local people to do it, and labourers have to be brought from Bihar and Noakhali in order to carry earth and make roads in Assam. That is a fact I am telling.

Shri Rohini Kumar Chaudhuri: Yes, the Honourable Minister has discharged the Hindu workers there and employed Muslims from Noakhali. He is under the impression that we are not able to dig earth.

The Honourable Rev. J. J. M. Nichols Roy: That is a wrong statement altogether.

When I am talking about culture what I mean is this. Labour is an honour to these hills people. No one of them consider that it is beneath their dignity to work. And men and women work together. Even the people who are in big positions in life like Rajahs and Mantris work in the same way as other people, whereas that principle is not found everywhere in India. And India must rise to that place where they feel that there is dignity in labour. When there is such a culture among the hills people why not allow them to develop that and be a little model for all the others—to the good of all India?

Finally, Sir, I support the amendment moved by Dr. Ambedkar. At the same time I must say before I sit down that these hills people feel that even this Sixth Schedule has controlled them too much and that they have not got enough what they would like to have. I think many of us realise that. Even Mr. Bardoloi the honourable Premier of Assam realises that. But under the circumstances we have agreed in order to have a compromise and in order to bring peace between all parties. Therefore, do not think that the hill areas have been given too much. They have not been given enough according to their ideas. But at the same time they have been brought under the control of the Governor of Assam. And that is the process by which they will be unified.

Shri H. V. Kamath (C.P. & Berar: General): May I Sir, suggest that, in view of the widely divergent views expressed regarding this Schedule, the finalisation of it may be postponed to a more propitious day?

Mr. President: I will call upon Dr. Ambedkar to reply. I think we had better finish this now. We have had enough discussion.

The Honourable Dr. B. R. Ambedkar: We have debated this question for two hours and I think the debate was mostly on points that are really not concerned with the Schedule. It is time that we attended to the Schedule itself, unless any particular Member has something very new to say, we need not continue the debate.

Mr. President: I have already called upon you to reply.

The Honourable Dr. B. R. Ambedkar: I am very much obliged to you. Sir, we have two amendments before us and I propose to deal with them before I reply to the general debate.

The first amendment is No. 100 moved by Mr. Chaliha. With regard to this, I do not see how it is appropriate in sub-paragraph (5) of paragraph 2. Sub-para (5) merely deals with the jurisdiction of the Regional and District Councils.

It has nothing to do with any directions that may be given by the Governor or the legislature of the State. We are simply creating a District Council and a Regional Council. If the honourable Member wanted to move any such amendment he ought to do to the appropriate provision. This Schedule deals with the subject matter with which the District Council and the Regional Council will be concerned. So I fail to understand altogether the appropriateness of the amendment at this particular place.

With regard to amendment No. 257 whereby the honourable Member seeks to limit the number on the Council to fifteen, it seems to me, again, quite unnecessary, because my own amendment says, 'not more than twenty-four'. Twenty-four is the maximum. Consequently, if it was necessary to have a Council of less than fifteen, even then my amendment should suffice. I therefore say that amendment number 257 is quite unnecessary.

Now, having disposed of these amendments, I will turn to the general debate on the question whether there should be Regional and District Councils for the purpose of the tribals living in Assam. Sir, in dealing with this matter, I am sorry to say, many Members who took part in the debate did not properly study the provisions contained in this Sixth Schedule. I am sure about it that if they had properly studied the provisions of this Schedule, they would not have raised the point which they raised that by creating these Regional and District Councils we were creating a kind of segregated population. It does nothing of the kind.

Now, the position of the tribals in Assam stands on a somewhat different footing from the position of the tribals in other parts of India.

Shri A. V. Thakkar: Hill tribals please.

The Honourable Dr. B. R. Ambedkar: I am not concerned with the terminology. I am speaking of Assam and other areas for the moment. The difference seems to be this. The tribal poeple in areas other than Assam are more or less Hinduised, more or less assimilated with the civilization and culture of the majority of the people in whose midst they live. With regard to the tribals in Assam that is not the case. Their roots are still in their own civilization and their own culture. They have not adopted, mainly or in a large part, either the modes or the manners of the Hindus who surround them. Their laws of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus. I think that is the main distinction which influenced us to have a different sort of scheme for Assam from the one we have provided for other territories. In other words, the position of the tribals of Assam, whatever may be the reason for it, is somewhat analogous to the position of the Red Indians in the United States as against the white emigrants there. Now, what did the United States do with regard to the Red Indians? So far as I am aware, what they did was to create what are called Reservations or Boundaries within which the Red Indians lived. They are a republic by themselves. No doubt, by the law of the United States they are citizens of the United States. But that is only a nominal allegiance to the Constitution of the United States. Factually they are a separate, independent people. It was felt by the United States that their laws and modes of living, their habits and manners of life were so distinct that it would be dangerous to bring them at one shot, so to say, within the range of the laws made by the white people for white persons and for the purpose of the white civilization.

I agree that we have been creating Regional and District Councils to some extent on the lines which were adopted by the United States for the purpose of the Red Indians. But my point is that those who have based their criticism of this Schedule on this fact, namely that we are creating Regional and District Councils, have altogether failed to understand the binding factors which we

[The Honourable Dr. B. R. Ambedkar]

have introduced in this Constitution. I should therefore like to refer to some of the provisions which nullify this segregation, so to say.

The first thing that we have done is this : That we have provided that the executive authority of the Government of Assam shall extend not merely to non-tribal areas in Assam, but also to the tribal areas, that is to say, the executive authority of the Assam Government will be exercised even in those areas which are covered by the autonomous districts. This, as will be seen, is a great improvement over the provisions contained in the Government of India Act, 1935. In the provisions contained in that Act, the executive was divided into two categories, one was called the Government of the province and the other executive was called the Governor in his discretion, so far as the tribal areas were concerned. This applied not only to the tribal areas in Assam, but also to completely excluded areas in other areas. The executive authority which operated upon those areas was not the executive of the province, but the Governor in his discretion. We have abolished that distinction so that the whole of the tribal area including those in the autonomous districts is now under the authority of the provincial Government. The thing which is a binding thing, to which honourable Members have paid no attention is this. That, barring such functions as law-making in certain specified fields such as money-lending, land and so on, and barring certain judicial functions which are to be exercised in the village panchayats or the Regional Councils or the District Councils, the authority of Parliament as well as the authority of the Assam Legislature extends over the Regional Councils and the District Councils. They are not immune from the authority of Parliament in the matter of law-making, nor are they immune—and that is the aim of the new amendment—from the jurisdiction of the High Court or the Supreme Court. This, I submit, is one binding influence.

The other binding influence is this : that the laws made by Parliament and the laws made by the Legislature of Assam will automatically apply to these Regional Councils and to the District Councils unless the Governor thinks that they ought not to apply. In other words, the burden is thrown upon the Governor to show why the law which is made by the Legislature of Assam or by the Parliament should not apply. Generally, the laws made by the local Legislature and the laws made by Parliament will also be applicable to these areas. I say that this is another unifying influence. Yet another unifying influence to which I must make reference is this. We are not saying that the political authority or power we have given to the tribal people through the constitution of the Regional Councils or the District Councils is all the sphere of influence to which they will be entitled. On the other hand, we have provided that the tribal people who will have Regional Councils and District Councils will have enough representation in the Legislature of Assam itself, as well as in Parliament, so that they will play their part in making laws for Assam and also in making laws for the whole of India. Now, if these cycles of participation, if I may say so, to which I have referred, *viz.*, representation in the legislature of Assam and representation in Parliament, the application of the laws made by Parliament and the application of the laws made by the Assam legislature, are not binding forces, I would like to know what greater binding forces we can provide for the purpose of unifying the Regional Councils and the District Councils with the political life of the province as a whole.

I do not therefore agree that in creating the Regional Councils and the District Councils, we have cut up the population of Assam into two water-tight compartments, *viz.*, tribals and non-tribals. On the other hand, we have

provided, as I have stated, many cycles of participation in which both can politically come together, influence each other, associate themselves with each other, and learn something from one another. I am sure about it that the argument which has been urged against the provision of Regional Councils and District Councils is entirely based upon a misunderstanding and inadequate reading of the other provisions contained in this Schedule.

Sir, I was rather surprised at the attitude taken by my Friend, Mr. Chaliha, in moving his amendment, also at the attitude of my Friend, Mr. Rohini Kumar Chaudhuri. I feel that they are not now a happy and united family. What is the cause of it I do not understand, but I can say that, when these amendments were made, they were made with the consent of Mr. Chaliha, they were made with the consent of the Premier of Assam, and also with the consent of my Friend, Mr. Nichols Roy, who is a principal party concerned in this. I see they are now indulging in criticising each other because of factors which lie outside this Schedule. I cannot find any other reason for this dissension, for this open dissension and hostility which has been exhibited by one against the other, and I do not wish therefore to enter into what I regard is a purely domestic quarrel.

Shri Rohini Kumar Chaudhuri: Is the Honourable Dr. Ambedkar entitled to make insinuations against us?

The Honourable Dr. B. R. Ambedkar: I am not making any insinuations; I was only saying, Sir, that it was a domestic quarrel into which I would not enter. My own view is that we have made the best provision . . .

Shri Kuladhar Chaliha: I object to Dr. Ambedkar imputing motives for honest opinion expressed.

The Honourable Dr. B. R. Ambedkar: I am not imputing any motives. Mr. Chaliha was a party to every change that has been made in this Schedule. I would like him to deny that fact. Can he deny it?

Shri Kuladhar Chaliha: Yes, I deny. I told Mr. Bardoloi that I did not agree with some things.

The Honourable Dr. B. R. Ambedkar: He might have whispered in the ears of Mr. Bardoloi. He did not say a single word against these changes in the Drafting Committee. I did not get his signature as I did in certain other cases, because I do not want any Member to go back upon his word. However, what I was saying was that the Regional Councils and the District Councils have been given certain autonomy for certain purposes and at the same time they have been bound together in the life of the province and in the life of the country as a whole. If these circumstances which are of a unifying character, do not bind, do not bring the tribal people with the rest of the plains people in Assam and in the country, then the cause for such an unfortunate event must be found in something else. My friend, Mr. Rohini Kumar Chaudhuri, stated that if you create the Regional Councils, the tribal areas will go the way of Tibet and go the way of some other area. I do not know that that prophecy could be confined only to the tribal areas. I fear that Assam itself might go. For that we cannot make any provision in the Constitution. I am sure about it.

Shri B. Das (Orissa : General) : May I ask Dr. Ambedkar if he is aware that British agents are still working on the Assam-Burma border and that they have been responsible for the troubles between the Karens and the Burmans, and whether those same British agents are not still working in the tribal areas of Assam? After hearing the speech of my Friend, Rev. Nichols Roy, I think that he wants the tribal areas to be a separate entity so that British influence

[Shri B. Das]

could permeate these tribal areas. As a Member of the Government, Dr. Ambedkar knows well—and I have known something—about these tribal areas.

The Honourable Dr. B. R. Ambedkar: All I can say is that it is perfectly possible to devise some means by which we can eliminate this foreign influence altogether.

Shri B. Das: The Drafting Committee . . .

The Honourable Dr. B. R. Ambedkar: The Drafting Committee has nothing to do with eliminating this foreign influence. It is the function of some other body but I can assure my friend that it would not be difficult to get rid of this foreign influence.

Mr. President: I shall now put the various amendments to vote.

The question is :

"That in sub-paragraph (1) of paragraph 2, for the words 'not less than twenty and not more than forty members' the words 'not more than twenty-four members' be substituted."

The amendment was adopted.

Mr. President: The question is :

"That in amendment No. 105 of List I (Seventh Week), in sub-paragraph (1) of paragraph 2, for the words 'not more than twenty-four members' (proposed to be substituted), the words 'not more than fifteen members' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That sub-paragraph (2) of paragraph 2 be deleted."

The amendment was adopted.

Mr. President: The question is :

"That after clause (d) of sub-paragraph (7) of paragraph 2, the following clause be added :—

'(dd) the term of office of members of such Councils :' "

The amendment was adopted.

Mr. President: The question is :

"That with reference to amendment No. 3487 of the List of Amendments (Volume II), at the end of sub-paragraph (5) of paragraph 2, the following be added :—

'subject to such directions as may be given by the Governor or by the Legislature of the State'."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 3493 of the List of Amendments (Volume II), for the proposed new sub-paragraph (7-A) of paragraph 2, the following be substituted :—

'The functions of the Governor under sub-paragraph 7 shall be exercised by him as the agent of the President'."

The amendment was negatived.

Mr. President: I think these are all the amendments. The question is :

"That paragraph 2, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 2, as amended, was added to the Schedule.

Paragraph 3

Shri Kuladhar Chaliha: Mr. President, Sir, I beg to move:

"That with reference to amendment No. 3494 of the List of Amendments (Vol. II), for paragraph 3 the following be substituted:—

'3 The Governor shall make laws and regulations and entrust the District Council and Regional Councils with such powers as the State Legislature may approve'."

Sir, you would find in paragraph 3 that regional and district councils have been given such powers as can hardly be imagined. It says that they shall have power to make laws with respect to the management of any forest not being a reserved forest, the use of any canal or water-course for the purpose of agriculture. If it is so desired they can prevent you from using the water. Then it says with respect "to the regulation of the practice of jhum or other forms of shifting cultivation". Supposing some people live in the hills and have property; they have their marriage and social customs as well. The Regional Councils will be entitled to change Hindu Laws of marriage and inheritance. So instead of the existing clause, I have substituted the following:—

"The Governor shall make laws and regulations and entrust the District Council and Regional Councils with such powers as the State Legislature may approve."

These are very consistent and very wholesome and it gives the power to the Governor. Of course, it has been mellowed down by amendment No. 114 which at the end says: "All laws made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect". At the same time it gives the power to the Regional Councils to make regulations, of course, at the end. This is nothing but mellowing down only. If they thought it wise to add this, why make this camouflage? The Drafting Committee could have gracefully accepted my amendment. Why do not they say plainly that the Governor shall have the right to do so. Instead of doing it plainly and saying that the Governor shall have the right, you allow the power and then you say "All laws made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect." In fact this amendment is the same as mine and therefore Dr. Ambedkar should have accepted mine than by adding like this and watering down and making a fuss of making laws. It is better to accept by amendment No. 113 than the amendment of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: The honourable Member has already moved it for me. If you will take it as if moved by me, it will save time.

Mr. President: I take it that he has moved.

The Honourable Dr. B. R. Ambedkar: Shall I move it formally?

Mr. President: Yes.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after sub-paragraph (2) of paragraph 3, the following sub-paragraph be added:—

'(3) All laws made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect'."

(Amendment No. 258 was not moved.)

Shri Rohini Kumar Chaudhuri: Mr. President, Sir, I beg to move:

"That in amendment No 114 of List I (Seventh Week), for the proposed sub-paragraph (3) of paragraph 3, the following be substituted:—

'(3) All laws made under this paragraph shall be submitted to the Governor who shall forthwith place them before the legislature of the State and until agreed to by the Legislature and assented to by the Governor such laws shall have no effect'."

[Shri Rohini Kumar Chaudhuri]

Sir, the object of my amendment is that it should not merely be sufficient if the laws have the assent of the Governor, but the Governor should place all those laws before the Legislature as early as possible and unless the Legislature has agreed or until the Governor has assented to such law, this law shall not come into force. I submit, Sir, that there should not be any nervousness over this change. In the Legislature there are the members who represent the tribal areas and on the support of a large number of the tribal members and the House the Government will function, and therefore unless this and the assent of the leading majority party of the Government is obtained, it should not be enforced as law. Although the law may have a particular bearing on the people of the areas, the District Council of which has passed the law, although it may have a greater bearing on the people of that area, certainly it may have some bearing on the people of the other areas in the neighbourhood, it should be placed before the whole Provincial Legislature and not the District Council. Therefore, whatever law is passed by the District Council or Regional Council ought to go to the main legislature of the province and if it is agreed to by the legislature of the province, then only the question of sending it to the Governor should arise and if the Governor gives his assent, the law comes into force. I hope this amendment would be acceptable to Dr. Ambedkar.

Mr. President: Amendment No. 260 given notice of by Mr. Kuladhar Chaliha is the same as amendment No. 259; that need not be moved.

Mr. Nazirudding Ahmad (West Bengal: Muslim): Amendment No. 195. This is a drafting amendment. I have explained the purport of this amendment in connection with the Fifth Schedule. I would only like that it should be considered by the Drafting Committee.

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move:

"That in amendment No 114 of List I (Seventh Week), in the proposed new sub-paragraph (3) of paragraph 3, for the word 'Governor' the word 'President' be substituted"

Sir, I am of opinion that if the Governor is vested with the power of scrutiny, the power of vetoing laws passed by the District Councils, then, there will be conflit. This will creat bitterness and ill-will between the provincial Government and the District and Regional Councils. It will impinge upon provincial autonomy. Therefore, in order to protect the provincial Governments, in order to strengthen the hands of the provincial authorities, it is necessary that this power should be vested in the hands of the President. I really want that in the Centre there should be a separate portfolio in charge of the tribal areas in Assam, both parts I and II of the Table appended to paragraph 19 of the Schedule. I am of opinion that it is such a vital matter that it should not be placed in the hands of the Governor. It is risky to do so. If the Governor fails to discharge his functions under this paragraph, due to any reason, the interests of the whole country will be jeopardised. The intention is to veto legislation which is of a fissiparous character. I also apprehend that the Governor may not be able to perform his functions properly because parliamentary democracy and narrow considerations of provincialism may stand in the way.

There is another argument I am opposed to this power being vested in the hands of the Governor. I am one of those who is in a minority in the House. I am in the minority of one. I believe in the doctrine of political centralisation. I am of opinion, I am convinced in my mind that decentralisation is a symptom of the classless society. It is capable of being achieved only in a classless society, where political violence has been liquidated and where the State itself has withered away. I strongly repudiate the suggestion made yesterday on the floor of this House that due to the pre-occupation of the Government of India in the sphere of our Foreign relations with other powers, due

to pre-occupation of the Government of India with the problem of the Native States, the Centre is not in a position to shoulder a wider responsibility. We accepted this plan of political decentralisation in order to accommodate the Muslim Leaguers, in order to accommodate the Princes. It was an act of absentmindedness, it was an act of gross negligence on our part not to switch over to that type of Government to which we were wedded to, to that type of Government which had been the common basis of all Governments in India since time immemorial. I mean the unitary type of Government. I strongly commend my amendment for the consideration of the House.

Mr. President: Dr. Ambedkar, do you wish to say anything? I do not think there is anything in this to discuss.

The Honourable Dr. B. R. Ambedkar: Sir, with regard to my Friend Mr. Chalina's amendment No. 113, I really do not understand what it means. It says: "The Governor shall make laws and regulations and entrust the District Council and Regional Councils with such powers as the State legislature may approve." I cannot understand what it means. I am therefore unable to say that I accept it.

With regard to my amendment and the amendment moved by my honourable Friend Mr. Rohini Kumar Chaudhuri, there is hardly any difference except a failure to understand on the part of my honourable Friend as to what the word 'Governor' means. He says that the laws shall be approved by the legislature of Assam. According to my amendment, the laws will be approved by the Governor as advised by the Ministry of Assam, because in all this scheme, we are dropping the words 'in his discretion'. Wherever the word Governor occurs, it means Governor acting on the advice of the Ministry. I should like to ask him whether he really thinks there is very serious difference between a law being approved by the Governor acting on the advice of the Ministry and a law being approved by the legislature of Assam itself. I think my scheme is much more consistent with the originals of the scheme, namely, that the tribal people themselves should have a certain inherent right given by the Constitution to make laws in certain respects. That being so, my paragraph (3) is much more consistent with the scheme and gives the Assam Ministry some power to advise the Governor as to whether he should accept or not accept any law. The intervention of the legislature is quite unnecessary.

Shri Rohini Kumar Chaudhuri: If I have understood the Honourable Dr. Ambedkar aright, I would be prepared to withdraw my amendment. I mean, if the Governor is to be advised by the Ministry and the Ministry takes the opinion of the legislature, then, I have no objection. If the advice of the Ministry means that the Ministry will take no such action until the House has had an opportunity of discussing it, then, I think it is the same thing which I want and which Dr. Ambedkar wants. In that case, I shall withdraw.

The Honourable Dr. B. R. Ambedkar: I think he is understanding more than what I have said. I am not prepared to give him that assurance at all.

Mr. President: I shall put the amendment to vote. The question is:

"That with reference to amendment No. 3494 of the List of Amendments (Vol. II), for paragraph 3, the following be substituted:—

'3. The Governor shall make laws and regulations and entrust the District Council and Regional Councils with such powers as the State legislature may approve'."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 114 of List I (Seventh Week), for the proposed sub-paragraph (3) of paragraph 3, the following be substituted:—

[Mr. President]

'(3) All laws made under this paragraph shall be submitted to the Governor who shall forthwith place them before the legislature of the State and until agreed to by the legislature and assented to by the Governor such laws shall have no effect'."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 114 of List I (Seventh Week), in the proposed new sub-paragraph (3) of paragraph 3, for the word 'Governor' the word 'President' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That after sub-paragraph (2) of paragraph 3, the following sub-paragraph be added:—

'(3) All laws made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect'."

The amendment was adopted.

Mr. President: The question is:

"That paragraph 3, as amended, stand part of the Schedule."

The motion was adopted.

Paragraph 3, as amended, was added to the Schedule.

Paragraph 4

Shri Kuladhar Chaliha: Mr. President, I beg to move:

"That for paragraph 4, the following be substituted:—

'4. The Governor shall constitute courts with such powers as he may deem proper and in making appointments and conferring judicial powers he shall follow as nearly as possible the Criminal and Civil Procedure Codes of India, and the High Court of Assam shall exercise all the appropriate powers conferred on it by law'."

Sir, Paragraph 4 has given the Regional Council for autonomous regions powers as follows:—

"(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply or those arising out of any law made under paragraph 3 of this Schedule, to the exclusion of any court in the State, and may appoint suitable persons of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution the Regional Council for an autonomous region or any Court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to scheduled tribes within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other Court in the State shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final."

Do you see the impossibility of this provision that even the High Court or District Court shall have no jurisdiction over the decisions of the District Councils and Regional Councils? Therefore I have tabled my amendment. I find in this Constitution they have mellowed down again in a mind form in 119 and 120 the same thing. In 119 they have said 'except the High Court and the Supreme Court shall have jurisdiction over such suits or cases'. In 120 they have said—

"The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-para (2) of this para apply as the Governor may from time to time by order specify."

But here the District Court has been deprived of the natural jurisdiction which it should have. So in spite of the amendments of Dr. Ambedkar it does not improve much. It deprives the ordinary Courts of their legitimate jurisdiction. You have omitted that. You have referred to High Court and Supreme Court only and the District Court has been cut out. Probably the judgments may be very elementary and without reason and yet it will go to High Court. Why not the District Court? The District Court will be sufficiently acquainted with the laws of the country and I think the District Courts should have been referred. As such my amendment is much better than the amendment of the Drafting Committee. Perhaps they are in a hurry and are rushing through with these schedules. If you run through the whole schedule you will find that you have neglected the Assamese people. You have never thought of them and you have neglected the district judge's court existing there and you pass over to High Court and Supreme Court. As such, I commend my amendment for the acceptance of the House.

The Honourable Dr. B. R. Ambedkar: Sir, I move .

"That in sub-paragraph (1) of paragraph 4, the words and figures or those arising out of any law made under paragraph 3 of this Schedule' be deleted."

They are unnecessary.

Sir, I also move :

"That in sub-paragraph (2) of paragraph 4, for the words 'shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final' the words 'except the High Court and the Supreme Court shall have jurisdiction over such suits or cases' be substituted."

Sir, I also move :

"That after sub-paragraph (2) of paragraph 4 the following sub-paragraph be added :—

'(3) The High Court of Assam shall have and exercise such jurisliction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply, as the Governor may from time to time by order specify'."

This amendment makes an important change. Originallv under sub-para. (2) of para. 4 the decision of the District Court was final. Now we have provided that they shall be subject to appellate jurisdiction of the High Court and the Supreme Court which was a necessary provision.

Shri Rohini Kumar Chaudhuri: Mr. President, Sir, I beg to move :

"That in amendment No. 3496 of the List of Amendments (Vol. II) in the proposed proviso to sub-paragraph (2) of paragraph 4 of the Sixth Schedule..."

Mr. President: But, Mr. Chaudhuri, amendment No. 3496 was for adding a proviso and that amendment has not been moved and that proviso therefore does not come in. Therefore your amendment No. 118 has no place. It is an amendment to an amendment which has not been moved.

Shri Rohini Kumar Chaudhuri: But such amendments have been moved before.

Mr. President: But where will you put it now? Independently?

Shri Rohini Kumar Chaudhuri: Then may I speak generally on this

Mr. President: Yes, you can do that after I finish the amendments. There is No. 197 of Mr. Naziruddin Ahmad. But that is a drafting amendment. Then there is the one in the name of Shri Brajeshwar Prasad, No. 198.

Shri Brajeshwar Prasad: Sir I move this amendment without any comment Sir, I move .

"That in amendment No 120 of List I (Seventh Week), for the proposed new sub-paragraph (3) of paragraph 4, the following be substituted .—

'(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the President may by order from time to time declare and prescribe' "

Mr. President: I think these are all the amendments No, there is one more, No. 261, of Mr. Sahu.

Shri Lakshminarayan Sahu: Sir, I move: That

Mr. President: But your amendment does not come now after the amendment No. 119 moved by Dr. Ambedkar where it is said for the words "shall have appellate jurisdiction over such suits etc. etc." the words "except the High Court and the Supreme Court shall have jurisdiction over such suits or cases" be substituted.

Shri Lakshminarayan Sahu: Then I do not move my amendment.

Mr. President: Then you can speak now, Mr. Chaudhuri.

Shri Rohini Kumar Chaudhuri: Sir, the present position with regard to the administration of justice in the hills is this. In civil suits the final appellate authority was formerly the Governor. The Deputy Commissioner and the Assistant Deputy Commissioner had jurisdiction to try civil suits up to any value. So far as criminal suits are concerned, the Deputy Commissioner and the Assistant Deputy Commissioner could inflict any sentence they liked, subject, of course to the power of revision of the High Court. But so far as the States are concerned, the High Court of the Province has absolutely no jurisdiction to interfere.

Now I want to raise one point with regard to the amendment which has been moved by Dr. Ambedkar. Whenever there is a civil suit between a non-tribal and a tribal over which the District Court has jurisdiction, whether the courts will have full jurisdiction or whether there will be some other procedure prescribed for it. Sub-para. (2) of para. 4 says—

"Notwithstanding anything in this Constitution the Regional Council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to scheduled tribes within such region of area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other Court in the State . . "

the subsequent portion has been sought to be amended. But I want to lay stress on the words—"between parties all of whom belong to scheduled tribes". Suppose there is a case in which one of the parties is a non-tribal, then what is the provision made in paragraph 4 and under the amendment of Dr. Ambedkar? That is what I want to know. Unfortunately I cannot get the attention of Dr. Ambedkar at the present moment, but I should like to have some answer to this question. When there is a dispute between a tribal and a non-tribal, which is going to be the appellate court? Whether the court of the District Council will have full jurisdiction or whether the case is liable to be transferred to some other court under the jurisdiction of the High Court? Under the present arrangement, whenever there is a dispute between a tribal and a non-tribal, if the defendant or the accused happens to be a non-tribal, he has the right to be defended by a lawyer and the ordinary procedure applies to him. But I want

to clarify this point, whether in Courts in an autonomous district and according to the contemplation of the Drafting Committee in the autonomous districts there will be a large number of non-tribals as for instance in the Garo hills, in the Naga Hills—and in the Khasi Hills—will the non-tribal people there be regulated by the provisions of the Code of Civil Procedure and the Code of Criminal Procedure, or whether they will be subjected to the ordinary laws, to the primary laws or the primitive laws which are meant only for the tribal people? That is question number one.

Question number two is this. Whether these people will have the right to be represented, to be defended in the civil court by a lawyer or not. And thirdly, whether any appeals arising out of those cases, whether the appeals shall lie to the High Court or the District Court, because sub-para. (2) while discussing appeals particularly mentions only about scheduled tribes. Is justice in the Naga Hills and the Garo Hills going to be administered in the same half-barbaric way in which it was administered before, or is there going to be any change in favour of the tribals or in favour of the non-tribals resident in the tribal areas? There are particular rules now for administration of justice in the Hills where it is not obligatory on the part of the court to allow a pleader to appear, where pleaders are only allowed to appear where non-tribal people are either defendants or accused; in this case only pleaders are allowed to appear now. The appeals, under Dr. Ambedkar's amendment, will go to High Courts and will have some sort of revision power. I want to know whether non-tribal people in these Hills shall have a right of appeal either to the High Court or to the District Court, because in the amendment only the tribes are mentioned.

The Honourable Dr. B. R. Ambedkar: Sir, I must say that I was somewhat surprised by my honourable Friend's putting me these questions. I think he could have answered them himself. But I will now answer them as he has put them to me.

With regard to the first question of whether lawyers will be allowed to appear in courts established in the tribal area, the answer is very simple. In the first place, the Provincial Government will have the power, under the entry in List III dealing with professions, to make any law with regard to the legal profession; and if under that law they provide that lawyers shall be entitled to appear in the courts in the districts which are known as autonomous districts, then that law will apply unless the Governor thinks that that law should not apply. Therefore, that matter is quite clear.

With regard to the question of appeals from the decisions of the tribunals which are created under this paragraph, the answer again is quite simple. The paragraph first provides that a court of appeal may be constituted there. Now the Governor or the Provincial Ministry may either constitute a new court of appeal in which case appeals will go to that court, or may declare the District Judge's Court as a court of appeal which will hear appeals from decisions made by the village panchayats and other courts. Therefore, there again there is a provision for appeal. According to my amendment now, there may be a further appeal from the District Court of appeal either to the High Court or to the Supreme Court.

Shri Rohini Kumar Chaudhuri: I particularly read out these lines of sub-paragraph (2) :—

" the Regional Council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to scheduled tribes . "

[Shri Rohini Kumar Chaudhuri]

What would happen when one of the parties is not a member of a scheduled tribe?

The Honourable Dr. B. R. Ambedkar: If the parties are such that one is a tribal and the other a non-tribal, then the ordinary law will apply

Shri Rohini Kumar Chaudhuri: Where have you provided it?

The Honourable Dr. B. R. Ambedkar: It follows from it. Even now it says, "where the parties are.....". I do not think there is any difficulty and I hope my friend has understood it.

Shri Rohini Kumar Chaudhuri: There is no provision made anywhere, Sir

The Honourable Dr. B. R. Ambedkar: The jurisdiction of the ordinary court is ousted only to the extent provided for in paragraph 4. Otherwise the jurisdiction of the ordinary courts continues. These will not be the only courts in this area; there will be other courts established by the Provincial Government for the purpose of administration of the general law of the Province

Mr. President: I will now put the amendments.

The question is :

"That for paragraph 4, the following be substituted .—

'4. The Governor shall constitute courts with such powers as he may deem proper and in making appointments and conferring judicial powers he shall follow as nearly as possible the Criminal and Civil Procedure Codes of India, and the High Court of Assam shall exercise all the appropriate powers conferred on it by law'."

The amendment was negatived.

Mr. President: The question is :

"That in sub-paragraph (1) of paragraph 4, the words and figure 'or those arising out of any law made under paragraph 3 of this Schedule' be deleted"

The amendment was adopted.

Mr. President: Amendment No. 118.

The Honourable Dr. B. R. Ambedkar: It was not moved.

Mr. President: Yes, then amendment No. 119.

The question is :

"That in sub-paragraph (2) of paragraph 4, for the words 'shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final' the words 'except the High Court and the Supreme Court shall have jurisdiction over such suits or cases' be substituted."

The amendment was adopted.

Mr. President: The question is :

"That after sub-paragraph (2) of paragraph 4, the following sub-paragraph be added —

'(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and case to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify'."

The amendment was adopted.

Mr. President: Then there is amendment No. 198 moved by Mr. Brajeshwar Prasad.

The question is

'That in amendment No 120 of List I, for the proposed new sub-paragraph (3) of paragraph 4, the following be substituted —

'(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the President may by order from time to time declare and prescribe' "

The amendment was negatived

Mr. President: I will put the whole paragraph to vote

The question is

That paragraph 4 as amended stand part of Sixth Schedule "

The motion was adopted.

Paragraph 4, as amended, was added to the Schedule

Paragraph 5

Mr. President: Then paragraph 5 There are two amendments to this First is No 199

Shri Brajeshwar Prasad: Sir, I beg to move

"That in sub-paragraphs (1) and (2) of paragraph 5, for the word 'Governor' wherever it occurs, the word 'President' be substituted "

Mr. President: Then amendment No 262 and 263 Mr Sahu

Shri Lakshminarayan Sahu: '[Mr President, my amendment reads as follows :—

"That for the heading to paragraph 5 the following be substituted :—

'Conferment of Powers' "

I also move .

That after sub-paragraph (3) of paragraph 5 the following new sub-paragraph be added .—

'(4) Notwithstanding anything contained in sub-paragraph (1) of paragraph 5, in a trial between a tribal and non-tribal, the proceedings shall be in accordance with the Civil Procedure Code, 1908 and Criminal Procedure Code, 1890'."

My intention in moving it is to specifically provide that any dispute between the tribal and the non-tribal should be adjudicated according to the Criminal Procedure Code and the Civil Procedure Code until it is specifically provided It may well be that the hill people might not know as to how a dispute between the tribal and non-tribal people was to be adjudicated

If the Nagas were to try the matter, it is quite possible that they may order beheading of a non-tribal person. Such things are common in the Eastern and Western tribal areas I know the case of a friend of mine who was fined Rs. Twenty thousand according to the Law of the North Western Frontier tribes He was to be beheaded if the fine was not paid, so in the circumstances he had to pay the amount. He came here and appealed to the Government of India and filed a suit, and though he had to spend Rs. 10 000, he got the refund of Rs. 20,000. He later on took a job in the Mycology Department of the Government of Bihar where he is at present employed.

So I know in the aboriginal areas, there are any number of disputes In our region, there are such disputes in which a person is given heavy punishment for theft. For small thefts, they apply a live charcoal to his cheek If the theft committed is bigger, he is fined and a red hot piece of gold is put in his mouth.

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*[ ] Translation of Hindustani speech

[Shri Lakshminarayan Sahu]

Such bad things occur in all tribal and non-tribal areas. Hence I wish that this provision should be made here.

Shri T. T. Krishnamachari (Madras: General): Sir, I am afraid Dr Ambedkar has already answered the question raised by amendment No 263 in dealing with the previous paragraph.

Mr. President: The question is.

"That for the heading to paragraph 5 of the following be substituted 'Conferment of powers.'"

The amendment was negatived.

Mr. President: I shall now put Mr. Brajeshwar Prasad's amendment to the House.

Shri T. T. Krishnamachari: Is it necessary to put it to vote, because the principle has been negatived on previous amendments, where the House has not agreed to substitute the word "President" for "Governor"?

Mr. President: I shall however put it to the House.

The question is:

"That in sub-paragraph (1) and (2) of paragraph 5, for the word 'Governor' wherever it occurs, the word 'President' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That after sub-paragraph (3) of paragraph 5, the following new sub-paragraph be added:—

'(4) Notwithstanding anything contained in sub-paragraph (1) of paragraph 5, in a trial between a tribal and non-tribal, the proceedings shall be in accordance with the Civil Procedure Code, 1908, and Criminal Procedure Code, 1890'."

The amendment was negatived.

Mr. President: The question is:

"That paragraph 5 stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 5 was added to the Schedule

Paragraph 6

Paragraph 6 was added to the Schedule.

Paragraph 7

Paragraph 7 was added to the Schedule

Paragraph 8

Shri Kuladhar Chaliha: Sir, I move:

"That for paragraph 8, the following be substituted:—

'8. The Governor shall lay down rules to assess collect land revenue and impose taxes for the District Councils and Regional Councils and place them before the State Legislature'."

If you will look at para. 8 you will find that powers have been given in excess of what has been given to the district boards of Assam. The power of collection

of land revenue is in the hands of the Government and I do not see any reason why these elementary, primitive regional and district councils should be allowed to tax professions, trades, callings, animals, vehicles and also collect land revenue In Assam the land revenue is collected by the land revenue staff of the Government of Assam and the same procedure still exists even in the Naga hills. This is an anomalous and retrograde provision. It has been made without a consideration of the land laws of the country and it is a negation of every thing. As I said before, the Drafting Committee seems to have been in a huff and did not know what to do and whatever was dictated to them by somebody without a knowledge of the country and its laws was put in there. Why should the ordinary laws of the province be rescinded and new laws like this should be incorporated in this paragraph. My suggestion is very simple and should be accepted by the Drafting Committee. It says :

"The Governor shall lay down rules to assess, collect land revenue and impose taxes for the District Councils and Regional Councils and place them before the State Legislature."

The legislature should have a voice in it. The district or regional council might tax anything : it might impose a tax on anyone with a head, which is a thing unthinkable. Therefore we should try to bring the laws of a primitive people in line with civilised standards. I have suggested my amendment and I trust that people are there to advocate these laws; and therefore, in order to bring them in line with civilised standards, I have suggested my amendment and I trust that the Drafting Committee will accept it. In fact the Nagas will have a voice to speak in the legislature, for when such questions come before the legislature they will be there to say what is wrong with them and point out what is there which should not be there. Therefore this small amendment has been put forward before you to accept it. The Drafting Committee should accept it and not have this retrograde and primitive paragraph 8 incorporated in the schedule. It is a primitive law and a primitive rule. Somebody has put into their head that this is a good law. I think it is one of the most retrograde laws that has ever been imposed on the people.

Mr. President : Then there is amendment No. 201 by Mr. Brajeshwar Prasad which is in line with the other amendments giving power to the President in all matters, and I do not think I should allow that. The question is :

"That for paragraph 8, the following be substituted :—

'8. The Governor shall lay down rules to assess, collect land revenue and impose taxes for the District Councils and Regional Councils and place them before the State Legislature'."

The amendment was negatived.

Mr. President : I shall put paragraph 8 to vote.

The question is :

"That paragraph 8 stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 8 was added to the Schedule.

Paragraph 9

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That sub-paragraph (1) of paragraph 9 be deleted."

That paragraph refers to licence or lease granted by the Government of Assam for the prospecting for or the extraction of minerals. That matter now is with the Central Government and therefore it is unnecessary to have this sub-paragraph here.

Mr. President: The question is:

"That sub-paragraph (1) of paragraph 9 be deleted."

The motion was adopted.

Mr. President: The question is:

"That paragraph 9, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 9, as amended, was added to the Schedule.

Paragraph 10

Shri Kuladhar Chaliha: Sir, I move:

That for paragraph 10, the following be substituted:—

'10. The Governor shall make regulations to control money lending and trading in the tribal areas'."

I find in paragraph 10 that power is given to the District Council to make regulations for the control of money-lending and trading by non-tribals. Under sub-paragraph (2) such regulations may "(a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending; (b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender; (c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in this behalf by the District Council; and (d) prescribe that no person who is not a member of the Scheduled tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council". Look at this last provision. Under these regulations will it be possible for any Assamese, Marwari, Sindhi, Punjabi, or Sikh from the plains or from Bombay to carry on business in the Naga Hills if we have a rule like (d)? To say the least, this is an impossible provision. These provisions are so bad that the only way out, I trust, is to accept my amendment. I have given a very mild amendment to the effect that "the Governor shall make regulations to control money-lending and trading in the tribal areas". During the British days the British were believed. Do you think we shall not be believed? The British induced the belief that they were their greatest friends and the Hindus and men of the plains were their enemies. That was the belief they created. I think we are insisting on that and inducing that belief again. And we are not allowing our business men to go there and do business. My amendment is a permissive law. The Governor has power to make rules and regulations and if he thinks that a certain man is objectionable or is not a desirable man he can rule such men out. I, therefore, submitted that this amendment should be accepted.

The provisions as drafted by the Drafting Committee are such that no civilised government can make them. I strongly resent these rules being made in such a hasty manner without considering the entire background and without considering what will be the effect of these things. They will be able to prescribe rules "providing for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in this behalf by the District Council". Are they acquainted with accounts? Have they got sufficient number of literate people? Have you ever considered these things? It is an impossible thing You have not understood these things. You have never cared to understand the problem from all-India point of view and you believe people telling you something which is not correct.

With these words, Sir, I commend my amendment to the acceptance of this House.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That in sub-paragraph (2) of paragraph 10, for the words 'Such regulations may' the words 'In particular and without prejudice to the generality of the foregoing power, such regulations may' be substituted."

It is merely a drafting change.

I also move .

"That after sub-paragraph (2) of paragraph 10, the following sub-paragraph be added .—

'(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect'."

Mr. President: There are two amendments by Mr. Naziruddin Ahmad which are of a drafting nature and another by Mr. Brajeshwar Prasad substituting the word "President" for "Governor" which need not be moved.

Shri Rohini Kumar Chaudhuri: Mr. President, Sir, we have been hearing the replies which the honourable Dr. Ambedkar has been giving to the various amendments moved by Mr. Chaliha, myself and others. Each time he has quoted the Premier of Assam and some other persons in his support. I would ask him whether there is anybody who had gone to him and said that this provision should remain in the new Constitution—the provision that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council? Is there anybody in this House who will support this discriminatory treatment between tribal and non-tribal people, in a place where they have been moving together for a very long time? Even the British would have been put to shame by such a provision. Take Shillong where there is a large number of non-tribal people who are carrying on retail business. Do you mean to say that the tribals living in the town of Shillong will require no licence but non-tribals will require a licence? Is there anybody who favours such a discriminatory treatment, I wonder? If there is anybody who supports discrimination between tribals and non-tribals I would say that it is useless to argue with him.

Mr. President: The first amendment to be put to vote is the one moved by Mr. Chaliha, No. 123. The question is :

"That for paragraph 10, the following be substituted:—

'10. The Governor shall make regulations to control money lending and trading in the tribal areas'."

The amendment was negatived.

The Honourable Dr. B. R. Ambedkar: May I say a word or two with regard to matters about which my friend is terribly excited? There are three things provided by way of safeguards which my friend has not taken into consideration. The first provision to paragraph 10 says : "Provided that no such regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council :" This is one safeguard. The second safeguard is contained on page 184 of the Draft Constitution. It says : 'Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations." Therefore, existing rights are not affected.

[The Honourable Dr. B. R. Ambedkar]

The third thing to which my friend has not cared to pay any attention is the amendment I have moved, *viz.*, "All regulations made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect."

These precautions are there.

As regards his remark that what the Drafting Committee has done is a barbaric thing, not done even by the British Government. I may point out that he forgets the fact that this excluded area was entirely within the discretion of the Governor; it was his fault. We have altogether taken away that discretion of the Governor. He can now act only subject to the advice of the Ministry.

I wonder now whether my Friend Shri Rohini Kumar Chaudhuri is satisfied with the explanation I have given?

Honourable Members: Not at all.

The Honourable Dr. B. R. Ambedkar: I know you want something more than what I can give. You are like hungry David Coperfield asking for more gruel.

Mr. President: I will now put amendment No. 124 to vote.

The question is :

"That in sub-paragraph (2) of paragraph 10, for the words 'Such regulations may' the words 'in particular and without prejudice to the generality of the foregoing power, such regulations may' be substituted."

The amendment was adopted.

Mr. President: Now I will put amendment No. 125.

The question is :

"That after sub-paragraph (2) of paragraph 10, the following sub-paragraph be added : —

'(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect'."

The amendment was adopted.

Mr. President: The question is :

"That paragraph 10, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 10, as amended, was added to the Schedule.

Paragraph 11

Shri Kuladhar Chaliha: I am not moving amendment No. 126.

Mr. President: Amendment No. 204 of Shri Brajeshwar Prasad is to the same effect as 126.

Shri Brajeshwar Prasad: Sir, my object is to have the notification published in the official Gazette of India. I will not move it if you so wish.

Mr. President: It is not a question of my not wanting or wanting it.

Shri Brajeshwar Prasad: If you permit me I shall move it.

Mr. President: You want it to be published in the official Gazette of India?

Shri Brajeshwar Prasad: Yes, Sir.

Mr. President: But the question concerns only Assam?

Shri Brajeshwar Prasad: It is part of the amendments which I moved.

Mr. President: That is why I said it is out of place when the principle you advocated has been rejected more than once by the House.

I will now put paragraph 11 to vote.

The question is :

"That paragraph 11 stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 11 was added to the Schedule.

Paragraph 12

Mr. President: Paragraph 12. Amendment No. 127.

Shri Kuladhar Chaliha: Sir, I move :

"That clause (b) of paragraph 12 of the Sixth Schedule be deleted."

Sir, fact is stranger than fiction. Even Parliament will have no power over the autonomous district unless the regional or district council agrees. The clause reads thus :

"The Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of clause (a) of this paragraph do not apply shall not apply to an autonomous district or an autonomous region, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may with the approval of the District Council for such district or the Regional Council for such region specify in the notification, if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be."

The Governor has no power and the Parliament has no power unless the Regional Council or the District Council by a resolution recommends a particular course.

The Honourable Dr. B. R. Ambedkar: May I draw attention to my amendment No. 128 on the Order Paper? As that is going to be moved, this amendment of my friend will be quite unnecessary. Therein I am proposing the omission of the words objected to by him.

Shri Kuladhar Chaliha: I am glad that for once some kind of sense has dawned upon the Drafting Committee. It is fortunate that for the first time sense has dawned on the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: That is because for the first time you have convinced me by your arguments.

Sir, I will now move my amendment No. 128 :

"That in clause (b) of paragraph 12, for the words 'with the approval of the District Council for such district or the Regional Council for such region specify in the notification, if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be' the words 'specify in the notification' be substituted."

The Governor, by this amendment, is freed from the trammels of any resolution that may be passed by the District Council or the Regional Council. He can now act on the advice of the Ministry whether a particular law passed by Parliament or by the Legislature of Assam is to apply to that area or not.

Mr. President: There are two amendments to this paragraph. Nos. 205 and 206 standing in the name of Shri Brajeshwar Prasad. We have discussed more than once and rejected the principles contained in them. I do not think therefore that we should take them up. The question is :

"That in clause (b) of paragraph 12, for the words 'with the approval of the District Council for such district or the Regional Council for such region specify in the notification if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be' the words 'specify in the notification' be substituted"

The amendment was adopted.

Mr. President: The question is :

"That paragraph 12, as amended, stand part of the Sixth Schedule"

The motion was adopted.

Paragraph 12, as amended, was added to the Schedule

Paragraph 13

Mr. President: Amendment No. 129

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That in paragraph 13, after the words 'the State of Assam shall' the words 'be first placed before the District Council for discussion and then after such discussion' be inserted."

Mr. President: Amendment No. 130 by Mr. Rohini Kumar Chaudhuri. It is more or less the same as No. 129. Do you wish to move it?

Shri Rohini Kumar Chaudhuri: Mr. President, Sir, I move :

"That in amendment No. 129 above, in paragraph 13, after the words 'and then after such discussion' (proposed to be inserted) the words 'and such separate statement pertaining to autonomous districts shall be subject to such modifications and alterations as the State Legislature may make' be inserted."

This is only a formal amendment. I think it is the intention of the Drafting Committee that the estimated receipts and expenditure pertaining to an autonomous district should be subject to such alterations or modifications as the State Legislature may make. This is evidently an omission, and the addition of these words will make the meaning perfectly clear. Otherwise it will be meaningless to place the Statement before the House, unless it is subject to modifications and alterations.

Shri Brajeshwar Prasad: I am not moving either of the two amendments 131 and 132.

Mr. President: Would you like to say anything, Dr. Ambedkar, about Mr. Rohini Kumar Chaudhuri's amendment?

The Honourable Dr. B. R. Ambedkar: I must complain that, although the words "Section 177" occur in the original draft, my Friend Mr. Rohini Kumar Chaudhuri has thought it fit to bring in this amendment No. 130. The effect of regarding it as a financial statement within the meaning of 177 means that it will be discussed by the Assam Legislature and, voted upon. Amendments may be moved and the appropriation law would apply. The only thing is that before the Assam Legislature deals with it, it is desirable to allow the District Councils to have their say as to how the money should be allocated. I hope he is now content.

Mr. President: The question is:

"That in paragraph 13, after the words 'the State of Assam shall' the words 'be first placed before the District Council for discussion and then after such discussion' be inserted"

The amendment was adopted.

Mr. President: The question is:

"That in amendment No. 129 above, in paragraph 13, after the words 'and then after such discussion' (proposed to be inserted) the words 'and such separate statement pertaining to autonomous districts shall be subject to such modifications and alterations as the State Legislature may make' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That paragraph 13 as amended, stand part of the Sixth Schedule"

The motion was adopted.

Paragraph 13, as amended, was added to the Schedule

Paragraph 14

Shri Brajeshwar Prasad: Mr. President, Sir, with your permission, I beg to move:

"That for amendments Nos. 3500, 3501 and 3502 of the List of Amendments (Vol II) the following be substituted:—

"That for paragraph 14 of the Sixth Schedule, the following be substituted:—

"The Governor of Assam as the agent of the President—

the words "(or alternatively the Governor of Assam) in his discretion" I am not moving, Sir.

"may at any time appoint a Commission consisting of not less than seven members, of whom not less than three shall be members of the scheduled tribes and the rest shall be chosen from the ranks of eminent anthropologists, retired judges of the Supreme Court and of the High Courts and men of science and letters, to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, or may appoint a similar commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

(a) the provision of educational, cultural, medical, economic and religious facilities and communications in such districts and regions;

(b) the need for any new or special legislation in respect of such districts and regions,

(c) the administration of the laws, regulations and rules made by the District and Regional Councils, and define the procedure to be followed by such Commission."

I have only two points to make. I have enlarged the scope of this Commission. I have said that it is to inquire into the provision for educational, cultural, medical, economic and religious facilities. These words do not find a place in the original paragraph.

Mr. President: Educational and medical facilities are there.

Shri Brajeshwar Prasad: But not cultural and religious facilities. My amendment enlarges therefore the scope and functions of the Commission Secondly, Sir, I have also circumscribed the sphere of choice of the Governor in appointing the members of the Commission. He is not free to choose all whom he likes. He has to choose from among the categories of persons that I have enumerated in my amendment Beyond this, I have nothing more to say

The Honourable Dr. B. R. Ambedkar: Sir, I do not think that this amendment is necessary. So far as . . .

Mr. President: You have yourself certain amendments to move first

The Honourable Dr. B. R. Ambedkar: Yes, Sir, I will move them first. Sir, I move :

"That in sub-paragraph (1) of paragraph 14, after the words 'autonomous districts in the State' the words, brackets, letters and figures 'including matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3) of paragraph 1 of this Schedule' be inserted"

"That in sub-paragraph (1) of paragraph 14, after the words 'autonomous districts', in the two places where they occur, the words 'and autonomous regions' be inserted."

"That in clauses (a) and (b) of sub-paragraph (1) of paragraph 14, after the word districts' in the two places where it occurs, the words 'and regions' be inserted."

"That in sub-paragraph (3) of paragraph 14, after the words 'autonomous districts' the words 'and autonomous regions' be inserted."

Some of these amendments are consequential. Others are purely verbal

Shri Kuladhar Chaliha: Mr. President, Sir, I move :

"That with reference to amendments Nos. 3500 and 3501 of the List of Amendments (Vol. II), after clause (c) of sub-paragraph (1) of paragraph 14, the following new clause be added :—

'(d) inclusion or exclusion of any tribal area from any district or Regional Council'"

Sub-paragraph (1) of paragraph 14 provides for the appointment of a Commission to inquire into and report on the administration of the autonomous districts. Somehow or other they have omitted to include a provision for the inclusion or exclusion of any tribal area from the District or Regional Councils. They say that the Commission will report on—

"(a) the provision of educational and medical facilities and the communications in such districts;

(b) the need for any new or special legislation in respect of such districts; and

(c) the administration of the laws, regulations and rules made by the District and Regional Councils."

I understand that the Commission will have power to include or exclude any tribal area, but I find that no provision has been made for the Commission to enquire into that question. It may be that some of the plains area have been included in the tribal areas and if he wanted to get rid of them, the Commissioner should have the power to go into them. Sir, I have tabled a very modest amendment, namely, "inclusion or exclusion of any tribal area from any district or Regional Council." I trust the Drafting Committee will reciprocate the kindness after all the unkindness they have shown and that they will accept this and include my amendment in (d), it will greatly improve the clause.

The Honourable Dr. B. R. Ambedkar: I should like to draw my honourable Friend's attention to the amendment which I moved to paragraph 1 of this Schedule, in which the provisions of sub-paragraph (3) were altered in certain respects. This matter which he now wants to provide is to be regulated on the recommendation of the Commission. That paragraph has already been passed, and therefore, it is not necessary.

Shri Kuladhar Chaliha: Is it amendment No. 99 ?

The Honourable Dr. B. R. Ambedkar: Yes, it is 99.

Shri Kuladhar Chaliha: But yet you have limited the commission here in paragraph 14 to (a), (b) and (c). That is my difficulty.

The Honourable Dr. B. R. Ambedkar: That is what had been passed.

Shri Kuladhar Chaliha: It has already been passed, but all the same you have limited it in (a), (b) and (c).

The Honourable Dr. B. R. Ambedkar: If I may explain to my honourable Friend, the operation of sub-paragraph (3) which deals with the alterations in the tribal areas either by inclusion or exclusion, are divided into two categories The first is this : Inclusion in any part of the said table which is (a). That the Governor can do, at the very start. For that no recommendation of the Commission is necessary. But according to my amendment if action is to be taken under (b), (c), (d) and (e), then the Commission's recommendation is necessary and as I said that part has been passed by the House. It is not possible to re-open this now.

Shri Kuladhar Chaliha: You have limited it again with the consideration of the report of the Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule. You have provided amendment No. 99 but limited it again. I should like to hear what Dr. Ambedkar has to say about it.

The Honourable Dr. B. R. Ambedkar: It is not limited by paragraph 14.

Shri T. T. Krishnamachari: If the honourable Member will please look at amendment No. 134, which wants the inclusion of the words "including matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3) of paragraph 1 of this Schedule" after the words "autonomous districts in the State" in sub-paragraph (1) of paragraph 14 then he will find the object that he has in mind has already been served by this amendment.

Shri Kuladhar Chaliha: Thank you, Sir.

Pandit Hirday Nath Kunzru (United Provinces : General): I have some difficulty in understanding this. The amendment moved by Mr. Chaliha is to the effect that the Commission that may be appointed by the Governor should consider not merely the inclusion of any new tribal area but also its exclusion. An area may be excluded from an existing tribal area without its being included in another tribal area and that thing has not been provided for here. All that the amendment No. 99 of Dr. Ambedkar provides is that an area may be taken out of one tribal area and united to another area but there is no power given to the Commission to inquire and to report about the desirability of excluding an area altogether. Only Parliament will have the power to exclude an area. Parliament will have the power to exclude an area from a tribal area, but without having the considered recommendations of the Commission before it because this Commission will not be empowered to deal with the matter.

The Honourable Dr. B. R. Ambedkar: If I may deal with my honourable Friend, Pandit Kunzru's difficulty, I think my honourable Friend has not clearly understood the purpose of Mr. Chaliha's amendment. Mr. Chaliha's amendment is "inclusion or exclusion of any tribal area from any District or Regional Council," that is to say, the diminution of the jurisdiction of the District or Regional Council. That is what Mr. Chaliha is speaking of. What my honourable Friend is speaking of is with the taking away altogether from an autonomous district any area and include it in the general territory of Assam. These are two quite different matters.

Pandit Hirday Nath Kunzru: Why should not the Commission be asked to report on that matter ?

The Honourable Dr. B. R. Ambedkar: The Commission has got power to report. If my honourable Friend will read the provision, he will find the following : "The Government of Assam may at any time appoint a Commission

[The Honourable Dr. B. R. Ambedkar]

to examine and report 'on any matter'." "Any matter" may include also the provisions contained in paragraph 1 and they are also specifically mentioned "specified by him relating to the administration of the autonomous districts in the State or may appoint a Commission to inquire into and report from time to time on the administration of Autonomous districts" includes matters specified, that is "any matters". My amendment No. 134 I have moved in order to make it quite clear and not to lead to interpretation of the words "any matter". I have now specifically mentioned that these may "include matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3 of paragraph 1 of this Schedule," and these will be referred to the Commission. That is the purport of my amendment No. 134.

Pandit Hirday Nath Kunzru: I understand the purport of the amendment all right and I am well aware of the contents of clauses (b), (c), (d) and (e) of the paragraph but what I say is that the Commission that will be appointed to deal with any matter connected with the administration of the autonomous regions does not seem to me to have the power of reporting that an area already included in a tribal area may be excluded from it and amalgamated with an ordinary administered area.

The Honourable Dr. B. R. Ambedkar: My honourable Friend ought to refer to (d) of paragraph (3) of the said table.

Pandit Hirday Nath Kunzru: That has been removed by your own amendment.

The Honourable Dr. B. R. Ambedkar: That I think will have to be done by Parliament by law.

Pandit Hirday Nath Kunzru: Without having the considered recommendations of the Commission. Parliament should have before it the report of the Commission but now it will have to deal with the matter entirely on the strength of such knowledge as it may have.

The Honourable Dr. B. R. Ambedkar: This is a matter which is not within the competence of the Governor. As passed, the exclusion of any area from the tribal areas is a matter which is taken out of the purview of the Governor. It is left to Parliament to decide. This Commission is merely to guide the Governor to deal with matters which are mentioned in clauses (b), (c), (d) and (e) of sub-para (3). Any matter which is outside it is a matter for Parliament. Parliament may appoint a Commission independently of this Commission and then legislate.

Prof. Shibban Lal Saksena: There is no provision for it.

The Honourable Dr. B. R. Ambedkar: No provision is necessary. Parliament may act upon the advice of the Assam Ministry. If Parliament thinks that that advice is not independent and that there should be independent evidence, Parliament is free to appoint a Commission and make an enquiry of its own.

***Shri Rohini Kumar Chaudhuri:** Sir, I beg to move :

"That with reference to amendment No. 135 above, the following proviso be added after sub-paragraph (1) of paragraph 14 of the Sixth Schedule :—

'Provided that the State Legislature shall be represented by two members elected by the Assam Legislative Assembly.'"

I would like to draw the attention of the House to paragraph 3 as amended and passed by the House which says that all laws passed by the District Councils

*Uncorrected.

shall be placed before the legislature and that the Governor shall give his assent on the advice of the Ministry. That is to say, that the legislature has a voice through their Ministers in the matter of laws passed by the District Councils and Regional Councils. One of the objects for which this Commission will be appointed is the need, under sub-clause (b), for any new or special legislation in respect of such districts. The Commission will be expected to report on the need for any new or special legislation in respect of such districts. Furthermore, sub-paragraph (2) of paragraph 14 lays down that the report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of Assam. It follows from this sub-paragraph that the whole report will be discussed by the legislature. I therefore think that when the Commission is expected to report on the need for any new special legislation, and when the report of the Commission will be placed before the State legislature for discussion, it is only in the fitness of things that two members of the provincial legislature should be represented in the Commission. These two members who will be with the Commission at the time of collecting materials for the report, will be able to give their important advice in the House itself. If the opinion of the members from the province of Assam counts for anything in regard to the discussion on this Sixth Schedule which relates primarily to Assam, I think the Honourable Dr. Ambedkar would agree to accept my amendment. I think we are fairly unanimous—I do not know about the two Ministers, but the rest of us are unanimous—on the need for accepting this amendment.

Prof. Shibban Lal Saksena: The Governor is free to appoint anybody to the Commission.

The Honourable Dr. B. R. Ambedkar: There are no limitations at all on the Governor.

Shri Rohini Kumar Chaudhuri: I say two members should be elected by the legislature.

The Honourable Dr. B. R. Ambedkar: He is not prevented from doing so.

Shri Rohini Kumar Chaudhuri: There is no harm in saying that. A man may live or die. Why do you say, die? I want to say live. Please accept my amendment.

The Honourable Dr. B. R. Ambedkar: The Governor will proceed to appoint a Commission on the advice of the Ministry. You think your Ministry will not appoint two members from the legislature.

Shri Rohini Kumar Chaudhuri: I want them to be elected by the legislature. I attach certain importance to election by the Assembly. I think the Honourable Dr. Ambedkar also used to give such importance; but he may change his mind now.

Mr. President: There are certain other amendments proposed by Mr. Brajeshwar Prasad: 207,—"President" for "Governor"; 208,—"President" for "Governor"; 209,—"Parliament" for "State legislature"; 210,—"Union" for "Assam"; 211,—"Union" for "State"; 212,—"President" for "Governor"; 213,—"in the State of Assam" for "in the State".

Shri Brajeshwar Prasad: I do not want to move these.

Mr. President: All the amendments to this paragraph have been moved. Would you like to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: No

Mr. President: I would put the amendments now.

The question is

"That for amendment Nos 3500, 3501 and 3502 of the List of Amendments (Vol II) the following be substituted :—

"That for paragraph 14 of the Sixth Schedule, the following be substituted —

'The Governor of Assam as the agent of the President may at any time appoint a Commission consisting of not less than seven members, of whom not less than three shall be members of the scheduled tribes and the rest shall be chosen from the ranks of eminent anthropologists, retired judges of the Supreme Court and of the High Courts and men of science and letters, to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, or may appoint a similar commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

(a) the provision of educational, cultural, medical, economic and religious facilities and communications in such districts and regions;

(b) the need for any new or special legislation in respect of such districts and regions,

(c) the administration of the laws, regulations and rules made by the District and Regional Councils, and define the procedure to be followed by such Commission' "

The amendment was adopted

Mr. President: The question is :

"That in sub-paragraph (1) of paragraph 14 after the words 'autonomous districts', in the State the words, brackets, letters and figures 'including matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3) of paragraph 1 of this schedule' be inserted "

The amendment was adopted

Mr. President: The question is .

"That in sub-paragraph (1) of paragraph 14 after the words 'autonomous districts' in the two places where they occur, the words 'and autonomous regions' be inserted "

The amendment was adopted

Mr. President: The question is :

"That in clauses (a) and (b) of sub-paragraph (1) of paragraph 14, after the word 'districts' in the two places where it occurs, the words 'and regions' be inserted "

The amendment was adopted.

Mr. President: The question is :

"That in sub-paragraph (3) of paragraph 14, after the words 'autonomous districts' the words 'and autonomous regions' be inserted."

The amendment was adopted

Mr. President: The question is :

"That with reference to amendments Nos. 3500, 3501 of the List of Amendments (Volume II), after clause (c) of sub-paragraph (1) of paragraph 14, the following new clause be added :—

'(d) inclusion or exclusion of any tribal area from any district or Regional Council.' "

The amendment was negatived.

Mr. President: The question is :

"That with reference to amendment No. 135 above, the following proviso be added after sub-paragraph (1) of paragraph 14 of the Sixth Schedule :—

'Provided that the State legislature shall be represented by two members elected by the Assam Legislative Assembly."

The amendment was negatived

Mr. President: The question is:

"That Paragraph 14, as amended, stand part of the Sixth Schedule."

The motion was adopted

Paragraph 14, as amended, was added to the Schedule

Paragraph 15

(Amendment No. 140 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I move

"That sub-paragraph (3) of paragraph 15 be omitted"

That is because it gives discretion to the Governor which it is not proposed now to leave with him

Mr. President: Amendment No 142 we have dealt with the question of discretion so many times. Is it necessary to move it?

Shri Brajeshwar Prasad: As you direct me, Sir

Mr. President: I do not think it is necessary. Amendment 214: again "President" for "Governor"; Amendment 215, "Parliament" for "legislature of the State"; Amendment 216: that is the same as Dr. Ambedkar's. These are all the amendments. Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar: No. As I have said we are taking away the discretion from the Governor which we had originally laid with him and it is therefore necessary to delete this sub-para (3)

Mr. President: The question is:

"That sub-paragraph (3) of paragraph 15 be omitted."

The amendment was adopted.

Mr. President: The question is:

"That paragraph 15, as amended, stand part of the Sixth Schedule"

The motion was adopted.

Paragraph 15, as amended, was added to the Schedule

Shri Brajeshwar Prasad: Sir, I would suggest that we sit for a few minutes more and finish this schedule.

Mr. President: It will take time. We may not be able to finish. I was just going to remind the House that we are very much behind our scheduled time and something will have to be done to catch up the lost time.

Shri R. K. Sidhva (C. P. & Berar: General): Today we have no other words and we may sit in the afternoon.

The Honourable Dr. B. R. Ambedkar: Tomorrow if you like we can sit Today we have called a meeting of the Drafting Committee to take up some articles which have remained for consideration

Mr. President: Very well, we shall consider that tomorrow. The House stands adjourned till 9 o'clock tomorrow.

The Assembly then adjourned till Wednesday, the 7th September 1949 at 9 A.M.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 7th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr President (The Honourable Dr Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Sixth Schedule— (*Contd.*)

Paragraph 16

Mr. President: We shall now take up paragraph 16. Shri Kuladhar Chaliha can move his amendment No. 143.

Shri Kuladhar Chaliha (Assam: General) . Mr. President, Sir, I beg to move

"That the second proviso to paragraph 16 of the Sixth Schedule be deleted."

I have a very modest amendment and I think the Drafting Committee will be pleased to accept it. I want that our Governor should have the power to exercise his powers properly. If you read paragraph 16, you find that he is hedged in by so many conditions that in an emergency he will not be able to act properly. It reads—

"Dissolution of a District or Regional Council

The Governor may on the recommendation of a Commission appointed under paragraph 14 of the Schedule by public notification order the dissolution of a Regional or a District Council and

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months."

And then you have the proviso—

"Provided that when an order under clause (a) of this paragraph has been made the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the re-constitution of the Council on fresh general election."

Provided again—

"Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of being heard by the Legislature of the State."

Sir, I find the language in this paragraph is so very involved. The Governor will have first to appoint the Commission, and on the recommendation of the Commission, he shall have to consider the report of the Commission and then submit it to the Legislature for approval and if approved, to direct a general election to be held immediately for the reconstitution of the Council, and assume the administration of the area. But that safeguard even is not considered sufficient and it is provided further that no action shall be taken without giving

[Shri Kuladhar Chaliha]

the District or Regional Council an opportunity of being heard by the Legislature of the State. When will they be heard? At what stage? And what is the necessity of consulting them? This little body, the District or Regional Council, will be heard again. Why? The Commission will sit, examine different aspects of the questions and different parties will be heard. After this their recommendations will be put up to the Governor who after necessary examination will put up before the Legislature for approval. Then what or where is the necessity for District or Regional Council to be heard again by the Legislature, and when? Should there be a second sitting of the Legislature? There is the first sitting, for approval of the action of the Governor. And then look at the process and procedure involved, and the time taken. It is an emergency practically. The people are probably recalcitrant. They do not obey the law. They are rather restless, and therefore this action is necessary on the part of the Governor and he should act quickly. But then you hem the Governor in, in such a way that he cannot act in an emergency The procedure here laid down will take more than a year, when the situation requires that action should be taken in one day. Sir, I think my proposal is a very reasonable one, and the first proviso is quite enough. Let the Governor act some time when he feels like acting and it is not necessary that he should again be circumscribed by the representation of the Regional Council or the District Council to the Legislature. It is not necessary that they should be heard again. My amendment, as I said, is a reasonable one and I commend it to the House and I hope Dr. Ambedkar will accept it.

Mr. President: There are two other amendments which I rule out, because they are on the same lines as the other amendment of Shri Brajeshwar Prasad Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar (Bombay: General): I should like to hear the Premier of Assam, if he has any views on this matter.

The Honourable Shri Gopinath Bardoloi (Assam: General): Sir, with reference to the amendment moved by Srijut Chaliha just now for the deletion of the second proviso to para. 16, all that I have to say is that in every case where action of this kind is taken—the parties affected thereby are given an opportunity of being heard. I agree that in this proviso no machinery by which this could be done has been laid down. Therefore, if Srijut Chaliha would modify his amendment as follows, namely, that instead of the words "opportunity of being heard by the legislature" the words "an opportunity of placing the views of the Regional Council" may be substituted, then the purpose of his amendment would be served.

Shri Kuladhar Chaliha: I am prepared to do that.

The Honourable Dr. B. R. Ambedkar: I am prepared to accept the amendment of Mr. Bardoloi to the amendment of Mr. Chaliha, which he has accepted. The proviso will now read like this:

"Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council as the case may be an opportunity of placing their views before the legislature of the State."

Mr. President: The question is:

"That for the second proviso to paragraph 16 of the Sixth Schedule, the following be substituted:

'Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council as the case may be an opportunity of placing their views before the legislature of the State.'"

The amendment was adopted.

Mr. President : The question is :

"That paragraph 16 as amended, stand part of the Sixth Schedule '

The motion was adopted.

Paragraph 16, as amended, was added to the Sixth Schedule.

New Paragraph 16-A

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That after paragraph 16, the following paragraph be inserted :—

'16A *Exclusion of areas from autonomous districts in forming constituencies for such districts* —For the purpose of elections to the Legislative Assembly of Assam the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such districts but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order ' "

The object of this is to give the people who are included in the autonomous districts but really who are not part and parcel of the people inhabiting the autonomous districts an opportunity to have a place in the Legislative Assembly by having their own constituencies marked out for them.

Mr. President : The question is :

"That paragraph 16A stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 16-A was added to the Sixth Schedule

Mr. President : There is notice of another amendment by Pandit Kunzru. It refers to 19. Therefore, it may come later.

Pandit Hirday Nath Kunzru (United Provinces : General) : Very well, Sir.

Paragraph 17

The Honourable Dr. B. R. Ambedkar : Sir, I move—

"That after sub-paragraph (2) of paragraph 17 the following sub-paragraph be added —

'(3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President, the Governor shall act in his discretion.' "

Mr. President : There are certain amendments by Mr. Brajeshwar Prasad on the same lines.

Shri Brajeshwar Prasad (Bihar . General) : Sir, I move :

"That for sub-paragraph (2) of paragraph 17, the following be substituted :—

'The administration of the tribal areas of Assam specified in the Table shall be carried on by the President through the Governor of Assam as his agent and the provisions of Part VIII of his Constitution shall apply thereto as if such area were a territory specified in Part IV of the First Schedule'."

Sir, the whole object of this amendment is to bring both the parts of the Table under the government of the President. I have spoken on this subject more than once. I shall not dilate and repeat my arguments. I am convinced of the fact that the policy pursued by the British Government was a very sound one. I am not at all keen whether Biharis, Bengalis, Oriyas and Assamese are allowed to go into those territories. It is a matter which concerns the defence of the country as a whole. It is an area which is of international importance. Therefore, all the tribal areas should be centrally administered areas.

The Honourable Dr. B. R. Ambedkar : I do not accept it, Sir.

Mr. President : Then I put Dr. Ambedkar's amendment first. The question is :

"That after sub-paragraph (2) of paragraph 17, the following sub-paragraph be added :—

"(3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President, the Governor shall act in his discretion"

The amendment was adopted.

Mr. President : Now I put Mr. Brajeshwar Prasad's amendment, which is really an amendment to the amendment just now carried. The question is :

"That for sub-paragraph (2) of paragraph 17, the following be substituted :—

'The administration of the tribal areas of Assam specified in the Table shall be carried on by the President through the Governor of Assam as his agent and the provisions of Part VIII of this Constitution shall apply thereto as if such area were a territory specified in Part IV of the First Schedule.' "

The amendment was negatived.

Mr. President : The question is :

"That paragraph 17, as amended, stand part of the Sixth Schedule"

The motion was adopted.

Paragraph 17, as amended, was added to the Sixth Schedule.

Paragraph 18

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in paragraph 18, in line 22, the words 'in his discretion' be deleted."

"That clause (c) of paragraph 18 be deleted."

Mr. President : Amendments Nos. 148 and 149 are ruled out. Then we have amendments Nos. 223, 224, 225 and 226 which are more or less on the same lines. Would you like to move No. 226, Mr. Brajeshwar Prasad? The other three I have ruled out.

Shri Brajeshwar Prasad : I do not like to move any of my amendments, Sir.

Mr. President : Then, I put Dr. Ambedkar's amendments No. 146 and 147. The question is :

"That in paragraph 18, in line 22, the words 'in his discretion' be deleted."

The amendment was adopted.

Mr. President : The question is :

"That clause (c) of paragraph 18 be deleted."

The amendment was adopted.

Mr. President : The question is :

"That paragraph 18 of the Sixth Schedule, as amended, be adopted.

The motion was adopted.

Paragraph 18, as amended, was added to the Sixth Schedule.

Paragraph 19

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendments No. 150 and 151 of List I (Seventh Week) for paragraph 19 and the Table appended to it the following paragraph and Table be substituted :—

'19. Tribal areas.—(1) The areas specified in Parts I and II of the Table below shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem:

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4 and paragraph 5 and sub-paragraph (2) clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District.

(3) Any reference in the Table below to any district (other than the United Khasi-Jaintia Hills District) or administrative area, shall be construed as a reference to that district or area on the date of commencement of this Constitution.

Provided that the tribal areas specified in Part II of the Table below shall not include any such areas in the plains as may, with the previous approval of the President, be notified by the Governor of Assam in this behalf.

Table

PART I

1. The United Khasi-Jaintia Hills District
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Hills.
6. The Mikir Hills District.

PART II

1. North-East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract Abor Hills District, Misimi Hills District.
2. The Naga Tribal Area.'"

Pandit Hirday Nath Kunzru: Sir, with your permission, I shall move amendments Nos. 330, 332 and 333 together.

Sir, I move:

"That after paragraph 16 of the Sixth Schedule, the following paragraph be inserted —

'16A. *Provisions applicable to areas specified in Part 1A of the Table appended to paragraph* 19.

(1) Notwithstanding anything contained in this Constitution, no Act of Parliament or of the Legislature of the State shall apply to any tribal area specified in Part 1A of the Table appended to paragraph 19 of this Schedule unless the Governor by public notification so directs; and the Governor in giving such directions with respect to any Act may direct that the Act shall in its application to the area or to any specified part thereof have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any such tribal area and any regulation so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area. Regulations made under this sub-paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect."

My second amendment runs as follows:

"That in paragraph 19 of the Sixth Schedule, for the words and figures 'Parts I and II' the words and figures 'Parts I, 1A, and II' be substituted."

My last amendment is:

"That for Part I of the Table appended to paragraph 19 of the Sixth Schedule, the following be substituted:—

[Pandit Hirday Nath Kunzru]

PART I.

1 The Lushai Hills District.

2. The Naga District.

3. The North Cachar Sub-division of Cachar District

PART IA.

1 The Khasi and Jaintia Hills District excluding the cantonment and the municipality of Shillong but including so much of the area comprised within such municipality as forms part of the Mylliem State

2. The Garo Hills District.

3. The Mikir Hills portion of Nowgong and Sibsagar Districts excepting the mouzas of Barpathar and Sarupathar."

I have put forward these amendments in order to place a difficulty that I feel, before the House and in particular before my honourable Friend, Dr. Ambedkar. The areas that are mentioned in Table I appended to paragraph 19 as moved by him contains all those areas that were formerly regarded as excluded or partially excluded areas. The difference between these areas was that while the Governor could act in his discretion in regard to excluded areas, he could only exercise his individual judgment in regard to partially excluded areas. In other words, while in connection with excluded areas he was not bound to consult his Ministers at all, in respect of partially excluded areas he was bound to act according to their advice, unless he felt that he must dissent from it. Now this distinction no longer exists because the Governor, practically speaking, is required in all cases to act on the advice of his Ministers.

Shri T. T. Krishnamachari (Madras : General) : Bar one !

Pandit Hirday Nath Kunzru : I have said 'practically speaking'. The only exception is with regard to areas specified in Part II of the table appended to paragraph 19. There he has to act in his discretion because he will act as an agent of the President and obviously the directions given by the President cannot be allowed to be modified by the Provincial Ministers. But though the legal distinction between excluded and partially excluded areas has been done away with by the Draft Constitution, the fact to which it corresponded still exists. What lay at the bottom of the division of backward areas into excluded and partially excluded was that while areas that were totally unable to look after their own interests were classified as excluded, other backward areas, owing to their contact with the people of the plains and thereby being in a better position to protect their interests than those living in the most backward areas, *i.e.,* the excluded areas, were classified as partially excluded areas. This distinction was made, it meant that the people living in the partially excluded areas, howevr backward they might from our point of view, were more advanced than those living in the excluded areas.

Now the arrangements made in the Sixth Schedule are concerned with the protection of the interests of the most backward people in respect of certain matters. I have no objection whatsoever to this protection being given. On the contrary, I welcome it and I hope that the new awakening on the part of the State in respect of the duty that it owes to the tribal people, who have been neglected for centuries and centuries, will bring about a speedy improvement in the condition of the people in the excluded areas. But is it necessary for this purpose, that areas more advanced than those that were formerly known as excluded should be placed on the same footing as the most backward areas ? I am all in favour of establishing local self-government in

areas that were formerly known as partially excluded areas that is, the Khasi and Jaintia Hills district *minus* the Khasi States that were at that time quite distinct from the British administered portion of the Khasi and Jaintia Hills district, the Garo Hills district and the Mikir Hills district. I know, Sir, what the report of the Bardoloi Committee and the memorandum of the Assam Government have to say on this point. These documents show that the people living in the areas that I have just referred to are backward. But the fact remains that fourteen years ago they were thought to be more advanced than the people living in areas that were then known as excluded areas. Is it necessary, in order to improve the condition of the people living in the Khasi and Jaintia Hills district or the Garo Hills district or the Mikir Hills to make no distinction between them and the people living in the Naga Hills district, the Lushai Hills district and the North Cachar Sub-Division of the Cachar district? I see no reason why the status of the people living in the former areas should be lowered and why they should be regarded as helpless wards, owing to their intercourse with the people of the plains their consciousness has been awakened and they are better able to look after their own interests than those living in the Naga Hills. It might be thought that if district councils and regional councils are established in the areas formerly known as partially excluded areas, no harm would be done to them and that therefore there is no reason for objecting to giving them the rights that the people living there would get under this Constitution.

Sir, in order to clear our minds on this point let us consider whether we would approve of such an arrangement in connection with the plains districts. Somebody may say, if it is desirable for a local body to enjoy the rights that are being conferred on regional and district councils under Schedule Six, there is no reason why the more advanced people should not enjoy them. What would our reply be in that case? Our reply would be that however good the provisions of the Sixth Schedule might seem, they segregate people living in different districts and thus make unity much more difficult. I feel the same difficulty in connection with the inclusion of what were partially excluded areas before in the table placed before us by Dr. Ambedkar. When these people have reached a state of development in which they can better look after themselves than those who are living, say in the Naga Hills District, why should we regret that fact? Why should we make the arrangement with regard to them rigid and make future changes more difficult? Our policy should be to take advantage of the natural progress made by them in respect of the understanding of their interests and bring them closer to the other areas, that is, to the plains districts without in any way affecting their essential interests. This is the purpose of the first amendment I have moved. If the position that I have taken up is correct and honourable Members share my view, then it is obviously desirable, unless Dr. Ambedkar can give us convincing reasons to the contrary, that the arrangements for the tribes mentioned in Part IA of my table should be different from those made for the tribal areas mentioned in Part I.

Now, under the Government of India Act, the Governor exercises two powers in relation to partially excluded areas. In the first place he can modify or amend any law passed by the Central or provincial legislature in its application to partially excluded areas. He enjoys this power even in respect of the excluded areas. In the second place he has the power to make rules for the peace and good government of the tribal areas, whether excluded or partially excluded. It was thought that these provisions by themselves were sufficient to enable the Governor to protect the interests of the people living in the partially excluded areas. In the excluded areas, in some places, there were

[Pandit Hirday Nath Kunzru]

tribal councils and there were other arrangements for enabling the people to take counsel among themselves. But the arrangements that existed in the partially excluded areas were not of the same kind according to the report of the Bardoloi Committee. Election to some of the seats on the representatives of the partially excluded areas to the provincial legislature is in existence. Though the election is indirect in some places, in this respect, the partially excluded areas are in a better position than the excluded areas. Now it is proposed to place both of them on the same footing. I venture to think that the interests of the people both of the partially excluded areas and the interests of the province of Assam as a whole would be better consulted if we continued, in relation to the government of these areas which are specified in part IA of my table, the arrangement that existed under the Government of India Act, 1935. I have already said, and I should like to repeat, in order to prevent any misunderstanding from arising, that I am in favour of complete protection of the interests of the people who will be unable without the help of the State to look after themselves. All that I have submitted to the House is that it is not necessary to treat the areas at present known as partially excluded and excluded in the same way, because that is not in accord with the differences in the mental advancement and the practical knowledge of the people of these areas.

My last two amendments relate to the Table appended to paragraph 19 In accordance with the first amendment moved by me, I have divided the table into three parts, I, IA and II. This requires no explanation in view of the remarks I have already made. The last amendment however requires some explanation. In item 1 of Part IA of the Table, I have not altered the area of the Khasi and Jaintia Hills District. In other words, the Khasi and Jaintia Hills District will include only the area that it does at present and that was recommended by the Bardoloi Committee. In the Table moved by Dr. Ambedkar, however, it has been stated that the Mylliem State should get back such portion of the municipality of Shillong as forms part of that State This means, Sir, that the Shillong municipality which has been in existence for two or three generations will lose a part of the area that it has been governing for so long a time. The Bardoloi Committee undoubtedly had all the facts of the situation before it but it nevertheless recommended no change in this respect. Yet, we are now told that the limits of the Khasi and Jaintia Hills District must be increased and those of the Shillong Municipality must be correspondingly contracted.

This is not a small matter, Sir. The Memorandum of the Assam Government explaining the position of the tribal people states on page 2 that the larger part of the municipality of Shillong is comprised in the Mylliem State I see no reason why so great a change shou'd be made. Dr. Ambedkar, in putting forward his table, which is different from that included in the Draft Constitution, did not say a word to justify this change. He treated it as if it were of no concern to us, and therefore needed no notice. I think, however, that the matter is not as insignificant as he considers it to be. It is a matter of some concern that an area that has been within the jurisdiction of the municipality of Shillong for so long a time should be taken out of it and included in the tribal area. If it is desired that the tribal people living in this area should be able to vote in the elections to the District Council, that can be allowed. Paragraph 16A moved by Dr. Ambedkar makes provision for the exclusion of voters not belonging to the tribal area from the tribal voters. We can on the same lines make a provision allowing the tribal people living within the municipality of Shillong to vote in connection with the elections to the District Council. but there is no reason why for this purpose any part, in fact the greater part, of

the municipality of Shillong should be excluded from [illegible] and brought back to the Mylliem State. I know, Sir, that negotiations are being carried on for the merging of the twenty five Khasi States in the Khasi and Jaintia Hills District but even when this amalgamation has taken place, there will be no rot on why the Shillong municipality should be deprived of any part of the area that it controls now. If people there have become used to more advanced ways of life and if their interests have been adequately protected so far, the burden of proving that the present arrangement is unsatisfactory lies on those who want to bring about a change in existing position. Sir, I hope that I have explained sufficiently the reasons for the amendment that I have moved before the House.

Mr. President: Pandit Kunzru, in your amendment No. 333 in Part IA you have used the same expression as Dr. Ambedkar.

Pandit Hirday Nath Kunzru: I do not think, so, Sir.

Mr. President: It is the same wording, "excluding the cantonment and the municipality of Shillong but including so much of the area comprised within such municipality as form part of the Mylliem State".

Pandit Hirday Nath Kunzru: I am sorry, Sir. That was a mistake. Those words should not be there. The words "but including so much of the area comprised within such municipality as forms part of the Mylliem State" should be cut out. I think that this item should be retained in the form in which it is included in the Draft Constitution. This is the form recommended by the Bardoloi Committee.

Mr. President: There are certain amendments to the amendment moved by Dr. Ambedkar. They have come too late. I find that several amendments to the same effect have been given notice of. I will allow one of them to be moved. Mr. Chaliha and another gentleman whose name I cannot read want that in amendment No. 331 the words "but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem" be omitted. You can move it if you like.

Shri Kuladhar Chaliha: There is also another amendment, Sir, for the insertion of the words "except the mouza of Dimapur" after the words "The Naga Hills District".

Mr. President: You can move both. I find Mr. Das has also given notice of an amendment to the same effect.

Shri Rohini Kumar Chaudhuri (Assam: General): May I explain what we want by moving these amendments: firstly, that the entire municipality of Shillong including the area owned by the Mylliem State should be excluded from the jurisdiction of any kind of the autonomous district and secondly, that the Mouza of Dimapur in Naga Hills which is inhabited by non-tribal people should be outside the jurisdiction of the District Council of Naga Hills.

Mr. President: Mr. Chaliha will move his amendments and make it clear.

Shri Kuladhar Chaliha: Sir, I beg to move:

"That in amendment No. 331 List V (Seventh Week) in item 3 of part I after the words 'Naga Hills District', the words 'except the mouza of Dimapur' be added."

Sir, I also move:

"That in amendment No. 331 of List V (Seventh Week) the words 'but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem' be omitted."

[Shri Kuladhar Chaliha]

Sir, firstly I shall take up the mouza of Dimapur. In telling you the history, I shall be a little long and I shall ask the patience of the House to hear me It is said that this country otherwise called the Brahmaputra valley was conquered by the Kacharis as early as 3000 B.C. and it continued under them till lately. You will find a reference to this history in pages 247 to 249 of Gait's History of Assam

'In the thirteen century it would seem that the Kachari kingdom extended along the south bank of the Brahmaputra, from the Dikhu to the Kallang or beyond and included also the valley of the Dhansiri and the tract which now forms the North Cachar Sub-division.....Towards the end of this century, it is narrated that the outlying Kachari settlements east of the Dikhu river withdrew before the advance of the Ahoms. For a hundred years this river appears to have formed the boundary between the two nations and no hostilities between them are recorded until 1490, when a battle was fought on its banks. The Ahoms were defeated and were forced to sue for peace. But then power was rapidly growing, and during the next thirty years, in spite of this defeat, they gradually thrust the Kachari boundary back to the Dhansiri river".

When war again broke out in 1526, the neighbourhood of this river was the scene of two battles : the Kacharis were victorious in the first but suffered a crushing defeat in the second. Hostilities were renewed in 1531 and a collision occurred in the south of what is now the Golaghat sub-division in which the Kacharis were defeated and Detcha, the brother of their king, was slain. The Ahoms followed up their victory and, ascending the Dhansiri, penetrated as far as the Kachari capital at Dimapur on the Dhansiri, forty-five miles south of Golaghat. Khunkhara, the Kachari king, became fugitive and a relative named, Detsung was set up by the victors in his stead.

"The ruins of Dimapur, which are still in existence, show that, at that period, the Kacharis had attained a state of civilization considerably in advance of that of the Ahoms. The use of brick for building purposes was then practically unknown to the Ahoms, and all their buildings were of timber or bamboo, with mud-plastered walls. Dimapur, on the other hand, was surrounded on three sides by a brick wall of the aggregate length of nearly two miles, while the fourth or southern side was bounded by the Dhansiri river. On the eastern side was a fine solid brick gateway with a pointed arch and stones pierced to receive the hinges of double heavy doors. It was flanked by octagonal turrets of solid brick, and the intervening distance to the central archway was relieved by false windows of ornamental moulded brick-work."

"Inside the enclosure are some ruins of a temple or perhaps a market place, the most notable feature of which is a double row of carved pillars of sandstone averaging about 12 feet in height and 5 in circumference. There are also some curious V-shaped pillars which are apparently memorial stones. There are several fine tanks at Dimapur, two of which are nearly 300 yards square."

From 1531 till World War No. 1. the Mouza of Dimapur was under the Ahoms kings and in the district of Sibsagar under the British but somehow or other the Political Agent of Manipur or a D.C. at Kohima got annoyed with a Station Master who was not very polite to him, because his seats in the first class compartment were not reserved for him or that a telegram was not received duly and the Station Master was not obliging and so a representation was made out and Dimapur Station was included in the Naga Hills and taken out from Golaghat sub-division of Sibsagar District which formed part of it for about hundred years even during British rule. In those days it was the object of the British to suppress the Assamese as much as possible as they became politically conscious and those

were the worst days one would have passed there. Sir, in the beginning of my life I was a magistrate of Golaghat and was in charge of the Sub-division for sometime and I know that that place is inhabited by 20,000 people and there is not a single Naga anywhere in that part of the world.

Now, Sir, it is a prosperous state where you find Assamese, Bengalees, Sindhis, Punjabees, Sikhs, Marwaris doing business after having invested crores of rupees; but do you know their fate? They can be ejected in 24 hours bag and baggage. Their business can be ruined and they are still included in that area. It is rather an irony of fate why the Drafting Committee could not see to it Sir, I happened to be the President of the Excluded area of Assam as well as All India Excluded Area Conference at Hanipur and I know about the Excluded areas much better than many people. I was the President of Assam Excluded Areas Association for a long time and therefore, I say with all humility that the inclusion of the Dimapur mouza in the Naga Hills is the negation of justice. It is nothing but consigning a civilized people, a forward people, an advanced community to the mercy of the autonomous districts, which have rather primitive rules and primitive ways of criminal laws and Civil Procedure Code. I submit and request, if they care to hear, that they accept this humble suggestion of ours. They are talking, they hardly give attention to my speech in spite of my voice; I am sorry that Dr. Ambedkar is not attending at all to what I have said.

Shri Brajeshwar Prasad : The honourable Member should be stopped till the gets attention of the Members of the Drafting Committee.

Mr. President : I know my duty.

Shri Kuladhar Chaliha : I wish to state to the Drafting Committee again that the Mouza of Dimapur is inhabited by civilized people, men from Madras, Bombay, Assam, Bengal, Punjab and other provinces and crores of rupees have been invested and if this area is to be governed as a tribal area by a Deputy Commissioner, who can do what he likes, or by autonomous councils or regions where none but a tribal can be a member as it is going to be now, the people will be ruined and they can be eschewed in 24 hours. I therefore request the Drafting Committee to give us a little attention and exclude the Mouza of Dimapur. Up to the World War No. 1 it was included in the Golaghat subdivision of Sibsagar District. It was never in the Naga Hills. Here I should like to say that Mr. Guha was the Sub-divisional Officer there and he knows the mouza of Dimapur and that it was in Golaghat Sub-division. I was myself a Magistrate there and I know that part of the country very well. I submit that you may be pleased to accept that amendment and will not stand on dignity or ceremony.

As regards the cantonments and municipality of Shillong I should like to speak that the entire area is inhabited by the people of Asam, Bengal and of other areas. Men of the Khasi tribes have so much advanced that there are scholars, principals of colleges and ministers and if you call them "tribes", it is an injustice to them. Here we have the highest literacy in Assam and as such I should think that Mylliem State which is within the municipality of Shillong should be excluded from part I of the table. I commend both these amendments for the acceptance of the House and I trust that the Drafting Committee will be pleased to accept them.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I am not sure if I have followed correctly the import of the amendment which was moved by my honourable Friend Dr. Ambedkar. But I would say that the amendment which he has moved this morning is merely a camouflage.

The Honourable Dr. B. R. Ambedkar : Camouflage for what ?

Shri Rohini Kumar Chaudhuri : Because Dr. Ambedkar seems to indicate by this amendment that he has altered his view in regard to the inclusion of any part of the Shillong Municipality in the autonomous district.

The Honourable Dr. B. R. Ambedkar . I have not altered my view.

Shri Rohini Kumar Chaudhuri : Paragraph (2) of the amendment as it stands includes..... ..

Shri T. T. Krishnamachari : May I point out, Sir, that we here are completely disinterested in this matter and there is no need for any camouflage at all.

Mr. President : There is no question of camouflage because the paragraph is perfectly clear that he wants to exclude, the Municipality of Shillong except that part of it which is comprised in the state of Mylliem.

Shri Rohini Kumar Chaudhuri : But includes that part which forms part of the Mylliem State; that is my difficulty. He excludes the Municipality and Cantonment of Shillong, but includes so much of the area as is comprised within the Municipality of Shillong and forms part of the Khasi State of Mylliem.

Mr. President : There is no camouflage; it is stated in so many words there. You say it is a camouflage; I say it is not, because it is stated clearly in so many words.

Shri Rohini Kumar Chaudhuri : I stand corrected. If Dr. Ambedkar does not practise camouflage, he would not be a good fighter. But, what I thought was that certain honourable Members may be misled as I was misled by what he had stated in his proviso.

The proviso seeks to exclude some paragraphs from operation in the Mylliem portion of the Shillong Municipality. I will show presently that these exceptions do not go very far. My first proposal is that these words appearing in paragraph 2 of his amendment, namely, "but including so much of the area comprised within the municipality of Shillong as forms part of the Khasi State of Mylliem" should be deleted, and consequently, in the table, Part I, in (1) which says "The United Khasi-Jaintia Hills District", the words "excepting the Municipality and Cantonment of Shillong" should be added. The original draft was "The Khasi and Jaintia Hills District excluding the town of Shillong". The words 'Town of Shillong' are comprehensive enough; it included the entire Municipality of Shillong as well as the Cantonment. I would have no objection if the original draft-stood as it is. Now, I want to omit these words and also that the table should be amended accordingly, and it should be stated. The United Khasi-Jaintia Hills District excepting the Cantonment and Municipality of Shillong".

Let us see what benefit we have got under the proviso. Under the proviso, Dr. Ambedkar has excluded the operation of clauses (e) and (f) of sub-paragraph (1) of paragraph (3).

The Honourable Dr. B. R. Ambedkar : You are studying now !

Shri Rohini Kumar Chaudhuri : Sub-paragraph (1), paragraph 3, clause (e) says : "establishment of village or town committees or councils and their powers". So far so good. By the omission of this clause, the question of establishing village or town committees in the Shillong municipality so far as it is comprised in the Mylliem State would not arise. But that is not much of a benefit; that would only remove a confusion which would have otherwise taken place. Clause (f) says, "any other matter relating to village or town administration including

village or town police and public health and sanitation". That is also good so far as it goes. Because, if these clauses are not there, it could not mean that within the Municipality of Shillong, that is to say, in the capital town of Assam, there would have been another police besides the Assam Police. It will be a Town police or village police, and there would be another management for public health and sanitation which of course, the autonomous district will have failed to carry out. But the other provisions in paragraph 3 will remain in force that is to say, provisions regarding allotment, occupation or use of land, management of any forest, use of any canal or watercourse, regulation of the practice of jhum, appointment or succession of Chiefs, etc. Let us see what further exemption this amendment makes.

The next exemption is about paragraph 6. Paragraph 6 says, that the District Council for an autonomous district may establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and waterways.... What is the meaning of this amendment, may I ask Dr. Ambedkar? Where are fisheries in the municipality of Shillong comprised in the Mylliem State? Fisheries, roads, all these belong to the Government of Assam. How does the exclusion of this paragraph benefit anybody in any way? It is absolutely meaningless.

The next exemption is made in respect of sub-paragraph (4) of paragraph 8. Sub-paragraph (4) of paragraph 8 says that a Regional Council or District Council as the case may be may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3). That only applies to the levy of any tax. These are the clauses which he had exempted from operation by the District Council, in that portion of the Shillong Municipality which lies in the State of Mylliem.

Mr. President: Mr. Chaudhuri, probably you did not notice that Dr. Ambedkar added two more paragraphs 4 and 5.

Shri Rohini Kumar Chaudhuri: "Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3,.....

Mr. President: After that, he has added paragraphs 4 and 5.

Shri Rohini Kumar Chaudhuri: That is not in the amendment.

Mr. President: While he was moving his amendment he added these paragraphs.

Shri Rohini Kumar Chaudhuri: I am glad that he has added paragraphs 4 and 5, which relate to the administration of justice in the autonomous districts I am glad that these clauses are not in operation and that the *status quo* is maintained. The High Court of Assam has complete jurisdiction over the Municipality of Shillong. The judiciary there is the ordinary judiciary as it obtains in other parts of the province. But, what he does not exempt is paragraph 10, which, in my opinion, is the most objectionable paragraph of all these paragraphs. Paragraph 10 says that the District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than scheduled tribes resident in the district. Now there are business concerns and even banks in the States and the District Council will be in a position to regulate their affairs and furthermore this regulation may prescribe that no one excepting the holder of a license shall carry on the business of money-lending. Ordinarily the Assam Money-Lenders' Act would apply to the Municipality of Shillong but by virtue of this para. the Assam Money-Lenders' Act will not be enforced and another money-lenders' Act may be introduced by the District Council. Clause (d) of para. 10 reads:

'No person who is not a member of the scheduled tribes resident in the district shall

[Shri Rohini Kumar Chaudhuri]

carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council."

This will be in force even after this amendment.

In the Shillong Municipality two-thirds belong to Mylliem State, and if two-thirds is taken out then very little remains of the town. There will be the Cantonment which is inhabited more or less by a floating population and there will be what was before as the British portion of Shillong comprising the Secretariat and other office buildings and a little space of Gohati Road with some shops. This is all that we shall have in the Shillong Municipality if we exclude the portion which belongs to the Mylliem State. The large majority of the non-Khasi people who were working in the Government offices and private offices and who are carrying on business there are living in the Mylliem State itself. All these people will reap the benefit enjoyed by others. Now, may I ask if this position would be acceptable to this House, that in the town itself the major portion of the town in which is living the non-Khasi people who have been compelled to go there to make their living should be deprived of the advantages which is enjoyed by people living in other parts of the town? I am afraid the House is not taking that sympathetic interest which it ought to take in matters like this. Why should people who have been compelled to live there on account of their vocation, on account of the fact that Shillong is the Capital of Assam, be deprived of ordinary facilities. Even now there is a clamour for removing the Capital to its original place Gohati. In Shillong they cannot acquire property without the permission of the Deputy Commissioner and they have to huddle themselves together in one-third part of that town and they cannot get any land to purchase outside by virtue of this provision. If anybody wants to purchase land it is dependent on the permission of Government and that permission may be refused. There is no remedy for it. Not to speak of purchasing from tribals, if Mr. Guha wants to purchase a plot from me he cannot purchase it without Government's permission. The position will be worse if the entire right of granting permission to sale of property is made over to the District Council.

So in order to avoid all difficulties I appeal to every Member of the House to consider our position, whether they like us to be subjected to such disabilities as regards our properties as has been envisaged by this Constitution. Such disabilities do not exist anywhere in India and it will be aggravated by this amendment of Dr. Ambedkar. If things remain as they are now *viz.*, Khasi State will be without Shillong. I would have no objection. Why Dr. Ambedkar is anxious to introduce this provision in order to take away the rights of ordinary citizens—it is incomprehensible. What mesmerism has been practised over him is more that what I can see. I cannot understand a man like him trying to circumscribe the rights of ordinary people like this. I am feeling very much disappointed in him. He has come to a position where he can ridicule an orphan, Oliver Twist or David Copperfield whatever he calls him. He has come to a position that he can ridicule a hungry orphan. But I hope he will forget Oliver Twist and David Copperfield but try to remember Barkis. Let Barkis be willing—I would ask Barkis Ambedkar to be willing to accept any reasonable proposition which is put before him irrespective of whatever mesmerism and witchcraft he has been subjected to.

Mr. President: I suggest that the Premier of Assam should assist the House with his opinion in this matter.

The Honourable Shri Gopinath Bardoloi: Sir, I am grateful for the opportunity you have given me to speak on the amendments that have been presented before the House.

I oppose Dr. Kunzru's amendment seeking to maintain the old distinction between the partially excluded and the fully excluded areas.

Pandit Hirday Nath Kunzru : We cannot hear Mr. Bardoloi.

The Honourable Shri Gopinath Bardoloi : I think I must speak much louder. Well, I was saying that Dr. Kunzru's amendment seeks to perpetuate the old distinctions which were maintained in the province between the partially excluded area and the fully excluded area. The fully excluded areas were within the discretion of the Governor, while the administration of the partially excluded areas was under his individual judgment. Now, since August 1947, these areas, both partially excluded and the fully excluded areas are under the administration of the provincial government and I could tell you, in the meantime, nothing has occurred by which it could be shown that the administration has deteriorated or anything like that. What I would therefore, point out is that there is absolutely no necessity for changing the general structure which has been adopted by this Constitution, in reference to the powers of the Governor.

Pandit Hirday Nath Kunzru : May I ask Mr. Bardoloi whether he realises that my amendment practically reproduces the provision of Section 92 of the Government of India Act, 1935, as amended in 1947?

The Honourable Shri Gopinath Bardoloi : I do know. But what I desire to point out is that there is absolutely no necessity, after this Sixth Schedule has been accepted, for maintaining this distinction. That is what I desire to point out. In the first place, even before 1947, the whole administration of the partially as well as the fully excluded areas was done under certain regulations which were promulgated in the name of the Governor and the Governor or the District Officers saw to the administration of these areas. But in fact, what these District Officers did was to accept virtually the authority of the village courts in almost all its affairs, not merely in the field of administration but also in the sphere of the administration of justice. What the present Schedule Six wants to do is only to put this thing in a statutory form up to a certain stage. It seeks to put what prevailed upto that time, in a statutory form upto a certain stage, and beyond that stage the administration is integrated with the general working of the Constitution for all areas both in the region of administration as well as in the region of justice. It is now integrated after a certain stage with the rest of the government, in all their functions. Therefore, I do not see, Sir, how the thing would improve if we have two categories of tribals, even in reference to those six districts which have now been put in the Sixth Schedule.

With reference to the amendment that has been tabled by Mr. Chaliha, we have the fullest sympathy. The Advisory Sub-committee for the tribal areas had investigated into this affair. It is quite true that for administrative reasons only about 35 years or 40 years ago—35 years I think is more correct—this area of Dimapur was brought under Naga Hill administration. The mouzas of Sarapathan and Borpathan in Golaghat sub-division brought under partially excluded area with the result that this portion—the mouza of Dimapur—was cut off altogether from the normal administration. They had, therefore, to tag it on with the administration of the Naga Hills. We had the opportunity of examining the inhabitants of this area and we saw that they were determinedly opposed to their inclusion in the Naga autonomous District. We fully sympathise with their aspirations, taking into consideration that this place at one time was the capital of a big kingdom of the Kacharis. But the remedy has already been provided in the Constitution, and I think, it is not possible for us to take the case of particular mouzas piece-meal The Constitution can provide only general articles or provisions for the purpose of meeting such cases. It will be seen that it is possible under paragraph 1, sub-clause (3) to diminish any area in an autonomous district. I do not know whether the word "diminish" would cover

[The Honourable Shri Gopinath Bardoloi]

such cases as we now have, and I should have no objection to substituting it by the word "exclude" (that might also better serve the purpose) and in the third reading, this correction, if necessary, may be made.

Prof. Shibban Lal Saksena (United Provinces : General) : What harm is there if you accept Mr. Chaliha's amendment ?

The Honourable Shri Gopinath Bardoloi : There is no harm. But by saying "Dimapur mouza" it will be difficult to fix the boundary. We have to define the boundary.

Shri Kuladhar Chaliha : The boundary is there already. You can look at the old map of Sibsagar District, which are available in the Government of India Survey Department and even Assam also.

The Honourable Shri Gopinath Bardoloi : But that is a matter on which there may be disputes. The Nagas may say that their district would go up to a certain point, and the Dimapur people would say that their boundary would come up to some other point. This matter may be disposed of satisfactorily under the provisions of the Sixth Schedule that we have already adopted. Therefore, it is not necessary (while I have the fullest sympathy with the object of this amendment), to go into the details of many places where such distribution of boundary will be desirable.

Then there is also another provision, 16-A which says that people living in any area, even within an autonomous district may, for the purpose of the franchise, exercise the same in the general constituency instead of in the tribal constituency. This has also been made possible under provision 16-A which we have passed just now.

Then with regard to the amendment of Mr. Chaudhuri—I am not sure whether it was an amendment, but he made certain remarks. It is very necessary for us to understand the real position of the town of Shillong. It is there that more than half of its area are included in the Mylliem State. The question that now faces us is how to maintain the District Council with its powers, and at the same time integrate it with the larger administration of the town of Shillong. That is the question. The view of the Drafting Committee as I understand was that while for the purpose of municipal and general administration the rights should be there with the provincial government or any authority created by it, the right of the tribal people of this area to their representation in the District Council should not go. The amendment has been put before us with that idea, I believe : in the first place, to let a uniform administration prevail in the Shillong Area including the whole of the municipality, at the same time to give the tribal people their right to representation in the District Council. It will be seen that the new amendment proposed by Dr. Ambedkar is to exclude from the operation of the District Council such rights and powers which as municipal administration the municipality under the authority of the Government should be able to exercise and all those powers have been given. Secondly, their rights in regard to justice in court have also been conceded in paragraphs 4 and 5 which deal with the matter of justice.

An Honourable Member : Distribution of land ?

The Honourable Shri Gopinath Bardoloi : There is very little of distribution of land. All these lands are occupied by people today and if it comes under the District Council administration with the merger of the Khasi States in Assam, then all the rights of the Government for acquisition of land will be there.

Mr. President : What about para. 10 about money-lending ?

The Honourable Shri Gopinath Bardoloi : If the autonomous district picture prevails there is no difficulty whatsoever. Three-fourths of the men are elected.

They may bring in any new regulation and all the old administration is to remain according to the provisions of that paragraph. When we know for a certainty that these States areas are going to be merged into the districts of Assam, I do not think that there can be anything wrong.

Shri Rohini Kumar Chaudhuri: May I be permitted to explain? According to Dr. Ambedkar's amendment, para. 10 will apply to that portion of Shillong Municipality which is under the Mylliem State because so far as para. 10 is concerned, that portion of the Municipality will be under the District Council and the District Council under para. 10 may prescribe that no person who is not a member of the scheduled tribes resident in that district can carry on wholesale or retail business except under a licence granted by the Council. Does the Premeir of Assam desire that this clause should be applicable to persons resident in Shillong Municipality the land of which belongs to Mylliem State and does he want that Dimapur which does not bear one single tribal man should also be subject to this regulation?

The Honourable Shri Gopinath Bardoloi: The question of Dimapur should not have been raised for the simple reason that it may be altogether cut off from the Sixth Schedule or, if it remains, I assume it will be governed by para. 10. It is necessary to understand what paragraph 10 says. You have read the portion relating to the necessity of obtaining a licence in the case of a non-tribal resident. As against this, there are these safeguards:

"Provided that no such regulation may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council"

Shri Rohini Kumar Chaudhuri: There cannot be a single non-tribal man in the municipality, not to speak of three-fourths.

The Honourable Shri Gopinath Bardoloi: It is only in respect of three-fourths that this is applied. Three-fourths of them are to be elected and one-fourth are to be nominated and those nominated members may be anybody. It is nowhere stated that they could not be non-tribals. Apart from that, there is also the proviso:

"That it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations."

That means to say it does not apply to old cases. It applies to new cases.

Shri Rohini Kumar Chaudhuri: On a point of information, may I ask the honourable Member whether a non-tribal man can be a member of the autonomous council?

The Honourable Shri Gopinath Bardoloi: There is no bar

Shri Rohini Kumar Chaudhuri: There is.

The Honourable Shri Gopinath Bardoloi: All regulations made under this Assam Assembly?

Mr. President: I think the Premier should be permitted to proceed in his own way.

The Honourable Shri Gopinath Bardoloi: All regulations made under this para. shall be submitted to the Governor and assented to by him. If there is any prejudicial regulation, the Governor cannot assent to it. But if it is thought that sub-para. 10 will yet work harshly, I can agree personally to the deletion of sub-clause (g), but in view of the fact that already there are so many safeguards for seeing that nothing wrong can be done under this sub-clause I do not think it is necessary.

Pandit Hirday Nath Kunzru: May I put a question to Mr. Bardoloi? What I should like to know, Sir, is whether the Committee on Tribal Areas in Assam over which Mr. Bardoloi presided, has pointed out that the present system has led to any injustice to the tribal people living within the limits of the Shillong municipality?

The Honourable Shri Gopinath Bardoloi: I am sure no injustice whatsoever has been done. On the other hand it is trying to do all that is possible to be done with the finances at the disposal of the Government of Assam.

I also find that the safeguards are enough for the purpose of preventing any abuse of the powers of the district councils.

Mr. President: What the Premier of Assam has suggested is that he would have personally no objection if, in the proviso moved by Dr. Ambedkar to paragraph 19(2), clause (d) of sub-paragraph (2) of paragraph 10 is also included. That gives power to the Council to prescribe that no person who is not a member of the scheduled tribes resident in the district shall carry on wholesale or retail business in any commodity.

The Honourable Dr. B. R. Ambedkar: Sir, I did not think that my amendment No. 331 substituting a new text of paragraph 19 would cause any kind of difficulty such as the one which I now find. I did not, therefore, consider it necessary to spend much time in explaining the provisions contained in paragraph 19. But now that so much debate has taken place of an acrimonious sort I am bound to explain the provisions as contained in the new amended paragraph 19.

Now, the chief part of the controversy has centred round sub-paragraph (2) of paragraph 19. I should like to explain what this means. It means that so far as the United Khasi-Jaintia Hills District is concerned which is mentioned as entry 1 in Part I of the Table, that portion of the area comprised within the municipality of Shillong and which forms part of the Khasi State of Mylliem shall be part and parcel of the United Khasi-Jaintia Hills District. It means that the part of the Mylliem state which is included in Shillong will form part of the United Khasi-Jaintia Hills District. It is realised that this part of the Mylliem State is really subject now under the new provisions of paragraph 19 to two separate jurisdictions. It is subject to the jurisdiction of the Municipality of Shillong, because by this provision we are not altering the boundaries of the Shillong municipality. The boundaries of the Shillong municipality, as defined by the Municipal Act passed by the Assam Legislature, remains intact. According to that Act this particular part of the Mylliem State is part of the municipality. It is recognised that this double jurisdiction, namely the United Khasi-Jaintia Hills District and the municipality might come in conflict. In order to overcome this conflict, I have added the proviso to sub-clause (2). The effect of the proviso is this that for the purposes mentioned in the proviso the jurisdiction of the District Council of the United Khasi-Jaintia Hills District is ousted and to the extent that the jurisdiction of the municipality is restricted to this purpose mentioned in the proviso the jurisdiction of the District Council will continue over this area. The idea of the proviso is to avoid conflict of jurisdiction. Some people on the other side have said that the Mylliem State area should be completely excluded from the United Khasi-Jaintia Hills district and should be made exclusively part and parcel of the Shillong municipality.

Pandit Hirday Nath Kunzru: As it is now.

The Honourable Dr. B. R. Ambedkar: I do not know whether that is so. The point is this, that as some one from that side said—I think my Friend Shri Rohini Kumar Chaudhuri—three-fourths of the municipality is really

covered by this area. There is not the slightest doubt about it that so far as marriage laws, inheritance laws and other customs and manners are concerned, the people living in this part of the Mylliem State share the same laws, the same customs, the same marriage laws and ceremonies of the whole district. Consequently what will happen is this. Supposing this area were completely excluded from the United Khasi-Jaintia Hills district. the result will be that these people although they are fundamentally alike to their brethren in the rest of the part of the Mylliem State with regard to marriage laws, their customs, etc., etc., they will become at once subject to the general law of inheritance. general law of marriage. all general laws which the Parliament may make or which the Assam Legislature may make. I do not think that it is right that a part of the people who are homogeneous in certain matters should be severed in this manner. A part will obtain autonomy so far as their tribal life is concerned and a part will be subject to the general law to which the rest of the population is subject. It is for this reason that the Drafting Committee felt that the provision contained in sub-clause (2) and the proviso which accompanies it was the proper solution of this problem, namely, that for the purpose of the municipality as defined in the proviso that part of the Mylliem State which is part of the municipality should remain subject to the municipality. while for purposes for which the district council is constituted that part should remain subject to the district council. There is no conflict and it helps to subserve the fundamental purpose, namely, that a homogeneous people should be subject to the same sort of laws and to the same sort of administrative system which all of them should have and have.

Now, there may be some controversy as to whether the proviso is sufficiently big enough to cover all matters that ought to be covered or whether it is too narrow. I am not prepared to express any opinion about it. The Drafting Committee has been guided in this matter by the two principal representatives, who must be credited with sufficient knowledge and information about this matter, namely the Premier of Assam and his colleague, Rev. Nichols-Roy. If they in their wisdom think that some other matters ought to be included, the Drafting Committee will certainly not raise any objection because the Drafting Committee has nothing to do with this matter.

Shri Rohini Kumar Chaudhuri: Is it that the non-Tribal people who live in Shillong have no voice in this matter?

The Honourable Dr. B. R. Ambedkar: In what matter?

Shri Rohini Kumar Chaudhuri: In whatever matter you are touching on now.

The Honourable Dr. B. R. Ambedkar: I cannot understand the point. What we have done is that the people living in this part have a double right. They have a right to elect their representatives under the Shillong Municipality and they will have a right to elect their representatives in the District Councils. Beyond that, the jurisdiction is quite separate. I do not think there is any other point so far as this new paragraph 19 is concerned.

Shri Rohini Kumar Chaudhuri: On a point of information, does the Member who is now speaking, mean to say that those people in Dimapur where there is not a single tribal person, and those people in Shillong, are, to be guided entirely by the opinion of Rev. Nichols-Roy.

Mr. President: He has not said anything about Dimapur. He is dealing with the question by Mr. Bardoloi that paragraph 10, sub-clause (d) of sub-paragraph (2) might be included in the proviso.

The Honourable Dr. B. R. Ambedkar: I have no objection. We leave the matter to them. If they think that certain matters should be included, why should we object? We are acting upon their advice.

Pandit Hirday Nath Kunzru: May I ask Dr. Ambedkar for information on one point? Has the Drafting Committee or Mr. Bardoloi and the Rev. J. J. M. Nichols-Roy who signed the report of the Tribal Areas Committee of Assam received any representation asking for a change in regard to the position of the tribal people living within the limits of the Shillong municipality?

The Honourable Dr. B. R. Ambedkar: I have not questioned their credentials nor have I examined whether they have fortified themselves with any such representation.

Pandit Hirday Nath Kunzru: I put this question because my honourable Friend referred to the authority of the Prime Minister of Assam and Rev. Nichols-Roy. Both these gentlemen have signed the report of the Committee to which I have referred and that Committee says that the limits of the Shillong Municipality should be what they are now and does not suggest any change in the status of the people living in that area.

The Honourable Dr. B. R. Ambedkar: That they may have done but the report cannot act as an estoppel for further re-examination! I do not think we can carry the matter any further. As I said the Drafting Committee felt that this was such a local matter that they could not act without the authority or advice of the principal participants in this matter. We took their advice and we carried out the work. If they think....

Shri Kuladhar Chaliha: In Dimapur people from all over India reside.

Mr. President: There is no use saying anything about Dimapur. He has said nothing about Dimapur.

The Honourable Dr. B. R. Ambedkar: I have so far said nothing about it; I am coming to it.

Now I come to the exclusion of certain areas from the autonomous districts.

In this connection I would like to remind the House of the new article 16-A which has just been passed. I would like you to refer to that. In framing article 16-A, two questions were raised. One question related to some two mouzas of what are called the Garo Hills. Along with that the question of the Dimapur area was also raised by my Friend Mr. Chaliha, and I think I am justified in saying that he was present at the Conference. There were three representatives of Assam who were also present at this Conference. Mr. Bardoloi, Rev. Nichols-Roy and Mr. Chaliha and it was considered whether these mouzas of the Garo Hills and the Dimapur area should be separated from the autonomous districts. It was said at the conference that it was not desirable to separate them from the autonomous districts because the life of these mouzas—their economic life—was closely bound up with the life of the people in the autonomous districts. It was therefore said that it would be enough if these areas, that is to say, the three mouzas from the Garo Hills and the Dimapur area were separated purely for giving political representation to the inhabitants of this area in the Legislative Assembly. That was definitely stated by my Friend, Mr. Chaliha, who has now raised the question of the Dimarpur area. It was therefore at their request and at the instance of these three representatives of Assam that paragraph 16-A was framed in the terms in which it has been framed. If at that time they agreed that there should be a complete separation, that this should not form part of the autonomous area, we would have had no objection to carrying out their wishes.

Therefore, it is no use blaming the Drafting Committee for doing something which it was not advised to do. That is my first submission. Paragraph 16-A embodies the concrete conclusions of the Drafting Committee and of the three representatives of Assam, including Mr. Chaliha, who for the first time raised the matter of the Dimapur area.

Shri Kuladhar Chaliha: May I submit that I was asked to go there as an Adviser and to see. I never felt that I was a member of the Drafting Committee and you will not find my name there.

Mr. President: No one has suggested that you were a member of the Drafting Committee. He has said that you were present.

The Honourable Dr. B. R. Ambedkar: That is his opinion. There is a further point to be made, namely under amendment 99 which gives power to the Governor to alter boundaries, to diminish areas and so on. It would be perfectly possible for the Governor to sever any area, exclude any area from the area now to be included in the autonomous area. If that is not clear, the Drafting Committee would be quite prepared to include an express clause to that effect. But I do like to say that it is very unfortunate, to put it in the very mildest terms possible, that representatives should come to a conference, agree to certain agreement, and then resile from that agreement, bring in amendments and make it a point to comment against the Drafting Committee and say that they have done something which is either contrary to the wishes of the representatives....

Shri Kuladhar Chaliha: No.

The Honourable Dr. B. R. Ambedkar: I am very sorry. All I can...

Shri Kuladhar Chaliha: No. no.

The Honourable Dr. B. R. Ambedkar: I am very sorry. Therefore, so far as paragraph 16-A is concerned, it provides separation for the purpose of political requirements. If complete separation is wanted I submit it is already provided for in the paragraph we have passed. If it does not do that, I am prepared to add a clause to make that thing quite clear that the Governor will have power to exclude any area if he thinks fit. So far as my amendment contained in new paragraph 19 is concerned I believe that all points of controversy have been answered.

Now, Sir, I propose to deal with my honourable Friend Mr. Kunzru's amendment which is for the addition of another paragraph. It will be noticed that his amendment is nothing but a repetition of paragraph 5 of the Fifth Schedule which has already been passed and which deals with tribal areas or scheduled areas in States other than Assam. There is nothing more in his amendment than this. My submission as against his amendment is this: so far as sub-clause (1) of his new paragraph is concerned, it is quite unnecessary. It is governed by paragraph 12(b) of the Sixth Schedule which gives the Governor the power either to apply or not to apply or if apply, apply with modifications laws made by Parliament or laws made by the Legislature of Assam. Therefore, that provision is absolutely unnecessary, and is already contained in our Draft.

With regard to the second sub-clause (2), the position is this. It is quite true that so far as the Fifth Schedule is concerned, we do give the Governor the power to make regulations in respect of that area, but we do not propose to give that power to the Governor in the case of the Sixth Schedule. It is for this reason that in the case of the Fifth Schedule the tribes have no authority to make any regulations for themselves, but in the case of the Sixth Schedule, we have given

[The Honourable Dr. B. R. Ambedkar]

the district council and the regional council the right to make laws in certain respects. It seems to me, therefore, that where the tribes have not been given the power to make regulations it is necessary to give the power to the Governor to make regulations. But, where the tribal councils themselves have been given power to make regulations it seems to me that conferring powers upon the Governor to make similar regulations is utterly superfluous. That is the reason why we do not propose to give the power to the Governor so far as the Sixth Schedule is concerned. I therefore submit that his amendment is quite unnecessary.

There is one other point which I would like to make quite clear. The power to make regulations which it is proposed to give to the District Council under the Sixth Schedule is not a new power at all. As a matter of fact there exists now in Assam certain regulations which give the tribes the same power of making regulations which we are giving by our Schedule. The Schedule therefore is not anything new. It is merely continuing the existing position, namely, that the tribes have the power now to make regulations in certain matters. Therefore, for the reasons I have explained his amendment is quite unnecessary. I therefore oppose it.

Mr. President: I was going to suggest that there is really not as much difference in the viewpoints expressed here as would appear from the discussion that we have had. As I have followed Dr. Ambedkar's statement, I believe that if two suggestions are accepted, probably much of the differences will disappear. I was going to suggest therefore that he should include clause (d) of sub-paragraph (2) of paragraph 10 in the proviso.

The Honourable Dr. B. R. Ambedkar: If we leave it to the Drafting Committee it will do that.

Mr. President: I was going to suggest that we add to clause (b) of sub-paragraph (3) in amendment No. 99, after the words "diminish the area of an autonomous district" the words "or exclude any area from an autonomous district". This would cover all the points.

The Honourable Dr. B. R. Ambedkar: That we are quite prepared to do.

Mr. President: I find this difficulty. Most of the Members of the House including myself are not acquainted with the local situation and are therefore not in a position to take any definite line of our own with regard to Assam. We have to be guided by friends from there. Since there is difference in some respects among them, our position becomes very difficult. I would therefore suggest that it would be best to leave the thing to be dealt with by the local Government. The suggestions which I have made will enable the local Government to deal with this matter. I understand that Dr. Ambedkar has no objection to the two suggestions I have made.

The Honourable Dr. B. R. Ambedkar: No, Sir. I am prepared to add 10(2)(d) to the proviso and also add, 'power to exclude' in the other case.

Mr. President: I think that will satisfy the friends from Assam.

The Honourable Rev. J. J. M. Nichols-Roy: I do not understand your proposal, Sir.

Mr. President: My first proposal is that, in the proviso which Dr. Ambedkar has moved to sub-paragraph (2) of paragraph 19, add the words in paragraph 10(2)(d).

Shri T. T. Krishnamachari (Madras : General) : It will read like this :

"Clause (d) of sub-paragraph 2 of paragraph 10, be added :"

Pandit Hirday Nath Kunzru : What was your suggestion, Sir ?

Mr. President : It is to insert the following in paragraph 19 .—

19. "Exclude an area from Part I of the suggested Table."

Please turn to amendment No. 99 which we have already passed.

The Honourable Rev. J. J. M. Nichols-Roy : In the proviso to clause (2) the proposal is to exclude. . .

Mr. President : No; to include the words "sub-clause (d) of sub-paragraph (2) of paragraph 10" after the words "paragraph 8"

The Honourable Rev. J. J. M. Nichols-Roy : The difficulty is only here. Already the power has been given to the local Government to stop any regulation made by the District Council from having effect. The local government has already been given the power to stop any law from having effect which is passed by the District Council for the regulation and control of money-lending within the district. Sub-paragraph (3) of paragraph 10 reads :

"All regulations made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect"

If we give power now to the Governor to exclude any area it will be too wide.

Mr. President : That is not the position.

The Honourable Rev. J. J. M. Nichols-Roy : My whole point is that power has already been given to the local government when we have provided that "All regulations made under this paragraph (by the District Council) shall be submitted forthwith to the Governor, and until assented to by him shall have no effect."

Mr. President : What paragraph is that ?

The Honourable Rev. J. J. M. Nichols-Roy : It is amendment No. 125 by Dr. Ambedkar :

"That after sub-paragraph (2) of paragraph 10, the following sub-paragraph be added :—

'(3) All regulations made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect'"

That covers everything, Sir. I am not agreeable to the powers of the Governor being made too wide.

Mr. President : The proposal is different under paragraph 19.

The Honourable Rev. J. J. M. Nichols-Roy : I do not see any reason why you should put under paragraph 19 a matter which is already covered by paragraph 10.

Mr. President : The idea is to put in "sub-clause (d) of sub-paragraph (2) of paragraph 10", not the whole of paragraph 10.

The Honourable Rev. J. J. M. Nichols-Roy : What is the use of putting it here in this proviso ? It is already there under paragraph 10.

The Honourable Dr. B. R. Ambedkar : Sub-clause (d) of sub-paragraph (2) of paragraph 10 covers only trading, not money-lending. That is what is sought to be included.

Mr. President: As regards the question of exclusion, it was in the original draft.

The Honourable Dr. B. R. Ambedkar: Mr. Nichols-Roy, it is all right. I do not think you stand to lose anything.

The Honourable Rev. J. J. M. Nichols-Roy: I am asking you whether or not you are going to put in the text an amendment to the effect giving power to Governor to exclude any area of an autonomous district.

The Honourable Dr. B. R. Ambedkar: "Exclude" also we are giving. To "diminish" means really "exclude".

Mr. President: "Diminish" means "exclude".

The Honourable Rev. J. J. M. Nichols-Roy: I suppose, Sir, it may be all right. Mr. President, Sir, I am very thankful to Dr. Ambedkar for the explicit way in which he has put the position before this House regarding Shillong Municipality. I think this House has understood that the Shillong Municipality is composed of two areas which were called before the British area and the Mylliem State area, and no act of the Provincial Legislature or of Parliament could be applied to this Mylliem State area unless agreed to by the Mylliem State authorities; but for municipal purposes the Mylliem State had given the power to the local Government and that is only for municipal purposes. The land still belongs to the Mylliem State. Therefore, Sir, the power of the District Council should remain over this area; and as it is understood from the Ministry of States this Mylliem State is going to be united with the District Council, this area should form part of the District Council and will be under the power of the District Council as regards land. The same conditions will be kept but all the municipal laws will apply there. At the same time, Sir, according to this the proviso which Dr. Ambedkar has moved regarding the Khasi and Jaintia Hills, it is stated that the Khasi States will be included in that area. For this reason, I believe that the pressure that has been put before the House is very reasonable. From the standpoint of the people the tribal people should live in that area; they would like to have the same rights and privileges which they had before, but according to this proviso even the judiciary of the Mylliem State will not be functioning there. Because paragraphs 4 and 5 have already excluded the judicial power of the District Council over this area. That to my mind, Sir, is a great concession in order to pacify the feelings of the people who are not tribal people. It has been really a great concession and a sacrifice also to the tribal people to allow these areas to be altogether under the power of the regular court instead of going to the District Court. Sir, I do not feel very happy about this, but under the present conditions of the people of Shillong and the feelings of all classes of people, I felt that this was a compromise that was arrived at between myself and the other parties.

Shri Rohini Kumar Chaudhuri: Is the honourable Member opposing the suggestion put forward by the Honourable Premier of Assam with regard to paragraph 10(d)?

The Honourable Rev. J. J. M. Nichols-Roy: I am not opposing. I have already said, I do not want to be disturbed. I have to leave and go away to Assam today, Sir. What I want to say is that this compromise that has been arrived at is according to the ideas placed before the House and the amendment proposed by the Drafting Committee is acceptable considering all the

possible conditions and also the feelings of all the parties and therefore, I support the amendment that has been placed before the House by Dr. Ambedkar.

I am sorry, Sir, I have to be in a hurry because I have to leave today, otherwise I would have taken more part in this discussion. I thank the Drafting Committee for all that they have done in order to realize the position of this difficult situation there in Shillong.

Shri B. Das (Orissa : General) : Sir, before I give my vote for the amendment may I know if this will not lead to disenfranchisement of large number of citizens in Shillong and is the deprivation of civil liberties, of rights and privileges of a section of the people that live today in the Shillong Municipality ? I should like to say that a sovereign body like ours should not deprive the civil liberties of those people. When I heard Rev. Nichols-Roy. I felt clear in my mind that he wants to perpetuate the old order of things. He does not want the inclusion of 10(2)(d) in the proviso that the Honourable President has recommended. Let Dr. Ambedkar explain to us as to why does he want to disenfranchise those people ? Why does he want to take away the civil liberties of people who have enjoyed them for years in the Shillong Municipality ? Part of my observations apply also to Dimapur. Dr. Ambedkar has changed his views ten times this morning and I am left no wiser. Sir, I may be a fool in this House but I just want the House to know that what Rev. Nichols-Roy said is only in continuation of the "two-nation theory".

Mr. President : You did not hear him.

Shri B. Das : I am sensing him. I am very sorry that a great liberator like Dr. Ambedkar should introduce such an anachronism in his amendment No. 331 to para. 19(2) of the Sixth Schedule, which disenfranchises the civil liberties of people of the Shillong Municipality and makes the people of educated class to depend on primitive people. Sir, I hate the provision of Sixth Schedule whereby you are perpetuating primitive conditions of life. I have warned you yesterday and I warn you again. The British spies through help of British and American missions and Communists are coming through these tribal areas and for that Reverend Nichols-Roy will be held responsible.

Shri T. T. Krishnamachari : Sir, the question be now put.

Mr. President : I shall now put the amendments to vote.

The question is :

"That after paragraph 16 of the Sixth Schedule, the following paragraph be inserted :—

"16A. *Provisions applicable to areas specified in Part 1A of the Table appended to paragraph* 19.

(1) Notwithstanding anything contained in this Constitution no Act of Parliament or of the Legislature of the State shall apply to any tribal area specified in Part 1A of the Table appended to paragraph 19 of this Schedule unless the Governor by public notification so directs; and the Governor in giving such directions with respect to any Act may direct that the Act shall in its application to the area or to any specified part thereof have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any such tribal area and any regulation so made may repeal or amend any Act of Parliament or of the Legislature of the State of any existing law which is for the time being applicable to such area Regulations made under this sub-paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect"

The amendment was negatived.

Mr. President : Amendment moved by Dr. Ambedkar, paragraph (1).

Shri H. V. Kamath (C. P. & Berar : General) : On a point of information, Sir, have your suggestions been accepted by Dr. Ambedkar on behalf of the Drafting Committee ?

Mr. President : Yes. Therefore I am going to put the paragraphs separately. The question is :

'That with reference to amendments Nos. 150 and 151 of List I (Seventh Week), for paragraph 19 and the Table appended to it, the following paragraph and Table be substituted —

'19. Tribal areas.—(1) The areas specified in Parts I and II of the Table below shall be the tribal areas within the State of Assam"

The amendment was adopted.

Mr. President : The question is : Paragraph (2).

"(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem.

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraphs 4 and 5, paragraph 6, and sub-paragraph (2), clauses (a), (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8, and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the Municipality of Shillong shall be deemed to be within the District"

The amendment was adopted.

Mr. President : The question is : Paragraph 3.

"(3) Any reference in the Table below to any district (other than the United Khasi-Jaintia Hills District) or administrative area, shall be construed as a reference to that district or area on the date of commencement of this Constitution :

Provided that the tribal areas specified in Part II of the Table below shall not include any such areas in the plains as may, with the previous approval of the President, be notified by the Governor of Assam in this behalf."

The amendment was adopted.

Mr. President : Table, Parts I and II. The question is :

Table

PART I

1 The United Khasi-Jaintia Hills District

2 The Garo Hills District.

3. The Lushai Hills District.

4. The Naga Hills District

5. The North Cachar Hills.

6. The Mikir Hills.

PART II

1. North-East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District, Misimi Hills District

2. The Naga Tribal Area.

The amendment was adopted.

Mr. President : The question is :

"That paragraph 19, as amended, and the Table, Parts I and II, stand part of the Sixth Schedule".

The motion was adopted.

Paragraph 19, as amended, and the Table, Parts I and II were added to the Sixth Schedule.

Paragraph 1

Mr. President : There is a suggestion that we reopen amendment No. 99 and add one more sub-clause to it :

"That after clause (a) of sub-paragraph (3) of paragraph 1 of the Sixth Schedule, the following be inserted :

'(aa) exclude any area from Part I of the said Table,' "

This gives power to the local Government to exclude any area. As a matter of fact, it is included in sub-clause (d) which says "diminish the area of any autonomous district". But, to make it beyond all question, this is sought to be added.

The question :

"That after clause (a) of sub-paragraph (3) of paragraph 1 of the Sixth Schedule, the following be inserted :—

'(aa) exclude any area from Part I of the said Table,' "

The amendment was adopted.

Paragraph 20

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after paragraph 19, the following new paragraph be inserted :

'20. *Amendment of the Schedule.*—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for purposes of article 304 thereof'."

Prof. Shibban Lal Saksena : Sir, I beg to move :

"That in amendment No. 153 of List I (Seventh Week), for the proposed new paragraph 20, the following be substituted :—

'20. *Parliamentary Commission and Amendment of the Schedule.*—(1) As soon as may be after the commencement of the Constitution but not later than two years thereafter, there shall be constituted a Parliamentary Commission consisting of fifteen members of whom ten shall be elected by the House of the People and five shall be elected by the Council of States in accordance with the system of proportional representation by single transferable vote.

(2) It shall be the duty of the Commission to investigate the entire problem of the tribal people and the tribal areas of Assam and to make recommendations to the President as to,—

(i) ways and means by which the tribal people may rise up to the level of the rest of the population educationally and economically so that at the end of a period of ten years since the commencement of the Constitution, these special provisions for the tribal people and the tribal areas in Assam may not be necessary and may be abolished, and

(ii) legislation that should be undertaken by Parliament to revise this Schedule with the above-mentioned purpose in view

(3) On receiving the report of this Parliamentary Commission, Parliament may by law amend by way of addition, variation or repeal any of the provisions of this Schedule, and when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(4) No such law as is mentioned in sub-paragraph (3) of this paragraph shall be deemed to be amendment of this Constitution for purposes of article 304 thereof."

[Prof. Shibban Lal Saksena]

Sir, in the last two paragraphs of my amendment, I have kept the two clauses of the amendment which has been moved by Dr. Ambedkar and I have added only the first two clauses. I want that the conditions in the tribal areas should be investigated by a Commission. The debate during the last two days has shown that most Members here do not know anything about the province of Assam. In fact, Mr. Rohini Kumar Chaudhuri went so far as to say that even the Prime Minister of Assam was not fully aware of the conditions and that many of these representatives have not gone to some of those areas. I think this is a very important problem, particularly because Assam is a frontier province. In the last war, it was a most important area. Therefore, I think that the ultimate destiny of these areas must be a matter of concern not only of Assam, but of the whole country.

I therefore want that after the new elections according to the new Constitution, the new Parliament should appoint a Commission and that Commission should consist of members of both the Houses. This Commission should investigate into the conditions and make a report, and according to that report, Parliament must then make legislation. The aim should be that at least within ten years we should be able to absorb these people in the rest of the population and they should form an integral part of the entire population of Assam. During this interval, this Schedule, if it is necessary, should be changed. In fact, yesterday Dr. Ambedkar told us that he has tried to follow a middle course policy between two extremes. But he admits that we want these people to become one with the rest of the people. I feel, Sir, that whenever there have been separate electorates, the result has been more separation and no attempt at assimilation has succeeded them.

What I am afraid of is this. Although in the present condition of these tribes, it would be necessary to provide ample safeguards for them, and not to introduce any violent changes in their economy, I do think that something should be done to remove the separation and to effect a gradual assimilation of these people in the whole population of the province. I therefore suggest, that because the House is not aware of the conditions of the people there, and the people of Assam are divided on this subject, provision should be made in this Constitution for this Commission. It may be said that there is already a Commission provided for in paragraph 16. That is a Commission which will report to the Governor mainly on three subjects which fall within the province of the Governor himself. I want the entire Schedule to be changed according to the report of the Commission. Of course, the power is there and Parliament can always do that. But, Parliament will not have any information about the conditions of these tribes. Besides, Parliament may not exercise that power unless it has got all the information before it. Therefore I say this should be laid down in the Constitution itself that within two years or as soon as may be possible, there should be a Commission which should make a report on which Parliament should proceed to revise this Schedule.

Shri Brajeshwar Prasad: Mr. President, I rise to support the idea of a Commission. I am not clear in my own mind whether it should be a parliamentary commission consisting of members of the Houses—both the Upper and Lower Houses—or it should be a body appointed by the President. I feel that members of the Houses of Parliament will not be in a position to discharge the functions properly because they are laymen. They are not acquainted with tribal problems especially tribal problems on the borders of Assam which are of a very complicated nature. I have already placed my views more than once in this House. I feel that this body should consist of members who are experts, who know the problem of these areas and who have an appreciation of the realities of the

situation, who understand the international importance of these areas. I am not in favour of the members of the Houses because I have a feeling in my mind that these members may tilt the balance in favour of provincial autonomy. I want both the areas specified in Parts I and II to be centrally administered areas and therefore I am of opinion that provincial members should not be allowed to become members of this body.

Secondly, I feel that my Friend Mr. Saksena has not properly drafted this amendment. At one place—I am referring to clause (2) (i)—he says that the Commission shall not have the power to recommend the complete repeal of the Sixth Schedule before the end of ten years and then he says in clause (3)—'On receiving the report of this Parliamentary Commission, Parliament may by law amend by way of addition or repeal any of the provisions of this Schedule'. Sir, Parliament according to (2) (i) has not got the power. The Commission has not got the power to recommend the repeal of the entire Schedule, but my friend says in clause (3) that such a thing can be done. Then in sub-clause (ii) of clause (2), there is the following—

"legislation that should be undertaken by Parliament to revise this Schedule with the above-mentioned purpose in view".

If after the word revise' the word 'or repeal' had been there, it would be far more satisfactory. I feel that this Commission is very very necessary. Of course it is left open to Parliament to appoint a Commission whenever it likes. What my Friend Mr. Saksena wants is to bind the Government and Parliament to appoint a Commission within a period of two years from the date of the commencement of this Constitution. On the whole I am glad to support the amendment moved by my Friend Mr. Saksena.

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment.

Mr. President: The question is:

"That in amendment No 153 of List I, for the proposed new paragraph 20, the following be substituted:—

'20. *Parliamentary Commission and Amendment of the Schedule*.—(1) As soon as may be after commencement of the Constitution, but not later than two years thereafter there shall be constituted a Parliamentary Commission consisting of fifteen members of whom ten shall be elected by the House of the People and five shall be elected by the Council of States in accordance with the system of proportional representation by single transferable vote.

(2) It shall be the duty of the Commission to investigate the entire problem of the tribal people and the tribal areas of Assam and to make recommendations to the President as to,—

(i) ways and means by which the tribal people may rise up to the level of the rest of the population educationally and economically so that at the end of a period of ten years since the commencement of the Constitution these special provisions for the tribal people and the tribal areas in Assam may not be necessary and may be abolished, and

(ii) legislation that should be undertaken by Parliament to revise this Schedule with the above-mentioned purpose in view.

(3) On receiving the report of this Parliamentary Commission Parliament may by law amend by way of addition, variation or repeal any of the provisions of this Schedule, and when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(4) No such law as is mentioned in sub-paragraph (3) of this paragraph shall be deemed to be amendment of this Constitution for purposes of article 304 thereof."

The amendment was negatived.

Mr. President: The question is :

"That after paragraph 19, the following new paragraph be inserted —

'20. Amendment of the Schedule : (1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for purposes of article 304 thereof.'"

The motion was adopted.

Paragraph 20 was added to the Sixth Schedule.

Mr. President: I put the whole Schedule now.

The question is :

"That Schedule VI, as amended, stand part of the Constitution" .

The motion was adopted.

Schedule VI, as amended, was added to the Constitution.

Article 281

Mr. President: Then we go to Article 281.

The Honourable Dr. B. R. Ambedkar: I move :

"That for article 281 the following be substituted :—

Interpretation. '281. In this Part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I or Part III of the First Schedule.'"

Mr. President: There is no amendment. The question is :

"That for article 281 the following be substituted :

Interpretation. '281. In this Part, unless the context otherwise requires, the expressing 'State' means a State for the time being specified in Part I or Part III of the First Schedule.'"

The motion was adopted

Article 281 was added to the Constitution.

Article 282 to 282-C.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That with reference to amendment No. 3034 of the List of Amendments (Volume II), for article 282. the following articles be substituted :—

'Recruitment and conditions of service of persons serving the Union or a State. 282. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or of any State :

Provided that it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor or, as the case may be, the Ruler of a State in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so. made shall have effect subject to the provisions of any such Act.

Tenure of office of persons serving the Union or a State. 282A. (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every

person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor or, as the case may be, the Ruler of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor or Ruler of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or, the Governor or the Ruler, as the case may be deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is for reasons not connected with any misconduct on his part, required to vacate that post.

Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or State

282B. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply—

(a) where a person is dismissed, or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;

(c) where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to clause (2) of this article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

All-India Services:

282C (1) Notwithstanding anything in Part IX of this Constitution, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States, and subject to the other provisions of this Chapter regulate the recruitment and the conditions of service of persons appointed to any such service

(2) The services known on the date of commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.'"

Sir, I do not propose, at this stage, to say anything on the amendment I have moved, because the articles themselves are quite clear. There are several amendments which may raise some points of criticism, and I shall then be in a position to give the House the explanations that may be necessary in order to dispose of those amendments.

Mr. President: Amendment No. 3—Shri Satis Chandra Samanta.

Shri Satis Chandra Samanta (West Bengal: General): Respected President, Sir, I beg to move:

"That in amendment No. 2 above, to the proposed article 282, the following proviso be added:—

'Provided further that no person shall be eligible for appointment to any of the superior public services and posts in connection with the affairs of the Union unless he is thoroughly conversant with any other regional language of India besides the National language of India'"

[Shri Satis Chandra Samanta]

Sir, in connection with the amendment that I have moved, I propose to refer to the report of the Universities Commission and to its recommendation, and also to one of the resolutions passed by the Language Convention held in Delhi in August last. The Universities Commission under the chairmanship of Dr. Sarvapalli Radhakrishnan has recommended that every university should teach its students one other regional language of India, besides the State language. And the Language Convention has also passed a resolution that excepting the regional language in the province or State, everyone should be conversant with any other regional language of India. Sir, India is a country which has so many languages, so many divergent languages and in order to make India one, all Indians should know one common language, and thereby acquaint themselves with the common people and with one another. So long as we have no common language of our own we should learn one other regional language. Therefore I want that at least the superior officers of the Union should be conversant with any other regional language of India besides the official language of India so that they may freely mix and have contact with the common people. Sir, I know that against my amendment, it will be said that it will come under the rules and regulations. But considering the importance of the subject, I request that this amendment should be added to the Constitution. This is my request and I hope the House will accept my amendment.

Mr. President: There are two other amendments—Nos. 4 and 5 which have the same effect. These need not be moved. Then we come to No. 6—Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move:

"That in amendment No. 3034 of the List of Amendments (Vol. II) in the proposed article 282, for the words 'Acts of the appropriate Legislature may regulate', the words 'the Union Public Service Commission as respects the All-India services and also as respects other services and posts in connection with the affairs of the Union, and the State Public Service Commission as respects the State services and also as respects other services and posts in connection with the affairs of the State shall make regulations on all matters relating to be substituted; and the proviso be deleted."

Sir, I want our Commissions to be constituted on the lines of the Whitley Commission of England, and I want these Commissions to have exactly similar powers and functions. I have thought over this matter very carefully. This amendment was tabled in 1948 and since then my views have undergone changes on this question. I am prepared to admit that the power of recruitment should be vested in the hands of Parliament, but in no case I am prepared to concede that this power should be given to the provincial legislatures. If this power is vested in the hands of Parliament it will strengthen the foundations of our State. I want to place before the House some reasons and some arguments why I am in favour of this proposition. It will generate a feeling of security in the minds of the public servants of the State. It will hamper the growth of communalism and provincialism and will thereby promote the cause of nationalism. If all the servants serving in different provincial governments are governed by uniform rules of recruitment and conditions of service, the result will be the growth of a feeling of oneness amongst all ranks of officers in India. The danger of discontent will be eliminated. A contented and efficient bureaucracy will go a long way in solving the major problems that confront us. The trend of the modern world is towards bureaucratic rule. The managerial state is the next step in the course of our political evolution. An enlightened bureaucracy is the need of the hour. We must strengthen the foundations of our civil service and protect it from the onslaught of mobocrats who are, in the name of democracy, trying day in and day out to boss over and dictate over those who are their superiors in intellect and morals. Men of small stature

riding on the crest of popular enthusiasm are placed in positions of power and authority. No civil servant will tolerate the antics and clownish performances of political upstarts. If the evils of adult franchise in a community which is steeped in ignorance and poverty are to be avoided, the civil services must be placed outside the purview of provincial autonomy.

Shri Phool Singh (United Provinces : General) : Mr. President I beg to move :

"That in amendment No. 3034 of the List of Amendments in the proposed article 282, after the words 'affairs of the Union or any State' the words 'and fix the minimum as well as the maximum amount of salary of a Government servant as also lay down the conditions to be fulfilled by a group of persons to be able to be included in the list of public servants' be inserted."

The first part of my amendment is an amplification of the principle already adopted by this House in articles 34 and 31, namely, that of living wage and equal remuneration for equal amount of work. While article 34 recommends a living wage for an agricultural, industrial or other sort of worker, there is no such suggestion regarding government servants. Not only that, the disparity between the pays of government servants is enormous. There are those who get Rs. 3 or Rs. 8 per month while there are those who get more than they deserve and also more than they need. It is also astonishing to know that in the case of government servants of higher ranks, even the contract of service is not adhered to. An I.C.S. even according to the contract is entitled to a maximum of Rs. 2,250. At present the Chief Commissioners get Rs. 3,500 and Commissioners Rs. 3,000; and who are these Commissioners and Chief Commissioners of today? They are the Deputy Collectors and Collectors of yesterday. The exist *en masse* of the Britishers from the services of India after independence has given easy lifts to these higher ranks—lifts which they neither contracted for nor ever dreamt of. Numerous devices have been invented to secure higher pays for these people by way of personal pays or some such things. It is but fair that we should fix the minimum as well as the maximum amount of salary that a government servant should get, so that there may be no harm done. As things are at present, the salaries do not very even according to responsibilities. Take the case of Secretaries of Departments who were formerly doing the work which the Ministers are now doing. After the introduction of this Government, the responsibilities of these Secretaries has surely decreased, but there has been no down-grading of pays in their case. They continue to enjoy the salaries they were enjoying before this Government was established.

Mr. President : So far as I can see, this clause has nothing to do with present incumbents. It relates to recruitment of people who will come into the services in future.

Shri Phool Singh : 282 and 283 refer to future incumbents as well as to present incumbents and 283-A refers to transitional period. These have not been moved. But I think I will cover all the cases and save the House repetition of the same arguments over again. My only submission is that it is but proper that we should fix the maximum and minimum amount of pay that a government servant should get. That is as far as the first part of my amendment is concerned.

So far as the second part is concerned, it will be interesting to note that those people who are called government servants are only a small minority of those who are virtually government servants but have not been styled so. If a post is created even temporarily, the incumbent is called a government servant. But just think of those thousands of workers in the countryside in the P.W.D. and other departments, whose job is not at all temporary. In their case there

[Shri Phool Singh]

is no prospect of their job being finished; still they are not called public servants. I had the opportunity to take up such cases with a provincial government and the answer given by people in the higher ranks of the services was that if these people are called government servants, they will slacken their efforts to work. If that is true, it should apply to all government servants and if it is false, then it will not be fair to punish these people under this pretext.

My submission is that it is better that we frame rules so that if any class of people who are working for the government fulfil those conditions, they should automatically be entitled to come under that list. Not only pay but all other considerations are also denied to these people. If a government servant in the higher ranks is transferred, he gets not only single fare, not only fare for himself but for his family; while people at the lowest rung sometimes are denied any railway fare and in most cases even if they have families they are given only one single fare. Those in the higher ranks are given conveyances or touring allowances, but those on the lowest rungs even in cases where their circle covers an area of forty miles are not given even cycles.

Sir, if these people are included in the category of public servants I think it will save them a lot of heartburning and it will improve the lot of those who well deserve it and who are doing real service to the Motherland.

With these few remarks, Sir, I submit that my amendments may be considered and accepted.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That in amendment No. 2 of List I (Seventh Week), in the proposed article 282, for the words 'Acts of the appropriate Legislature' the words 'Acts of Parliament' be substituted."

Along with this amendment of mine should be considered my amendment No. 231. Sir, I move:

"That in amendment No. 2 of List I (Seventh Week), for the proviso to the proposed article 282, the following be substituted:—

'Provided that Parliament may by law specify the public services in the States with regard to which Acts of appropriate Legislature may regulate the recruitment and conditions of services of persons appointed to them'."

Dr. Ambedkar's amendment provides that "Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or of any State". The object of my amendment is to bring about uniformity in regard to the recruitment to the important public services all over the country. At present the only services where there is a certain amount of uniformity is the Indian Administrative Service (which has replaced the Indian Civil Service) and the Indian Police Service. The object of my amendment is that this practice should be extended to the other important services as well.

Dr. P. S. Deshmukh (C. P. & Berar : General): Mr. President, Sir, I move:

"That in amendment No. 2 of List (I (Seventh Week) in the proposed article 282, for the word 'may', where it occurs for the first time, the word 'shall' be substituted."

Sir, looking to the whole structure of the provisions of this article, I think it is necessary that the provision in article 282 should be made obligatory and not left in doubt as it has been done here. It may probably be said that

'may' has the force of 'shall'. If that is our intention, why not use the word 'shall'? I would, therefore, suggest that this amendment of mine may be accepted if it is found, as I hope it will be, that this change would be better suited to the whole position and carry out our intention better also.

Dr. Monomohan Das (West Bengal: General): Mr. President, Sir, I move:

"That in amendment No. 2 of List (I (Seventh Week), at the end of the proposed article 282, the following new proviso be added:—

'Provided that, in order to be recruited for any of the posts in connection with the affairs of the Union, a candidate must be thoroughly conversant in the following languages:—

(i) The official language of the Union.

(ii) The English language.

(iii) Any other regional language of the Union except the official language.'"

Sir, my amendment proposes that in order to be recruited as an officer under the Union Government a candidate must possess a fairly workable knowledge in three languages at least, namely, English, the official language of the Union and a regional language of India different from the official language of the country. In the amendment moved by Dr. Ambedkar, article 282, the President has been invested with power for framing rules and regulations regarding the recruitment of services under the Central Government. My amendment seeks to introduce some principles into these regulations so far as the question of language is concerned. These principles are of such importance that I feel they should not be left to the sweet will and pleasure of the President but they must find a place in the Constitution.

Sir, a fairly workable knowledge of English should be an essential requirement for any Government officer in the Centre because English has become practically the international language of the world today. In addition to this, it is through the medium of the English language that education in scientific and technical subjects has been imparted to the people of this country for more than 150 years. Moreover, the link between India and the outside world today, which is growing stronger and stronger every day is being maintained through the medium of the English language. Therefore, it will be disastrous on the part of our Government if the officers under the Central Government lack a fairly workable knowledge of the English language.

Secondly, our officers under the Union Government must be thoroughly conversant with our national language because of the simple fact that it is the official language of the Union.

Thirdly, our officers under the Central Government will be required to have a fairly workable knowledge in any regional language different from our official language. Sir, the Indian Union consists of so many States having different languages and the Central Government should be always in intimate touch with the provinces and States. So it is essential and necessary that our officers under the Central Government should have at least some knowledge of the regional languages of the States that comprise the Indian Union today. This knowledge of the regional languages of the States of India, is also necessary from another point of view. This is for maintaining a common standard for educational qualifications, especially linguistic qualifications among the members of our Central services.

Sir, this Assembly has not yet selected the official language of this country. We have deferred this issue up till now to avoid unpleasant consequences that a controversy on this subject may give rise to. But the time has come when we shall be able no longer to defer this issue and we must have to take

[Dr. Monomohan Das]

some decision one way or the other without delay. Sir, a section of the population, whose mother tongue will be accepted by this House as the official language of the country, will have an undue and unjustified and inherent advantage over the sections whose mother tongue will not coincide with this official language of India. In order to do away with this difference.....

The Honourable Dr. B. R. Ambedkar : I think my friend has said enough on the point and he need not continue. We have understood his point. We must get through today at least one article.

Dr. Monomohan Das : If that is the case, I shall stop.

Dr. P. S. Deshmukh : Sir, I move :

"That in amendment No. 2 of List I (Seventh Week), in the proviso to the proposed article 282, the words 'and any rules so made shall have effect subject to the provisions of any such Act' be deleted."

My purpose is simple because the previous wording says that "it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor or, as the case may be, the Ruler of a State in the case of services and the posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts *until provision in that behalf is made by or under an Act of the appropriate Legislature.*"

In view of these concluding words it appears that there is no necessity of adding a clause to this effect by which the rules are to have effect subject to the provision of any such Act. So long as the words "until provision in that behalf....etc." are there, the rules made by the above-named authorities would be operative, only till the appropriate Legislature deals with the matter by an Act.

There are two more amendments. They are more of a drafting nature and I am prepared to leave them to the Drafting Committee. So I do not propose to move them.

Shri Mahavir Tyagi (United Provinces : General) : Sir, I beg to move :

"That in amendment No. 2 of List I (Seventh Week), at the end of the proposed article 282, the following new proviso be added :

'Provided further that all tests, examinations, interviews and competitions held for the purpose of selecting candidates for services and posts in connection with the affairs of the Union or a State shall, as far as practicable, be conducted in the language recognised for the official purposes of the Union or the States as the case may be.'"

It is a very simple amendment. The grievance of the whole country for a century and a half has been that the indigenous talents and intellect which the country produced was never recognised by the British. They had their own pattern of pedantism with which they thought they could run the administration of the country. Therefore those who took to learning the English language and who began to practice English mannerism were considered to be educated, and fit to take charge of the Government of the country. My regret is that even today the same conditions obtain. The country fought for freedom not against the British, as Mahatma Gandhi said. It was not against colour. It was against the bureaucracy that we fought and wanted to be free from it. Now the very same bureaucracy stands as it is. According to my opinion, Government must not be allowed to be run by persons who are mercenary, who come and offer their intellectual talents on hire. I am a man of a different way of thinking. I consider the English education as a curse to India. All these pedants who boast

of their foreign accents suffer from a superiority complex. They are generally speaking a demoralised and denationalised lot. I think Government servants must be paid according to their needs and they should not be encouraged to bargain their talents. They must offer as volunteers to serve the State. Only then the old pattern will change and that can come about only if we discard the English language and own our own culture with pride. Now all stress is on the English language. I am opposed to the present method of selection of candidates to the services. My friend Shri Monomohan Das complains that if Hindi were made the official language, persons who belong to non-Hindi speaking areas will suffer in competition with people who come from these areas. I therefore suggest that the overall capacity must not be examined even in Hindi. I am not only for Hindi. My submission is that every candidate must be examined in his own mother tongue. It is in one's own mother tongue that one would be able to express his ideas best.

Mr. Naziruddin Ahmad (West Bengal: Muslim): The members of the Public Service Commission would then have to learn the language of a candidate they want to test.

Shri Mahavir Tyagi: If you legislate like that they will have to learn those languages.

Mr. Naziruddin Ahmad: There are about 130 principal languages in India and about 300 dialects.

Shri Mahavir Tyagi: It is not necessary to test the intelligence of a candidate by examining the amount of Oxonian accent he has adapted. You can test him in Hindustani or Madrasi or Punjabee or Bengalee or any other language. Proficiency in a language is not the sole criterion of education. To claim to be educated, one must be possessed of a general knowledge of the world, and one should prove that he has taken the fullest advantage of knowledge by practising it on himself, and that one has consumed knowledge. He must radiate knowledge by his habits and manners. But today as we see the main stress is on correct English and on good table manners in the approved English style. Such men are selected at the interviews. If things go on at this rate I am afraid, we can never enjoy freedom. The only proper method of recruitment to Government services of the true sons of the soil is to test the candidates in their own mother tongue.

Sir, even in the army, recruits are selected not because of their capacity to use the sword effectively, but because of their knowledge of handling the fork and spoon. They are selected for their English mannerisms. I have seen selections for the army made of people whose only qualification is knowledge of English. This is a slavish Habit. India cannot stand it any longer, I submit that people should be examined in their own language and the candidate should be absolutely free to prove their talents even in broken English.

Mr. President: The honourable Member has expressed his views at length.

Shri Mahavir Tyagi: If you have been convinced I am thankful.

Mr. President: I do not say I am convinced. I have understood what you have said. All the concerned amendments have been moved.

Shri H. V. Kamath: With your permission Sir, I shall say a few words. I shall not take more than two minutes.

On this amendment moved by my Friend Mr. Tyagi I wish to say that his intention is laudable, but I fear that there will be considerable difficulty in implementing his amendment. Let me at the outset state that prejudice

[Shri H. V. Kamath]

against any language as such is thoroughly irrational. Prejudice against even the English language is irrational. We fought British rule in India, but we never fought against the English language. I may remind the House that Kemal Ataturk, after Turkey was freed from foreign rule, almost overnight adopted and promulgated the Roman script throughout Turkey.

Now, Sir, the difficulty in adopting this amendment is two-fold. Firstly, the posts in connection with the affairs of the Union do not fall all under one category. Does Mr. Tyagi want that even the candidates for the consular and diplomatic posts should be examined only in the official languages of the Indian Union?

Shri Mahavir Tyagi: I said in the language of the region from which the candidate comes.

Shri H. V. Kamath: He has not followed me. I want to know from him whether persons to be selected for diplomatic and consular posts abroad should be examined only in an Indian language.

Shri Mahavir Tyagi: I have said, 'as far as practicable'. If you are selecting a candidate for our Embassy in France, let him have a knowledge of French. But he should be examined in his own mother tongue. I have no objection to a man being examined in Marathi language.

Shri H. V. Kamath: My friend has put all tests, examinations, interviews and competitions together in his amendment. I may tell him that I respect the spirit of his amendment. I am only pointing out the practical difficulties in the way of its acceptance. Even in England the tests conducted by the Selection Boards for appointments to diplomatic and even the Home Civil service are not all of them in the English language alone.

Mr. President: Mr. Kamath has taken more than the two minutes he himself promised to take.

Shri H. V. Kamath: I shall conclude in a few seconds, Sir. I may tell the House that the examinations in England itself are not all conducted in English. So also in India it would not be practicable to hold all tests and examinations only in the official language of the Union or of the States.

I have said that as regards posts in the Union, there are various categories of them; and each category calls for particular qualifications. Secondly, as regards a particular State, it may like to have officers for the purpose of liaison with the Union Government. For such posts a mere knowledge of the language of the State would not be adequate. Knowledge of the official language of the Union *plus*, perhaps, knowledge of a foreign language as well may be necessary for persons appointed as liaison officers between States and the Centre and for officers in foreign countries. I therefore feel that Mr. Tyagi's amendment . . .

Mr. President: The honourable Member has exceeded his time-limit. Does Dr. Ambedkar like to Speak?

The Honourable Dr. B. R. Ambedkar: I do not accept any of the amendments.

Mr. President: I shall now put the amendments to vote. The question is:

"That in amendment No. 2 above, to the proposed article 282, the following proviso be added:—

'Provided further that no person shall be eligible for appointment to any of the superior public services and posts in connection with the affairs of the Union unless he is thoroughly

conversant with any other regional language of India besides the National language of India.' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 3034 of the List of Amendments (Vol. II), in the proposed article 282, for the words 'Acts of the appropriate Legislature may regulate', the words 'the Union Public Service Commission as respects the All India services and also as respects other services and posts in connection with the affairs of the Union, and the State Public Service Commission as respects the State Services and also as respect other services and posts in connection with the affairs of the State shall make regulations on all matters relating to' be substituted; and the proviso be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 3034 of the List of Amendments, in the proposed article 282, after the words 'affairs of the Union or any State' the words 'and fix the minimum [illegible] as the maximum amount of salary of a Government servant, as also lay down the conditions to be fulfilled by a group of persons to be able to be included in the List of public servants' be inserted "

The amendment was negatived.

Mr. President : Then amendment No. 228.

Shri Brajeshwar Prasad : What about my amendment No. 8 to the proposed new article 282-A ?

Mr. President : I am not taking up 282A yet.

Shri Brajeshwar Prasad : I am sorry, Sir.

Mr. President : At that time I said that you should not move it and you did not move it. We have not taken up 282A yet. The question is :

"That in amendment No. 2 of List I (Seventh Week), in the proposed article 282, for the words 'Acts of the appropriate Legislature' the words 'Acts of Parliament' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 2 of List I (Seventh Week), in the proposed article 282, for the word 'may', where it occurs for the first time, the word 'shall' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 2 of List I (Seventh Week), for the proviso to the proposed article 282, the following be substituted :

'Provided that Parliament may by law specify the public services in the States with regard to which Acts of appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to them.' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 2 of List I(Seventh Week), in the proviso to the proposed article 282, the words 'and any rules so made shall have effect subject to the provisions of any such Act' be deleted."

The amendment was negatived.

Mr. President: The question is .

That in amendment No 2 of List I (Seventh Week), at the end of the proposed article 282 the following new proviso be added —

'Provided further that all tests examinations interviews and competitions held for the purpose of selecting candidates for services and posts in connection with the affairs of the Union or a State shall as far as practicable, be conducted in the language recognised for the official purposes of the Union or the State as the case may be' "

The amendment was negatived

Mr. President: The question is

'That in amendment No 2 of List I (Seventh Week), at the end of the proposed article 282 the following new proviso be added —

'Provided that in order to be recruited for any of the posts in connection with the affairs of the Union, a candidate must be thoroughly conversant in the following languages —

(i) The official language of the Union.

(ii) The English language

(iii) Any other regional language of the Union except the official language' "

The amendment was negatived.

Mr. President: I think these are all the amendments. I will now put Dr. Ambedkar's proposition to the vote. The question is :

That proposed article 282 stand part of the Constitution "

The motion was adopted.

Article 282 was added to the Constitution.

Article 282-A

Shri Brajeshwar Prasad: Mr President, Sir, I move :

'That in amendment No 3034 of the List of Amendments (Vol. II) in the proposed new article 282-A—

'(i) in clause (1), for the word 'holds' in the two places where it occurs, the words 'shall hold' be substituted; and for the words 'during the pleasure of the President' and 'during the pleasure of the Governor of the State' the words 'until he attains the age of sixty eight' be substituted;"

I realise, Sir, ...

Mr. President: You are not moving clauses (ii) and (iii).

Shri Brajeshwar Prasad: No, Sir, they relate to 282-B. I have modified my stand since this amendment was moved. I am now in favour of the proposition that every civil servant of the State, whether he is serving in the Union or in the provinces should hold his office during the pleasure of the President and of the President alone. I cannot agree to the proposition that every civil servant of a State should hold office during the pleasure of the Governor or, as the case may be, the Ruler of the State. The Governor or the Ruler means the Ministry.

Mr. President: You are not supporting your own amendment.

Shri Brajeshwar Prasad: I sought your permission, Sir, on that point. I submitted to you, Sir, that since I moved that amendment, I have now come to the conclusion that it is advisable that all civil servants of the State should hold office during the pleasure of the President.

Mr. President: The interval between your moving your amendment and your request to me was so short that it was difficult for me to form any opinion about it

Shri Brajeshwar Prasad: If you do not consider it advisable for me to speak on this article at the present moment, during the general discussion when this article is taken up, I would like with your permission to say a few words

Mr. President: I make no promise You may take your chance.

Shri Jaspat Roy Kapoor (United Provinces: General): Does the honourable Member want the age to be 86 or is it a misprint for 68?

Mr. President: We go to the next amendment, No 235 by Dr. Deshmukh

(Amendments Nos 235, 236 and 237 were not moved)

I think these are all the amendments to 282-A

Shri Brajeshwar Prasad: I would like to make a few observations

Mr. President: I do not think so I think we had better do without your observations

Shri Brajeshwar Prasad: As you please Sir. Your word is law to me

Mr. President: There is no other amendment to 282-A. The question is:

"That proposed article 282-A stand part of the Constitution"

The motion was adopted.

Article 282-A was added to the Constitution.

Article 282-B

Mr. President: I have got a large number of amendments to this We might move one or two today. Mr Brajeshwar Prasad, No. 9.

Shri Brajeshwar Prasad: I would like to reserve my right to speak for tomorrow. Within five minutes, I would not be able to read the amendment and speak on it.

Mr. President: You might move your amendment now.

Shri Brajeshwar Prasad: Mr President, Sir, I move:

"That in amendment No 3034 of the List of Amendments (Vol II) in the proposed new article 282-B—

In clause (2), for the words 'by an authority subordinate to that by which he was appointed' the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted"

Mr. President: You are reading clause (ii) of the previous amendment. That relates to 282-A.

Shri Brajeshwar Prasad: That relates to 282-B

Shri Jaspat Roy Kapoor: No. 9 is the amendment that you should move.

Shri Brajeshwar Prasad: No, No. 9 relates to 282-C. Sir, these are the old amendments

Mr. President: But the old article has not been moved.

Shri Brajeshwar Prasad: This is an amendment to 282-B.

"No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed"

Sir, I would like to move my amendments tomorrow.

Mr. President: I do not think these amendments fit in at all, (ii) and (iii). They do not fit in with 282-B; so they do not arise.

Shri Mahavir Tyagi: They may be taken as moved.

Mr. President: No, they cannot be taken as moved, because they do not fit in.

Shri Brajeshwar Prasad: I will try to amend them and with your permission would move them tomorrow, Sir.

Mr. President: I think it is already one now and we should rise. A suggestion has been made that we sit in the afternoon.

Honourable Members: Yes, Sir, we shall sit in the afternoon.

Mr. President: There are difficulties. There is a Cabinet meeting which the Honourable Dr. Ambedkar has to attend.

Shri R. K. Sidhva (C.P. & Berar: General): The Drafting Committee can meet later on.

Mr. President: It is not the Drafting Committee that I am speaking of. There is a meeting of the Cabinet.

Shri R. K. Sidhva: But there are other members of the Drafting Committee who can be present.

Mr. President: We can make much more progress within the scheduled time if Members take care of the time. I think there is some difficulty in my way. It is very difficult for me to stop any Member from speaking if he insists on speaking.

Shri R. K. Sidhva: We are prepared to sit and finish. We can sit for seven or eight hours.

Mr. President: That is not possible. We cannot sit for eight hours. After all we work like human beings. We cannot work like machines. So I do not think it will be possible. What do you say, Dr. Ambedkar, is it possible to have an afternoon sitting today?

The Honourable Dr. B. R. Ambedkar: I expect to be back from the Cabinet meeting at about half past five. If the House is prepared to sit for two hours after that, I am quite prepared, but we have a Drafting Committee meeting from half past five onwards, because unless we are ready with the articles which have already been held up, it will be difficult to proceed. We have to go to another place to obtain a decision and then to come here. If the House so wishes, we can change the sitting of the Drafting Committee to some other time.

Mr. Naziruddin Ahmad: There are other difficulties which I want to submit. I do not mind sitting for any length of time. The only thing that I care for is that we should be given sufficient time to consider the amendments. The Drafting Committee is not yet ready with some of their most important amendments. I would most respectfully ask you to consider our situation. If we are to take any part in the drafting of the amendments, or in speaking on them, without adequate preparation, the result would be desultory talking I submit that the

Drafting Committee should give us sufficient time to consider their latest draft. They are changing their mind every day. They may think that we have no part to play—that is a different matter—but I have come here for a part to play, to do my duty. In that case, I think the amendments should reach us in sufficient time to enable us to consider them. If we are to sit in the afternoon also, where is the time to consider what amendments to suggest and then let the office have them in time so that they may circulate them among the members in good time?

Mr. President: We have already circulated amendments to about fifteen articles. 281 and 282 we have already dealt with. 282A we have dealt with. Then come 282B, 282C, 283, 243, 244, 245, 274A-E, 264, 265. 265A and 266. All these were circulated yesterday and so Members have had time to give notice of any amendments.

Mr. Naziruddin Ahmad: They are coming to us in a scrappy form. In fact, the amendments come in irregular order The method of the juggler is followed in this respect. In fact, there is no opportunity for Members to see them in their proper light. That is one difficulty. Afternoon sittings would interfere with proper consideration of the amendments. I do not myself mind sitting for any length of time. The only question is that we should be given sufficient time to consider the amendments. Though the Drafting Committee is not in a position to accept our suggestions, still as much as possible we have got to study all the amendments. So we want some time. The whole difficulty is with the Drafting Committee, but perhaps they are themselves the scapegoats of certain other factors. But our position also should be considered. There are many other important articles which have to be considered A number of articles which have been given to us recently are so varied, so difficult and so complicated that each article has to be considered in its proper context We are not in the fortunate position of the Chairman of the Drafting Committee who has very able expert assistance at his call. He need not hear any arguments, and when the time comes for reply, he can say that he does not want to say anything. We do not find ourselves in that fortunate position And so my submission is that we should be given some time to study the amendments.

Mr. President: I do not think that any Member can have any grievance that he has not had sufficient time to consider amendments so far as these articles are concerned.

Shri R. K. Sidhva: We have received the amendments, there is no doubt about it. We have got amendments for the next week dealing with language and compensation. We have already received it, but Sir, as far as the programme of this House is concerned, you are aware that for the last ten days the Drafting Committee has been telling us that they are not ready and when they asked us to sit for two hours, we acceded to that request. We are wasting the public money and yet they are not ready. They are wasting public money by not sitting in the afternoon now. My suggestion is that if the Drafting Committee is not yet ready, in order to save the public money, they should adjourn for 15 days, so that the amendments may be ready and the Drafting Committee should be prepared with the full programme. Yesterday we were prepared to sit in the afternoon and the day before yesterday we were prepared to sit in the afternoon, but Dr. Ambedkar is busy. So the whole expenditure of the State will lie on the shoulders of Dr. Ambedkar and not on the shoulders of the members of the House.

Shri T. T. Krishnamachari: I submit it is very unfair because if the House is willing to finish the work on the Order Paper before the day after tomorrow, we can assure the House that we will have enough work on Friday, but the question is whether the House will be prepared to complete the work

[Shri T. T. Krishnamachari]

on the Order Paper.

Mr. President : There is enough work till Tuesday next because these articles which are already in hands of the Members are likely to take till day after tomorrow and after that on Saturday, Monday and Tuesday, we have important subject to consider. So there is enough work and we can't take up anything, it is not because of want of preparation on the part of the Drafting Committee. They have given us enough work till the following Wednesday.

Shri R. K. Sidhva : We want to sit in the afternoons.

Mr. President : It is not because there is no work that we are not sitting in the afternoons. It is for other reasons that it is suggested that we should not sit. I would leave it to the House whether they would like to sit in the afternoon.

Honourable Members : No, Sir.

Shrimati G. Durgabai (Madras : General) : Let us sit at 5-30 in the afternoon.

Shri Biswanath Das (Orissa : General) : I speak on behalf of myself and on behalf of my friends and I make my submission to you, Sir, that we are not willing to sit seven or eight hours as has been suggested by my honourable Friend Mr. Sidhva. We are human beings, as you have rightly suggested, nor are we going to hear long and elaborate speeches after the detailed discussions we are having in the party and also after fairly good discussions here. I would therefore request you to control the speeches of the Speakers. In this view of the matter, I see that there is possibility of economy. Sir, I have nothing to blame the Drafting Committee. (*Interruption.*) They deserve nothing but congratulation from us. They are undergoing immense hardship. They have got far less leisure than ourselves and it would be unkind and unfair to comment on the work of the Drafting Committee. With these words, Sir, I would beg of you to control the debate and try to finish as early as possible.

Shri Brajeshwar Prasad : I would like to say a few words, Sir.

Mr. President : Not necessary; I do not want any discussion on this point. I shall be able to conduct the proceedings of the House if the House cooperates with me. My appeal to the Members is, in the first place, to cut the tendency of giving notice of amendments. It involves the office in very hard work because they have to print a number of pages till late at night and distribute them. Then, many of these amendments, I find, are sometimes not moved, sometimes not pressed, sometimes they are withdrawn and most of them are defeated. So, I would ask honourable Members in the first instance to consider whether the amendments which they are thinking of giving notice of are really amendments which deserve the consideration of the House. Of course, it is difficult for me as President to rule out the amendments which are within the rules. I cannot rule them out. But, my appeal to the members is to consider the amendments and if they find that they are really essential, then alone they should give notice of them. In the second place, my appeal to them is to curtail the speeches. If we could do this, I think we should complete the work within the scheduled time. But, if we go on giving notice of amendments from day to day and delivering speeches on every amendment, well, I do not know when we shall be able to finish.

So far as this evening's Session is concerned, there is a suggestion that we should sit from 5-30 to 7-30. Is that the wish of the House ?

Several honourable Members : Yes.

Several honourable Members : No.

Mr. Naziruddin Ahmad : We shall cut down our amendments and our speeches rather than be forced to sit twice a day. Not that we are unwilling to work : some work should be done at home and some work here.

Mr. President : When the House is divided in a matter of this kind, I should not force any section of the House to sit more than it desires to sit. We shall not sit this evening.

Shri Jaspat Roy Kapoor : May I submit, Sir, (*Interruption*) if we have a complete programme of the work you would like to be finished by 17th we may be able to finish the work by that. Most of us are sincerely anxious to finish the programme before the 17th.

Mr. President : I shall do that. The House stands adjourned till Nine of the clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Thursday, the 8th September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 8th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 282-B

Mr. President: We shall take article 282-B.

Shri Brajeshwar Prasad (Bihar: General): Sir, this amendment No. 8 fits in with article 282-B clause (1). The last line of that clause is 'by an authority subordinate to that by which he was appointed'. I want to substitute the words by 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission'. May I move this amendment?

Mr. President: Yes.

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move:

"That in Article 282B clause (1), for the words 'by an authority subordinate to that by which he was appointed' the words 'except by an order of the Union Public Service Commission, or, as the case may be by the State Public Service Commission' be substituted."

The purpose of my amendment is obvious. The power of dismissal, removal or reduction in rank of persons employed in several capacities under the Union or State should be in the hands of the Public Service Commission. I want that disciplinary matters should not rest in the hands of the Ministers, either Central or Provincial. Sir, I am not in any way suggesting a course of action which has got no precedent in any part of the world. In Great Britain, in Canada, in Australia and in South Africa in all these countries the public servants are not under the Ministers, and there has been no conflict or no confusion of authority. In the circumstances in which we are placed to-day, I am quite clear in my own mind that if the foundations of our civil service are to be laid on sound and scientific basis they must be removed from the control of the Ministers. The independence of the bureaucracy from the control of the Ministers is as important, if not more, than the independence of the judiciary from executive interference. The role of the public servants, according to my humble judgment, is more important than that of Ministers. "Men may come and men may go, but I go on for ever". The Public servants remain, though Ministers may come in and go out of the cabinet with bewildering rapidity. The foundations of our national life can be secured if the public servants are assured of their security, if they get the conviction that there will be no ministerial interference. For no fault of theirs, if they do not find favour with the Ministers, they are transferred to some unknown regions in some God-forsaken districts. This creates a sense of insecurity. I am quite clear in my mind that there is need for administrative unification of the country. Sir, I am of opinion that all the civil servants should be brought under the control of the Union Public Service Commission. As a matter of concession I am prepared to agree that some control should also be vested in the hands of the

[Shri Brajeshwar Prasad]

State Public Service Commissions. I stand for the proposition that the civil servants of India, whether Central or Provincial, should be under the Central Public Service Commission. We are passing through a very difficult period, Sir. The whole of our society is passing through a period of decadence and decay and if we want that the birth-pangs of the new social order should not be prolonged, we should lay the foundations of our civil services on safe and secure basis.

Mr. President: You do not move to clause (3) ?

Shri Brajeshwar Prasad: Yes, Sir. I move:

"That in paragraph (b) of the proviso to clause (3), for the words 'where an authority empowered to dismiss a person or remove or reduce him in rank' the words 'if the Union Public Service Commission, or, as the case may be, the State Public Service Commission' be substituted."

I have got only one word to say about this amendment. In this proviso the authority to dismiss, remove or reduce in rank has been vested in the hands of three authorities, Superior Officers, Governor and the President. Sir, I am opposed to this procedure. I am convinced that there should be some authority in the State to dismiss a public servant if a civil servant is found guilty, if the authority is convinced that he is a fifth columnist and that it is not desirable to keep him in service. But there should not be so many authorities vested with this power. I feel that the President alone should be empowered with this power. It is not right vesting this power in the hands of a large number of officers. If you do so, it will give no security to officers.

Mr. President: Amendment No. 10—Mr. Jaspat Roy Kapoor.

Shri Jaspat Roy Kapoor (United Provinces: General): Sir, I beg to move:

'That in the proposed article 282B, sub-clause (b) of clause (2) thereof be deleted, and clause (3) also of the said article be deleted, and thereafter sub-clause (c) be relettered as sub-clause (b)".

Clause (2) of the proposed article 282-B reads thus:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:"

and to this substantial portion of clause (2) there are three provisos, of which proviso (b) reads thus:—

"where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;"

and it is this sub-clause (b) that I seek to delete.

And then the other clause which I seek to delete is clause (3) which reads thus—

"(3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to clause (2) of this article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

It will be clear that deletion of clause (3) is consequential and is necessary in the event of sub-clause (b) of clause (2) being deleted.

Sir, the object of article 282-B is obviously to give security and protection to Government servants so that these government servants may feel that they shall not be punished in any way whatsoever, unless and until a reasonable opportunity has been given to them to show cause why any order punishing

them in any way whatsoever may not be passed. But, Sir, while the object of this article is to give this sense of security and protection to these government servants, unfortunately this article is so worded that what is provided in the substantive portion of clause (2) is being taken away by the subsequent long and detailed provisos which follow. So, what has been conceded in the substantive portion of this clause is being taken away by the provisos which follow. This article has been framed on the model of section 240 of the old Government of India Act. In fact, that section 240 of the Government of India Act has been bodily taken over from there and incorporated here, but with two additions, both of which go against the interests of the Government servants. The two portions of this proposed article which have been added to section 240 of the Government of India Act are sub-clause (c) of clause (2) and clause (3) of this article. My submission is that it is the inherent, fundamental and elementary right of every person not to be condemned unheard. We should not take away this inherent and fundamental right in the case of government servants. It is true that this right has been recognised, in this article, but as I have submitted, merely to recognise the right at one place and take it away substantially, though not altogether, in another, by providing various provisos that have been mentioned herein, does not appear to be fair.

Let us see what these provisos are. The first proviso says :

"Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge",

no opportunity need be given to the government servant to show cause why an order of dismissal or removal or reduction should not be passed against him. This sub-clause (a) of clause (2) as it stands is much too wide. It says that if a person is convicted of any offence, howsoever trivial it may be (for that is the natural implication), he may be dismissed, etc., and he need not be given an opportunity to show cause why such an order may not be passed against him. This is much too wide and it is, therefore, necessary, I think, that some clause may be added to the effect that the criminal charge of which the person is convicted is one which involves moral turpitude.

It may be said that even if the sub-clause is not there, no superior officer is going to act in such a foolish and stupid manner as to dismiss or reduce a government servant for any trifling offence of which he may have been convicted. True, this clause was there in its present form in the old Government of India Act and it may be said that government servants never felt that because of this clause being there they were unduly harassed or punished in a manner the hardship of which was felt by them. But when we are going to start on a clean slate, when we are going to have a fresh constitution there seems to be no reason why these lacunae need not be provided for.....

Mr. President : I would ask the honourable Member to be short. The amendment is clear and Members are able to follow the effect of it.

Shri Jaspat Roy Kapoor : Not only do I wish to be short but for that reason I have not moved an amendment to this clause, and I will say nothing further on the subject.

The second proviso for the deletion of which I have moved my amendment reads :

"Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;"

in that case no such opportunity need be given to the person concerned. I cannot conceive of any circumstances under which it cannot be reasonably

[Shri Jaspat Roy Kapoor]

practicable to give such an opportunity to any government servant. If a person is absconding how will it be possible for such a person to be given an opportunity, it may be asked. My simple answer is that the notice may be served at the place where he last resided or at the place the address of which he had given to his employer. That would certainly be considered as the man having been given a reasonable opportunity. Such a thing always happens in a court of law or under the company law. If a shareholder is served with a notice at the registered place of his residence it is supposed to be enough. So I submit that I cannot possibly conceive of any difficulty in regard to the government servant being served with a notice if an adverse order is to be passed against him.

Clause (3) which I seek to delete must necessarily be deleted if my amendment seeking deletion of proviso (b) is accepted.

Besides, clause (3) is very drastic, for it seeks to make final the decision of the authority dismissing or otherwise punishing a government servant; on the question as to whether it is reasonably practicable or not to give notice. There is to be no appeal even against this decision. This makes the implications of sub-clause (b) of clause (2) worse still.

One word more with regard to proviso (c). The implication of this is that whenever the President, the Governor or the Ruler is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity, no such opportunity need be given. Even in the case of political offenders, where a person is deprived of his liberty, the Government, as we know very well by our own experience, does inform the person who is being detained as to under what circumstances and for what reason he is detained. An opportunity is given to him to show cause why such an order should not be passed or confirmed. But under this sub-clause, if a government servant is dismissed, removed or reduced no such opportunity need be given to him. I do not see any reason why the government servant should be deprived of this elementary right of his. If we want our government servants to work efficiently, if we want our government servants to remain happy and contented, if we want them to work with a sense of security, it is absolutely necessary that we must provide that no order will be passed against them unless a reasonable opportunity has been given to them to show cause why they should not be punished or penalised.

Mr. President: I desire to tell honourable Members that I propose to finish at least up to article 245 in the course of this day, that is before lunch, and I would therefore seek the co-operation of honourable Members. The amendments are more or less obvious and their effect is perfectly clear. So, long speeches are not required either in favour or against the amendments. I would therefore ask honourable Members to confine themselves to moving the amendments and not to speak for more than two minutes, if they at all wish to speak.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I may be permitted to move my amendments Nos. 239, 244 and 245.

I beg to move:

"That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282B, after the word 'conduct' the words 'involving moral turpitude' be inserted."

Or, alternatively.

"That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282B, after the word 'charge' the words 'involving moral turpitude' be inserted."

I also beg to move :

"That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new article 282B, for the word 'practicable' the word 'possible' be substituted."

I further beg to move :

"That in sub-clause (c) of the proviso to clause (2) of the proposed new article 282B, for the words 'is satisfied' the word 'certifies' be substituted."

In regard to these I need not take much of the time of the House. As regards amendment 239, it is obvious that there are many cases in which convictions take place in courts which do not afford sufficient ground for the removal of such persons. If the clause stands as it is and unless the words I suggest are inserted, every conviction will earn a dismissal or removal of a public servant, and that is not satisfactory. I know that there are cases of persons who are convicted on the basis of conscientious objections, for instance if they do not resort to vaccination. There are cases of negligence. There are many cases in which there is no question of moral turpitude involved. The public conscience will be shocked if on a mere conviction a public servant will be discharged or dismissed. My humble submission is that in regard to these cases, the cases may be decided on merits. I hold that even an acquittal order may be tantamount in a particular case to conviction. A man may be acquitted on a technical ground but on matters of fact the judgment may be one of conviction. Again if it is an order of conviction on technical grounds but as a matter of fact one of acquittal, it is but meet that the person should not be subjected to dismissal or removal. In these circumstances I beg the House to accept my amendment so that honest persons may be saved and dishonest persons may be punished as the occasion arises.

In regard to my amendment No. 244, it is true as my Friend Mr. Jaspat Roy Kapoor has complained before you that what is given by one hand is taken by the other. This is a balanced set of rules and the balance should not be tilted in favour of the employer or the employee. As it stands the provision which is contained in 282B is quite fair. But at the same time we should see that in practice it does not work any hardship. Therefore I propose that instead of the word "practicable" the word "possible" may be there. In ordinary cases it would happen that whenever it is possible, all attempts should be made to see that the person is served with notice to show cause. Not to allow him to appear before you and show cause is not fair. To prevent abuses of the "practicability" of his being afforded an opportunity to show cause, I have said that where it is reasonable "possible" he should be allowed an opportunity. This would as a matter of fact ensure a proper opportunity for every public servant.

Similarly in regard to amendment 245 I want to submit a word. As it is, the words used here are "is satisfied". We know how the words "satisfaction" and "satisfied" are interpreted. In fact it is not the satisfaction of the President at all. The satisfaction is generally of the Minister in charge. It is not even of the Minister in charge but of some Secretary or Under Secretary. Therefore, as a measure of precaution I want to substitute the words "is satisfied" by the word "certifies", so that when the certificate is made full caution is exercised. Before the certificate is given the mind of the Minister in charge or the President is brought to bear on the question at issue. If the word "certifies" is there the relevant authority would certainly think twice before certifying. But if the word "satisfied" is there and this satisfaction is at the back of the public servant, then the protection afforded to him is obscure and illusory.

Mr. President: In amendment No. 240 by Mr. Naziruddin Ahmad there are three parts. The first part is covered by Pandit Thakur Das Bhargava's amendment 239. The second part is covered by amendment 10 which has been moved by Mr. Jaspat Roy Kapoor. Only the third part which seeks to delete sub-clause (c) is not covered by any of the amendments moved.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Yes, Sir, that exactly is the position. But though the first part of my amendment is identical in purpose with Pandit Thakur Das Bhargava's amendment there is some verbal difference. Therefore, with your permission I shall move the first part also.

Mr. President: Very well.

Mr. Naziruddin Ahmad: Sir, I move:

"That in the proviso to clause (2) of the proposed new article 282-B,—

(i) in sub-clause (a), for the words "on the ground of conduct which has led to his conviction on a criminal charge" the words "on the ground that he has been convicted of an offence involving moral turpitude" be substituted; and

(ii) sub-clause (c) be deleted."

As regards my other amendment, No. 246, for the deletion of clause (3), that has already been covered by Mr. Jaspat Roy Kapoor's amendment No. 10 and so I need not move it.

Sir, I submit that this article is very important and it affects the welfare of a large number of government servants. As regards higher government servants I submit that they are more than well protected. They are influential, and they can take care of themselves and any injustice to them will be rare and may be rectified. But with respect to a large number of middle class public servants rotting in the districts and in the sub-divisions, in out of the way places and also in higher places, the injustice to them might be very great. So I submit that the House should carefully consider the provisions which would affect them and which may result in serious injustice to them.

Clause (2) of this article says that no officer shall be removed or reduced or dismissed until an opportunity has been given to him to show cause against any proposed order. Then comes the proviso. The proviso, I submit, takes away literally all the safeguards which are purported to have been given in the body of clause (2). The first proviso is that no opportunity need be given to show cause if the man has been discharged or dismissed on account of a criminal conviction. My honourable Friend Pandit Thakur Das Bhargava has already clearly explained that the conviction should be a conviction for an offence involving moral turpitude. There are various offences like assault, trespass, technical defamation and similar things which are compendiously described as offences not involving moral turpitude. In all such cases if the office master tries to drive him off, all that we ask for is that he should be given an opportunity to show cause.

The Honourable Dr. B. R. Ambedkar (Bombay: General): There is no amendment to delete clause (3). Your amendment is only to delete sub-clause (b).

Mr. Naziruddin Ahmad: Yes, I have given notice of this amendment too. See amendment No. 246.

The Honourable Dr. B. R. Ambedkar: There is an amendment by Mr. Jaspat Roy Kapoor to delete clause (3) of 282B.

Mr. President: There is an amendment by the Honourable Member (Mr. Naziruddin Ahmad) also.

The Honourable Dr. B. R. Ambedkar: He can go on; I merely wanted to draw his attention.

Mr. Naziruddin Ahmad: I have given notice of an amendment to delete clause (3) but I did not move it because that has already been moved by Mr. Jaspat Roy Kapoor. Dr. Ambedkar was probably engaged in more interesting conversation than listening to the point I made as to why I was not moving it.

Sir, the proposal has already been made for the deletion of clause (3). It was made by my Friend Mr. Jaspat Roy Kapoor. He has already moved it and as you referred to the matter and gave me directions I did not seek to move it because it was unnecessary.

This proviso is extremely important. With regard to proviso (a) the condition is that the officer or public servant need not be given any opportunity to show cause if he is removed, discharged or reduced in rank on account of a conviction in a criminal case. But a conviction in a criminal case does not necessarily involve moral turpitude. There is many an important man who would assault people on provocation; on almost a justifiable cause, but he may be convicted; that does not in the least affect his moral or intellectual qualities or in the least make him unfit for Government service. In a case where he is convicted of an offence involving moral turpitude, of course the usual safeguard of giving him an opportunity need not be provided. But I wish to restrict myself to the proviso (a) dispensing with the necessity of giving opportunity to show cause to be confined to offences involving moral turpitude where the conviction will be conclusive and no explanation need be taken.

Mr. Jaspat Roy Kapoor has clearly explained why opportunities should always be given. What is the meaning of the expression, "it is not reasonably practicable to give" him notice? In fact, a man in office can easily be available for serving the notice. If he runs away, he would be dismissed on that ground alone. If he is on leave, he has a notified address and the notice can be sent to that address. All that I want is that an opportunity should be given. An opportunity is a great thing and sometimes an explanation might reveal strong points in the delinquent's case and might help him. To refuse to give an opportunity is to refuse justice.

Then, Sir, my amendment which is not already covered by other amendments is the deletion of clause (c) of this proviso. This I consider to be very important. Clause (c) runs thus:—

"where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity".

The expression "security of the State" which is so dear to the heart of everyone is a much exploited expression and has been needlessly over-emphasised in proviso (c). I quite concede the need for ensuring the security of the State. But I utterly fail to see how, when a Government officer is reduced or dismissed, any opportunity given to him to show cause why he should not be dismissed or otherwise dealt with is really going to affect the "security of the State". All that I want is that he should be given an opportunity. If an officer is very undesirable and undermines the security of the State—if his activities are dangerously undesirable in this respect—he may be kept in detention: even then it cannot affect the security of the State to give him an opportunity to explain; if his conduct is otherwise bad and affects the security of the State, there are ample powers to deal with him, but that could be no justifiable or reasonable cause for refusing to give him an opportunity to explain. I think, Sir, the expression "security of the State" is fantastically out of the question in a matter like this. Security of the State can never be affected by giving anyone an opportunity. If the man is in detention you can send him a notice in the prison and he can send the explanation and no harm would be caused in considering the explanation. What is the harm in doing him justice? He may

[Mr. Naziruddin Ahmad].

be dangerous to the security of the State—for that adequate provisions have been made and he can be adequately dealt with. But we are concerned with the security of the services. We are considering whether opportunity should be given to them. If we say that it is the opinion of the Governor or the President that the man is so dangerous that he should be dismissed on that ground, it is a different matter. But when he is being dismissed or reduced in rank not on the ground that he is a danger to the security of the State, then the security of the State is attempted to be made a ground for refusing to give him an opportunity to explain his alleged misconduct or shortcoming.

I think no purpose will be gained by introducing this imposing expression "security of the State". At this expression everyone will jump up and cry out—"security of State, security of State, security of State". I submit that if the security of India would be seriously affected by giving an officer opportunity to show cause, if the security of India is based on this, I think there is no security in India; India must be dangerously insecure if her security is based upon a refusal to give an opportunity to an humble officer. What happens in such cases is that men are dismissed by higher officers on insufficient cause, sometimes on bias and not always with a sense of impartiality. We hear of these things; these things are not published in the Press nor are they subject matters of Council questions, but these things happen, in fact they are very widespread. An opportunity to show cause would place on record the delinquent's version; nothing will be lost but much will be gained by allowing him to put on record his reason. An officer who dismissed him may be biassed, but a superior officer may read his explanation and do him justice. It is provided that the decision of the officer dismissing him would be final. Nothing could be more improper than giving the higher officer an arbitrary power. In fact, the officer himself is the complainant, he is the judge and he is the final appellate authority. There is no point in questioning his authority. Clauses (a) and (b) of this proviso were taken from the proviso to section 240 of the Government of India Act, 1935. In those settings this was highly proper; there was the imperialistic Government, they would dismiss anyone they liked and any opportunity to explain would be refused. But we are living in a free India. We must take care to safeguard the rights and liberties of our poor, humble officers; they are the middle classes and they require protection. So, whatever may be the justification for retaining these clauses (a) and (b) in the Government of India Act, in free India there cannot be any such a thing. We should be more open to conviction, we should give more opportunities to show cause we are bound to give them an opportunity to show cause. If reasonable opportunity is not given, I think there is no sense of security.

Sir, these amendments should be taken into consideration carefully as they will affect these officers who would be entirely at the mercy of their dissatisfied superiors; they require sufficient protection. All the protection is merely nominal, it is merely psychological. You must give an opportunity to show cause. These clauses of the proviso cannot be given effect to and they should be deleted. With regard to proviso (a) it should be seriously modified so as to reduce it to cover offences involving moral turpitude.

Sir, I have taken a little more time than I should have, but I bow down to your ruling that we should cut down our speeches to the minimum and I give my assurance that I shall cut down my speeches to the minimum.

Mr. President: Amendment No. 241. Mr. Shibban Lal Saksena. Both 241 and 242 are covered by amendments already moved.

Prof. Shibban Lal Saksena (United Provinces: General): I want to speak, Sir.

Mr. President: Not now. Then, amendment No. 243, Mr. Kamath Your amendment also is covered by the one already moved.

Shri H. V. Kamath (C.P. & Berar: General): Not the whole of it. The alternative is not covered.

Mr. President: All right. I want to be strict in regard to the time-limit on speeches.

Shri H. V. Kamath: But in view of the importance of the subject some latitude may be shown. If I am found to repeat myself you may pull me up

Mr. President: The honourable Member need not read out his alternative to amendment No. 243.

Shri H. V. Kamath: My amendment runs:

"(a) That in the proposed new article 282B, in sub-clause (b) of the proviso to clause (2), for the words 'that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause' the words 'on grounds to be recorded in writing, that the whereabouts of that person are unknown' be substituted;

(b) That in the proposed new article 282B, sub-clause (c) of the proviso to clause (2) be deleted;

(c) That in the proposed new article 282B, clause (3) be deleted."

May I humbly add my feeble voice to the protest that has been raised in the House by several honourable Members against the injustice that has been sought to be embodied in this article? We have proclaimed in the Preamble to the Constitution that Justice shall be the Pole Star or the lode-star of our Constitution. We have given pride of place in he Preamble to our ideal that Justice, social, political and economic, shall be meted out to all. I hope we shall not deny any class of people, public servants or others, the fundamental justice that is their due. I was wondering whether, after all, these articles 282A, 282B and 282C are at all necessary to be embodied in our Constitution I was wondering whether we in this House are sitting as mere lawyers framing Fundamental Rules for civil servants or a Civil Service Manual, or whether we as a free people, after the attainment of freedom, are busy drafting a Constitution for a free people—a Constitution illumined by the ideals of liberty, equality, and justice. These articles are reminiscient or redolent of the Civil Service Manual. There is no need for these articles in the Constitution. No constitution anywhere in the world includes such rules. Our Drafting Committee has taken the Government of India Act, 1935, as a guide to draft a Constitution for a free country. I am sorry for it. My friend Mr. Naziruddin Ahmad pointed out how iniquitous it is to copy in our Constitution the provisions of the Government of India Act with regard to the Civil Services. This, to say the least, is a blot on our escutcheon and denial of the Justice which we have proclaimed to the world in the Preamble of our Constitution. I would only say that if we adopt this article as it is, I warn the House that the services will have no heart in their work; they will get demoralised and they will not be efficient. There will always be, hanging over their heads, this sword of Damocles. When will it fall, when will a whimsical or a vindictive Minister let it fall?

Mr. President: The honourable Member has taken more than three minutes already.

Shri H. V. Kamath: I will not take more than five minutes. I am not speaking on any other article today.

Mr. President: Finish your peroration.

Shri H. V. Kamath: It is no peroration, Sir. If however you deem it so, I have nothing to say.

Sir, I was saying that the public services, with this sword hanging over their head, will not put their heart into their work. A capricious Minister might any day dismiss or remove a civil servant without serving a notice asking him to show cause. Of course the article mentions the President or Governor; but it means the Minister or the Council of Ministers. A Minister might take it into his head to inform a public servant, thus: "In the interests of the security of the State, I hereby take action against you. You are removed from service". This is most unfair to anybody, not to say a civil servant.

About sub-clause (b) I think the attention of the House has been drawn by Pandit Thakur Das Bhargava or Mr. Nazimuddin Ahmad that the only circumstance in which it will not be possible to serve a notice upon a public servant asking him to show cause is when his whereabouts are unknown. As that is the case, I have moved my alternative amendment (a) to the effect that for the words "that for some reason to be recorded by that authority in writing, it is not reasonably practicable etc., etc." the words 'on grounds to be recorded in writing, that the whereabouts of that person are unknown' be substituted. This is the only circumstance when it would not be possible to serve a notice on a public servant. The two lacunae in this article are, firstly, that a person, according to (b) and (c) could be summarily removed without any opportunity being given him to show cause. If it is not practicable, I would like the authority to record in writing that the whereabouts are unknown. If otherwise it is obligatory on the State to ask him to show cause, (c) must be deleted. It is grossly unfair to summarily dismiss any man without giving him an opportunity to explain. Even detenus in jails, during the last war you will remember, Sir, were informed of the grounds of detention and given an opportunity to make their representations in writing. This has been proposed to be denied to Government servants who form an important part of the machinery of the State.

There is another point on which I would say a few words. There is no right of appeal specifically mentioned in the article. I feel that every public servant before he is removed must be given not only an opportunity to show cause why he should not be removed, but also the right of appeal against any such order before he is finally removed.

Mr. President: The honourable Member has taken eight minutes.

Shri H. V. Kamath: Unfortunately, Sir, . . .

Mr. President: He should not take advantage of my indulgence.

Shri H. V. Kamath: I am concluding my speech. If unfortunately this article is adopted without amendment, I feel that public servants, whether of the Union or of the States, who are so important to an efficient administration will be reduced to the position of virtual slaves or serfs. I for one shudder to think what will happen to our administration if that situation develops. I commend my amendments. Sir . . .

Mr. President: Amendment No. 247.

Shri H. V. Kamath: I am concluding, Sir.

Mr. President: I have already called upon the mover of the next amendment to move it.

Shri H. V. Kamath: I am sorry you are over-strict today.

Mr. President: I am sorry you are taking advantage of my lemency. Amendment No. 247, Shri Munavalli.

Shri B. N. Munavalli (Bombay States): Sir, I move:

"That in clause (3) of the proposed new article 282B, for the word 'If', the words 'if, on the application of the person, so affected,' be substituted.

(2) That in amendment No. 2 of list 1, 7th week, in clause (3) of the proposed new article 282B, for the words 'any person' the word 'him' be substituted."

If this is not done, the question may be raised by the relatives of the person to whom a notice has not been given under 282B(2)(b), or his friends may raise the question or, if any organisation of employees is in existence, it will raise that question. So according to this clause there is wide scope. The purpose of my amendment is to restrict that scope to the person who has been affected. It is only that person that should raise this question so that it may be dealt with according to law. The general principles embodied in this article can be seen to exist in the laws of the various nations. Even in the U.S.A. it has been established that there should be permanency of tenure. In Great Britain also by tradition the permanency of tenure has become so firmly entrenched that it is not possible for any new Ministry to assail it. All these provisions have been substantially embodied in this article. Some of the honourable Members said that what has been provided in this article has been taken away by the proviso. Sir, it is not so. To my mind it seems that the proviso is applicable only in the case of those civil servants whose loyalty is very doubtful. There are civil servants whose political affiliations are open to criticism and whose loyalty to the existing government is doubtful. Under those circumstances there is no other course but to deal with them according to this proviso. Such laws can be traced in the history of other nations also. For example in 1933 when the National Socialists came to power in Germany they promulgated a Civil Service Law whereby it was provided that those civil servants whose political affiliations were questionable and open to criticism could be discharged or reduced in rank. So also those that came out openly in an aggressive manner against the existing government were severely dealt with. Similarly in our country also, for dealing with those civil servants whose loyalty is questionable and who come out openly in an aggressive manner against the government, there must be some proviso, so that the heads of departments could properly deal with them. Therefore I am of opinion that this proviso should exist and I support the provisions of this article wholeheartedly.

Mr. Mahboob Ali Baig (Madras: Muslim): Mr. President, Sir, it is to be regretted that this important question which involves millions of public servants should have been brought before us when we are very much pressed for time. Anyway, the President has been kind enough to allow us to move amendments in this regard. Sir, I move.

"That in clause (2) of the proposed new article 282B, after the words 'aforesaid shall be' the word 'suspended' be inserted."

"That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282B, the following be added:—

"for offences of bribery, corruption or treason, or offences involving moral delinquency."

Then 325.

Mr. President: That is already covered.

Mr. Mahboob Ali Baig: Amendments Nos. 325, 326 and 327 have already been moved, but I will comment on them. Then amendment No. 328. Sir, I move:

"That the following new clause be added at the end of the proposed new article 282B :—

"The Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority."

Under article 282A a public servant holds his office during the pleasure of the President or the Governor as the case may be. The legal implication is that a public servant when he has been dismissed or removed, cannot claim to be restored through a court. That is the legal implication. So, it has become very necessary for us to provide safeguards which must be adequate, fair and just, in order that the services may feel secure in their tenure of office, on which depends the welfare of the State and of the administration which is so necessary. Now, Sir, this article 282B seeks to provide such safeguards. Let us see whether they are adequate, fair and just. That is the question before us when we are discussing this 282B. My first amendment, No. 323, proposes that a public servant cannot be suspended without being given an opportunity to show cause why he should not be suspended. The punishment of suspension is a severe one and a serious one. That is my proposal, Sir, as far as 323 is concerned.

My amendment No. 324 refers to sub-clause (a) of the proviso to clause (2). What I propose is that where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, then no opportunity need be given to the public servant for showing cause why he should not be dismissed or removed. It has already been argued by many honourable Friends who came before me that a man may be convicted and sentenced for offences which do not involve either a dereliction of duty as a public servant or for any offence involving moral turpitude or moral delinquency and such cases have been cited also. But I have added two or three instances also such as "for offences of bribery, corruption, or treason or offences involving moral delinquency". The circumstances in which a public servant may have been convicted or sentenced in these cases are of a very serious nature and when he has been so convicted, he should not be given an opportunity. That seems to be fair; but if you state that he was convicted for any offence before a criminal court, then he need not be given any opportunity, it is too sweeping a circumstance and therefore, Sir, I submit that the amendment, as drafted by the Drafting Committee may be amended as I have suggested.

I have purposely added the word "treason" for this reason. Clause (c) perhaps contemplates all cases where a person may be suspected of being disloyal and that a public servant is disloyal cannot be proved, it may be argued. It may also be true that there may be mere allegations against him. I submit that either you give an opportunity to him to prove that he is not disloyal or if he is tried by a court of law and found to be treasonable or disloyal, then he need not be given an opportunity. Beyond that it is not fair that he should not be given an opportunity to prove that he is disloyal and therefore he should be dismissed.

Now, Sir, with regard to clause (b) it has been argued by my honourable friends that we cannot conceive of cases where you cannot serve a notice upon him and a reasonable opportunity cannot be given to him. I do not know why such a clause has been introduced unless it be to facilitate the work of the inquiring officer when a delinquent has absconded and is not to be found anywhere. For that there is the procedure which can be easily followed. I do

not see any reason why this clause should be there. With regard to (c), it is very unfortunate that this clause has been introduced. Even the Government of India Act, section 240, does not mention any provision of this kind. Where a foreign Government, a bureaucratic Government has not found it necessary...

Mr. President: The honourable Member is only repeating what has been said by more than one member. He can confine himself to amendment No. 328.

Mr. Mahboob Ali Baig: I consider that sub clause (c) is not only unnecessary but it is retrograde and ought to be deleted.

Now with regard to clause (3) also I might mention that such a clause also does not find a place in section 240 of the Government of India Act. The reason for this may be that clause (b) states as follows :—"Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied". This itself was quite enough. So perhaps it is not necessary to have introduced clause (3) here.

Then my amendment No. 328, I submit, is very necessary. The reason is that, as we know, these rules and regulations are framed not by the legislature but by the Government. I want that these rules and regulations should be framed by the legislature and not by the Governments concerned. The safeguards that you can provide...

Shri T. T. Krishnamachari (Madras: General): If the honourable Member refers to article 282, he will find what he wants there.

Mr. Mahboob Ali Baig: So what I want is that in the absence of the help of the court in the case of persons sought to be removed you must provide very adequate, fair and just safeguards and those safeguards must be very clear and they must be made by the Parliament or the legislature to be followed by the appropriate authority. The words "reasonable opportunity" have no meaning at all. We have known many cases where the Government servants go to a court after being removed and they are told by the court that it has no jurisdiction at all because they are holding service during the pleasure of the Crown. The only way in which the Court can safeguard the rights of the person who goes to a court is to see what is a "reasonable opportunity" whether the procedure laid down by the Government, laid down by the legislature has been followed satisfactorily by the appropriate authority before dismissing him. It is only in those circumstances the Court can say whether the "reasonable opportunity" has been given to the person aggrieved and then come to his rescue. Even then he cannot be rescued or restored at all, but compensation only can be granted to him. I am not only referring to the remedy that he may have before the court; but in order that he may feel secure, that he might have confidence in his office, it is necessary that these rules should be framed and the authorities concerned should follow them strictly. Though it is stated "if any question arises whether it is reasonably practicable to give notice to any person under clause (b)", you have not provided in clause (3) any appellate authority to find out whether the reasons given by the appropriate authority, that he is satisfied that it is not reasonably practicable to give notice are sound. It is the person who dismisses the Government servant who has to decide whether it is reasonably practicable to give notice or not. You have not provided that some appellate authority should examine the matter and come to the conclusion that the appropriate authority who refused to give a reasonable opportunity is really right in having dismissed a Government servant without notice. If you say that the legislature might provide for that, you might make it clear even now when we are dealing with this matter.

Therefore, Sir, my submission is that while the article makes an attempt to provide safeguards, in my considered view they are not adequate, fair and just

[Mr. Mahboob Ali Baig]

and it is necessary that in order to safeguard the interests of these millions of Government servants on whose efficiency and honesty our administration depends, these amendments of mine should be accepted.

(Amendment No. 367 was not moved.)

Prof. Shibban Lal Saksena: Mr. President, Sir, while carefully listening to the debate, I have been wondering whether the removal of this article from this Constitution would not be better than putting it in this form. In fact there is the fundamental principle that no man shall be condemned unheard. What we are laying down here is that some persons can be condemned unheard. If this article is removed, at least everybody could go to a court of law and say "I will be heard before I am punished." I know Dr. Ambedkar has introduced this article, not because of the provisos, but because of the fundamental principle involved in it that he wants to guarantee to the people in Government service that they shall not be removed from service or punished unless they are heard. But I say, Sir, that the provisos have ruined the whole thing. In fact under clause (a) even Pandit Jawaharlal Nehru, yourself and probably half of the House would all be liable to be dismissed because of our conviction on criminal charges during Satyagrah movement which did involve moral turpitude. I hope, Sir, the amendment of Pandit Thakur Das Bhargava, of which he has given notice, will be accepted.

About clauses (b) and (c), I cannot see how the mere giving of an occasion or an opportunity to show cause would be dangerous. You are not giving anybody an assurance that that explanation will be accepted. What I want is that these sub-clauses (b) and (c) must be removed. It is said that there are Communists in service whom it is necessary to remove and therefore this clause is necessary. It is said that it will be difficult to give an opportunity to show cause. I say, Sir, that by putting this clause in the Constitution, you are going to make the services a communist nest. I am not afraid of communism or their philosophy. By this clause, you are only making the people labour under a sense of injustice and grievance that they have not been heard. That is the feeling which in fact infects the people with disaffection and disloyalty. I therefore think that for the sake of seeing that the services are satisfied, you must give them an opportunity to be heard. I do not say that you must always accept their explanation; but they must have an opportunity to explain. I hope Dr. Ambedkar will accept the amendment.

Shri T. T. Krishnamachari: I move, Sir, that the question be now put.

Mr. President: Closure has been moved. The question is:

"That the question be now put."

The motion was adopted.

Mr. President: I shall now put the amendments to vote. Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar: I should like to say one or two words, Sir.

As I listened to the criticisms made by the various speakers who have moved their amendments, I have come to the conclusion that they have not succeeded in making a clear distinction between two matters which are absolutely distinct and separate: these matters are grounds for dismissal and grounds for not giving notice. This article 282-B does not deal with the grounds of dismissal. That matter will be dealt with by the law that will be made by the appropriate legislature under the provisions of article 282. In what cases a person appointed to the civil service should be dismissed from service would be a matter that would be regulated by law made by Parliament. It is not the purpose of this article 282-B to deal with that matter.

This article 282-B merely deals with, as I stated, the grounds for not giving notice before dismissal so that a person may have an opportunity of showing cause against the action proposed to be taken against him. The purport of this clause is to lay down a general proposition that in every case notice shall be given, but in three cases which have been mentioned in sub-clauses (a), (b) and (c), notice need not be given. That is all what the article says. It has been, in my judgment, a very wrong criticism which has been made by my honourable Friend Mr. Kamath that this article is a disgrace or a shame or a blot on the Constitution.

Shri H. V. Kamath: [illegible]

The Honourable Dr. B. R. Ambedkar: I am afraid I have to say that that was probably the best provision that we have for the safety and security of the civil services, because it contains a fundamental limitation upon the authority to dismiss. It says that no man shall be dismissed unless he has been given an opportunity to explain why he should not be dismissed. If such a provision is a blot, a disgrace, then I must differ from my honourable Friend, Mr. Kamath in his sense of propriety.

Shri H. V. Kamath: I am referring to the provisions of clause

The Honourable Dr. B. R. Ambedkar: I am coming to the provisos.

So far as clause (2) is concerned, I have no doubt in my mind that everybody who has got common-sense would agree that this is the best proviso that could have been devised for the protection of the persons engaged in the civil service of the State. The question has been raised that any person who has been convicted in any criminal case need not be given notice. There, again, I must submit that there has been a mistake, because, the regulations made by a State may well provide that although a person is convicted of a criminal offence, if that offence does not involve moral turpitude, he need not be dismissed from the State service. It is perfectly open to Parliament to so legislate. It is not in every criminal charge, for instance, under the motoring law or under some trivial law made by Parliament or by a State making a certain act an offence, that that would necessarily be a ground for dismissal. It would be open to Parliament to say in what cases there need not be any dismissal. It would be perfectly open to Parliament to exclude political offences. This clause in so many words merely deals with the question of giving notice. Parliament may exempt punishment for offences of a political character, exempt offences which do not involve moral turpitude. That liberty of the Parliament is not touched or restricted by sub-clause (a). I want to make this clear.

With regard to sub-clause (b), this has been bodily taken from section 240 of the Government of India Act. I think it will be agreed that the object of introducing section 240 of the Government of India Act was to give protection to the services. Even the British people who were very keen on giving protection to the civil services, thought it necessary to introduce a proviso like sub-clause (b). We have therefore not introduced a new thing which had not existed before. With regard to sub-clause (c), it has been felt that there may be certain cases where the mere disclosure of a charge might affect the security of the State. Therefore it is provided that under sub-clause (c) the President may say that in certain cases a notice shall not be served. I think that is a very salutary provision and notwithstanding the obvious criticism that may be made that it opens a wide door to the President to abrogate these provisions contained in sub-clause (2), I am inclined to think that in the better interests of the State, it ought to be retained.

[The Honourable Dr. B. R. Ambedkar]

Coming to clause (3), this has been deliberately introduced. Suppose, this clause (3) was not there, what would be the position? The position would be that any person, who has not been given notice under sub-clauses (a) or (b) or (c), would be entitled to go to a court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word 'satisfaction': is it a subjective state of mind of the officer himself or an objective state, that is to say, depending upon circumstances? It has been felt in a matter of this sort, it is better to oust the jurisdiction of the court and to make the decision of the officer final That is the reason why this clause (3) had to be introduced that no Court shall be able to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

Now, another misapprehension which I should like to clear is this. Some people think that under the provisions regarding civil service which I have introduced the Government has an absolute unfettered right to dismiss any civil servant and that this power is aggravated by the introduction of sub-clauses (a), (b) and (c) of clause (2). I submit that again is a misapprehension because under the provisions relating to Public Service Commission which we have passed already there is a provision that every civil servant who is aggrieved by any action taken by any officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore, even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to the Public Service Commission and to file an appeal that he has been wrongfully dismissed contrary to the provisions contained in the rules made relating to his service. I, therefore, think that the apprehensions which have been expressed by honourable Members with regard to the provisions contained in this article are entirely misfounded and are due to misunderstanding of the provisions of this Act, the provisions of article 282 and the provisions relating to Public Service Commission.

Mr. President: The question is:

"That in the proposed new Article 282B clause (1), for the words "by an authority subordinate to that by which he was appointed" the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in the proposed new article 282-B, in paragraph (b) of the proviso to clause (3) for the words 'Where an authority empowered to dismiss a person or remove or reduce him in rank' the words 'If the Union Public Service Commission, or, as the case may be, the State Public Service Commission' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That sub-clause (b) of clause (2) of the proposed new article 282B be deleted."

The amendment was negatived.

Mr. President: The question is:

"That clause (3) of the proposed new article 282-B be deleted."

The amendment was negatived.

Mr. President: The question is:

That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282B, after word 'conduct' the words 'involving moral turpitude' be inserted"

The amendment was negatived.

Mr. President: The question is:

'That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282B, after the word 'charge' the words 'involving moral turpitude' be inserted."

The amendment was negatived.

Mr. President: The question is:

'That in the proviso to clause (2) of the proposed new article 282B, sub clause (c) be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in the proposed new article 282B in sub-clause (b) of the proviso to clause (2) for the words 'that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause' the words 'on grounds to be recorded in writing that the whereabouts of that person are unknown' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new article 282B for the word 'practicable' the word 'possible' be substituted

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (c) of the proviso to clause (2) of the proposed new article 282B, for the words 'is satisfied' the word 'certifies' be subsututed."

The amendment was negatived.

Mr. President: The question is:

'That in clause (3) of the proposed new article 282B, for the word 'If', the words if, on the application of the person, so affected,' be substituted

The amendment was negatived.

Mr. President: The question is:

"That in clause (3) of the proposed new article 282B for the words 'any person' the word 'him' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (2) of the proposed new article 282B, after the words 'aforesaid shall be' the word 'suspended' be inserted"

The amendment was negatived.

Mr. President: The question is:

"That sub-clause (a) of the proviso to clause (2) of the proposed new article 282B, the following be added:—

'for offences of bribery, corruption or treason or offences involving moral delinquency'."

The amendment was negatived.

Mr. President: The question is:

"That the following new clause be added at the end of the proposed new article 282B:—

"That Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority."

The amendment was negatived.

Mr. President: I put the original amendment of Dr. Ambedkar—Article 282-B.

The question is:

"That proposed article 282-B stand part of the Constitution."

The motion was adopted.

Article 282-B was added to the Constitution.

Article 282-C

Mr. President: We go to 282-C.

Shri Brajeshwar Prasad: Sir, I move:

"That in clause (1) of the proposed article 282C the words 'if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do' be deleted and after the words 'other provisions of this Chapter' the words 'the Union Public Service Commission shall' be inserted."

The whole aim of Article 282C is to protect the Federal foundations of this Constitution. Therefore this power has been given to the Upper Chamber. They have the right to take the initiative in the matter and the Lower House has no power in this respect. Secondly, not only they have this power of moving this resolution but something like a veto power has been given to them. A resolution must be passed by two-third members of the House. I do not see any reason why the Federal foundations of this Constitution should be protected. Our constitution is not merely federal in character but it is also unitary in character. There is no reason why the unitary foundations of this Constitution should not be protected. Federal Government tends towards unitary type of Government. It would be wrong on our part to put the hands of the clock back. I am in favour that all services in the country should be centralised and I am convinced that there are no classes of persons in this country who are champions of Federal rights.

Let me place my ideas in this connection. Who are the people in this country who want to protect the federal sentiments? I come to the industrial workers in this land. Sir, Karl Marx had the vision to see that the industrial workers are international minded. Cricumstanced as they are today in this world there is no course left open to them but to become champions of internationalism. Therefore these industrial workers are not at all in any way champions of local rights.

Mr. President: All this is quite irrelevant to the amendment.

Shri Brajeshwar Prasad: The whole aim of this article is to protect the Federal Constitution or else there is no meaning in giving this power. I want to deal with the theoretical foundations of this Constitution. If you want me to speak only on the provisions and not to deal with the philosophical background I am quite prepared to do so.

Mr. President: I think you had better confine yourself to the amendment tabled by you instead of talking of the background.

Shri Brajeshwar Prasad: Well, Sir, there is no danger if this power is vested in the hands of Parliament instead of vesting this power in the Upper Chamber because thereby you give the power to the Central Ministry, and no Ministry in its senses would resort to a process of centralisation of services unless a need has been felt for it and unless it has developed the technical resources for that purpose. The other part of the amendment says that the power to regulate recruitment and conditions of service should be placed in the hands of Parliament. I have suggested that this power should be vested in the Union Public Service Commission.

I had more to say, but since you Sir, do not want that I should deal with the theoretical foundations of this article, I stop here.

Mr. President: Yes, because that is merely speculation. Then we come to No. 249 of Dr. Deshmukh. But that is a drafting amendment, I think. Then No. 250.

Dr. P. S. Deshmukh (C. P. & Berar: General): They are of a Drafting nature, and I am prepared to leave them to the Drafting Committee.

Mr. President: No. 251 also is of a drafting nature.

Dr. P. S. Deshmukh: But I should like to speak on the amendments.

Mr. President: Very well, after I have finished with these. No. 368 Mr. Muniswamy Pillay.

Shri V. I. Muniswamy Pillay (Madras: General): Sir, with your permission I move the amendment standing in my name:

"That in amendment No. 2 of List I (Seventh Week), in clause (1) of the proposed new article 282C, after the word 'Union and the States' the words 'giving equal opportunities to all unrepresented communities' be inserted."

This clause envisages giving power to Parliament to make laws for the creation of more all-India services coming under the Union and the States, regulate recruitment and so on, I feel it my duty to bring to the notice of the House the paucity of members of the backward communities in the services, both at the Centre and in the Provinces. Sir, due to the influences that have been exercised by some privileged communities, it was not possible for these backward communities to get their adequate share in the services. Since this clause wants to make laws for the rules and regulation of recruitment, I feel that accurate statistics must be obtained before any law is made, so as to find out the number of persons serving, belonging to the various communities in the provinces and in the Union, and to make such laws so that those people who are being left out from the services may get equal opportunities with the rest, in all the services.

Mr. President: Mr. Muniswamy Pillay, there is another provision which directly provides for that. Is it necessary to bring this here, in this round-about fashion?

Shri V. I. Muniswamy Pillay: There is one impediment in the way. Some of my friends who spoke yesterday were referring to the knowledge of the official language. I think, Sir, since we have a clause coming later, about the language, it is not advisable that any "stick to"—should be made about the official language. But I feel that the language which at present is adopted in all the provinces should be the order of the day, until Parliament by law at a later date affirms what the language in the province and the State should be. With these words, I strongly support the amendment that has been brought forward by Dr. Ambedkar.

Mr. President: There is no other amendment to this article You wanted to speak, Dr. Deshmukh.

Dr. P. S. Deshmukh: Sir, I support the amendment moved by my Friend Shri Brajeshwar Prasad in regard to the omission of the words:

"If the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest so to do."

I had intended to move a similar amendment, No. 250, but I do not propose to move it now since an identical amendment has been moved. I have been unable to understand this provision. Nowhere has the initiative in any important matter been left to any other House except the House of the People in the Central Parliament. But here for the first time, according to my knowledge and information, we give the initiative to the Council of States. Sir, either the central services are desirable or they are undesirable. If they are desirable, then they should not be cramped with so many impediments created in the way of their being started. If they are undesirable, then there should not have been any provision whatsoever. I think, more and more there will be the tendency to have all-India services, and therefore in my opinion there was no point in making their introduction so difficult. Why should the proposal have the support of not less than two-thirds of the members present and voting of the Council of States? I think these words are absolutely unnecessary, unless they are intended to clothe the useless House of the Council of States with some dignity or some function. I think that appears to be the only anxiety at the root of this brain-wave, of giving the initiation of such an important matter to the Council of States. I see no purpose for these words and therefore move that they be omitted.

Mr. President: Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar: Just one word. I think neither Mr. Brajeshwar Prasad nor my friend Dr. Deshmukh, the one in moving the amendment and the other in supporting it, seems to have read carefully the provisions of article 282. Article 282 proceeds by laying down the proposition that the Centre will have the authority to recruit for services which are under the Centre and each State shall be free to make recruitment and lay down conditions of service for persons who are to be under the State service. We have, therefore, by article 282 provided complete jurisdiction. 282C to some extent takes away the autonomy given to the States by article 282, and obviously if this autonomy is subsequently to be invaded, there must be some authority conferred upon the Centre to do so, and the only method of providing authority to the Centre to run into, so to say, article 282 is to secure the consent of two-thirds of the members of the Upper Chamber. The Upper Chamber is the only body mentioned in article 282. *Ex-hypothesi* the Upper Chamber represents the States and therefore their resolution would be tantamount to an authority given by the States. That is the reason why these words are introduced in article 282C.

Mr. President: I put Shri Brajeshwar Prasad's amendment in two parts. The first part is this. The queestion is:

"That in clause (1) of the proposed article 282C, the words 'if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do' be deleted."

The amendment was negatived.

Mr. President: Then the second part. The question is:

"That in clause (1) of the proposed article 282C after the words 'other provisions of Chapter' the words 'the Union Public Service Commission shall' be inserted."

The amendment was negatived.

Mr. President : Then there is the amendment moved by Shri Muniswamy Pillay.

Shri V. I. Muniswamy Pillay : I would like to withdraw that amendment.

The amendment was by leave of the Assembly, withdrawn.

Mr. President : Then I put the article as moved by Dr. Ambedkar The question is :

'That proposed article 282C stand part of the Constitution'

The motion was adopted.

Article 282C was added to the Constitution

Article 283

Mr. President : Then we come to article 283 Dr Ambedkar

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for amendment No 3037 of the List of Amendments (Volume II), the following be substituted :—

"That for article 283 the following article be substituted :—

Transitional provisions

283 Until other provisions is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an All-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution' "

This is a purely transitional provision.

Mr. President : There is amendment No. 12 of Shri Jaspat Roy Kapoor. That is not moved.

No. 252 of Mr. Nazruddin Ahmad is purely of a drafting nature.

No. 253 of Pandit Thakur Das Bhargava is not moved.

There is no amendment moved, then. Does anyone wish to say anything about this article ?

(No Member rose to speak.)

Then I put article 283.

The question is :

"That proposed article 283 stand part of the Constitution."

The motion was adopted.

Article 283 was added to the Constitution.

Article 302

Mr. President : Then we take up article 302. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I move :

"That in clause (1) of article 302, after the word 'Governor' the words 'or Ruler' be inserted"

[The Honourable Dr. B. R. Ambedkar].

"That in the second proviso to clause (1) of article 302, for the words and figures 'bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution' the words 'bring appropriate proceedings against the Government of India or the Government of a State' be substituted."

"That in clause (2) of article 302, after the word 'Governor' the word 'Ruler' be inserted."

"That in clause (3) of article 302, after the word 'Governor' the words 'or Ruler' be inserted."

"That in clause (4) of article 302—

(a) after the word 'Governor' in the first place where it occurs, the words 'or Ruler' be inserted;

(b) for the word 'Governor' in the second place where it occurs, the words 'as Governor or Ruler' be substituted; and

(c) after the word 'Governor' in the third place where it occurs, the words 'or the Ruler' be inserted."

An Honourable Member: What about 13, Sir?

Mr. President: It is not in the Order Paper. It is held over.

The Honourable Dr. B. R. Ambedkar: Amendments 14, 16, 17 and 18 are purely drafting amendments. The only amendment perhaps which requires an explanation is No. 15. The reason for bringing in this amendment is that reference to Chapter III really means reference to article 274. Article 274 deals with the right of suit against Government and that article is divided into two parts. One part deals with the right of suit as exists on the date of the commencement of the Constitution. The other part is regarding the power of Parliament to make further provision with regard to the right of suit against Government. If the words as there remain, it would only mean that the right of suit against Government would be in terms of 274 as it would be on the date of commencement of the Act. The substitution of the words "appropriate proceedings" is intended to cover not only the right of suit as it would exist on the date of commencement of the Act, but also as to subsequent proceedings which Parliament may by law provide against the Government of the day. That is the reason for this amendment. I might also mention to the House that I find that if this amendment is carried, I shall also have to bring in a small consequential amendment in article 202 where there has been a sort of omission.

Mr. President: There are several amendments printed in volume II of the printed amendments. I do not know if the honourable Members would like to move them. 3203—Mr. Kamath.

Shri H. V. Kamath: Mr. President, Sir, I move amendment 3203. I do not move 3204, 3205 and 3206 as they do not arise in view of the changes in the article. Amendment 3203 is as follows:

"That in clause (1) of article 302, for the word 'duties' the word 'functions' be substituted."

I feel that in the context of this article the word "functions" expresses the meaning intended, far better than the word "duties". We always refer to the functions and powers, and not duties of an officer or dignitary.

With regard to clause (2) I have a slight difficulty. Clause (2) says that no criminal proceedings whatsoever shall be instituted or continued against the President or the Governor or the Ruler of a State in any court during his term of office. The doubt that has arisen in my mind is as to whether the President or the Governor or the Ruler has no liability for any criminal act committed

by him during his term of office. Suppose for instance he commits a crime—God forbid that the President or the Governor or the Ruler of a State should be guilty of criminal conduct, but human nature is fallible—so if he unfortunately commits a criminal act, does this clause mean that no proceedings can be instituted against him during the whole prescribed term, or whether it means while he is in office only, that is to say, whether as soon as a *prima facie* case is made against him, the President should resign his office irrespective of the period put in by him; whether in the case of a Governor or a Ruler committing a criminal act, the President ought to remove him from office. The phrase "during his term of office" is rather ambiguous. I hope Dr. Ambedkar or Mr. Krishnamachari whoever replies on behalf of the Drafting Committee; will throw some light on this matter and clarify the content of clause (2) of this article.

(Amendment 3207, 3208, 3209 and 3210, 19 and 256 were not moved.)

Mr. President: So there is only one amendment moved by Mr. Kamath. Does Mr. Ambedkar wish to say anything on that?

Shri T. T. Krishnamachari: No, Sir. Sir Alladi Krishnaswami Ayyar wishes to say something.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, after listening to the reasons which were given by the Honourable Dr. Ambedkar in regard to the amendment concerning the proviso to article 302, I should like to say a few words. In other parts of the Constitution we have made a provision guaranteeing fundamental rights. The High Court also is invested with the jurisdiction to ensure the necessary writs in regards to fundamental rights. When once the rights are guaranteed, it is only fit and proper that there must be the proper remedy against the encroachment of those rights. That is why we have provided that the High Court can exercise all the jurisdiction in respect of the necessary remedies for the enforcement of fundamental rights. The second proviso, as it stands, reads:

"Provided further that nothing in this clause shall be construed as restricting the right of any person to bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution"

That could only refer to suits as against the Secretary of State or against the Government referred to in Chapter 3, part X. There may be the danger of the proviso being so construed as to negative the enforcement of fundamental rights guaranteed in other parts of the Constitution. That is why the Honourable Dr. Ambedkar has brought forward the amendment before the House so that effective remedies may be secured for the enforcement of the fundamental rights. It is all the more necessary because in the corresponding section 202 of the Government of India Act, it was held by the High Court that no sort of writ can lie against the Government, and therefore in order to make it quite clear that the restrictions imposed on the High Court in section 202 of the earlier Government of India Act no longer applied, this amendment is introduced. Therefore, if in the exercise of any statutory or other function, Government out-steps the limits of its power, it will be open for the aggrieved person to seek the necessary remedy. As the Honourable Dr. Ambedkar has already pointed out certain necessary changes might have to be made in other parts of the Constitution. The idea is to get over the restriction that has been placed by the High Courts in regard to the issuing of writs against the Government. When the Government exercises quasi judicial or statutory functions, it must be open to the High Court to issue the necessary writs. Even under the Act of 1935 the Madras High Court has taken the view that no such writ lies It is to get over this that the proviso is sought to be modified. There is no need to apprehend that the story of the conflict between the Governor-General

[Shri Alladi Krishnaswami Ayyar]

and the Supreme Court in those days after the regulating Act will be repeated. That need not now be anticipated and this right I have no doubt will be wisely exercised by the High Court in the enforcement of fundamental rights guaranteed under the Constitution.

Mr. President: Would you like to say anything about Mr. Kamath's amendment?

Shri T. T. Krishnamachari: We have been attempting to explain to him what it really means.

Mr. President: I will put Mr. Kamath's amendment No. 3203 to the vote.

Shri H. V. Kamath: Is there no reply to my difficulty about the term of office?

Mr. President: Mr. Krishnamachari has told the House that the thing has been explained to you.

Shri H. V. Kamath: No, it has not been explained.

Mr. President: You may not accept the explanation.

Shri H. V. Kamath: No reasons have been given. If he does not wish to give reasons, I shall not force him. If he is not able to answer my question, then that is different.

Shri T. T. Krishnamachari: I am advised that the wording had better remain as it is.

Mr. President: Dr. Ambedkar, there is an amendment moved by Mr. Kamath that in clause (1) of article 302, for the word "duties" the word "functions" be substituted.

The Honourable Dr. B. R. Ambedkar: The word "functions" is a large word and it includes both powers and duties. We have said powers and duties which include all the functions that we can have. It is unnecessary to have any kind of amendment like that.

Mr. President: The question is:

"That in clause (1) of article 302 for the word 'duties' the word 'functions' be substituted."

The amendment was negatived.

Mr. President: That is the only amendment that has been moved. I shall now put the amendment put by Dr. Ambedkar.

Shri T. T. Krishnamachari: The whole lot can be put together.

Mr. President: If the Members want that, I shall put them separately.

Very well. I shall put them together. The question is:

"(1) That in clause (1) of article 302, after the word 'Governor' the words 'or Ruler' be inserted.

"(1) That in clause (1) of article 302, after the word 'Governor' the words 'or Ruler' 'bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution' the words 'bring appropriate proceedings against the Government of India or the Government of a State' be substituted.

(3) That in clause (2) of article 302, after the word 'Governor' the word 'Ruler' be inserted.

(4) That in clause (3) of article 302, the word 'Governor' the words 'or Ruler' be inserted.

(5) That in clause (4) of article 302—

(a) after the word 'Governor' in the first place where it occurs, the words 'or Ruler' be inserted :

(b) for the word 'Governor', in the second place where it occurs, the words "as Governor or Rule" be substiuted : and

(c) after the word 'Governor' in the third place where it occurs the words 'or the Ruler' be inserted."

The amendments were adopted.

Mr. President : The question is :

"That article 302, as amended, stand part of the Constitution."

The motion was adopted.

Article 302, as amended, was added to the Constitution.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That the heading above article 243, and articles 243, 244 and 245 be omitted."

That might be put, so that the others may be taken separately. It is an independent thing.

Mr. President : The question is :

"That the heading above article 243, and articles 243, 244 and 245 be omitted."

The motion was adopted.

The heading above article 243, and articles 243, 244 and 245 were deleted.

PART XA

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after Part X, the following new Part be inserted, namely :—

"Part XA

Trade, Commerce and Intercourse within the territory of India.

274A. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

Freedom of trade, commerce and intercourse throughout the territory of India.

274B. Parliament may, by law enacted by virtue of powers conferred by this Constitution, impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

Power of Parliament to impose restrictions on trade, commerce and intercourse by law.

274C. (1) Notwithstanding anything contained in article 274B of this Constitution neither Parliament nor the Legislature of a State shall have power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination between one State and another by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule

Restrictions of the legislative powers of the Union and of the states with regard to the trade and commerce.

[The Honourable Dr. B. R. Ambedkar].

(2) Nothing in clause (1) of this article shall prevent Parliament from making any law giving any preference or making any discrimination as aforesaid if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

274D. Notwithstanding anything contained in article 274A or article 274C of this Constitution, the legislature of a State may, by law—

Restrictions on trade, commerce and intercourse among State.

(a) impose on goods which have been imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purpose of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the previous sanction of the President.

274E. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 274A, 274B, 274C and 274D and confer on the authority so appointed such powers and such duties as it thinks necessary.'"

Appointment of authority to carry out the provisions of this Constitution, and conferment of powers and duties on such authority.

Sir, all that I need do at this stage is to inform the House that originally the articles dealing with freedom of trade and commerce were scattered in different parts of the Draft Constitution. One article found its place in the list of Fundamental Rights, namely, article 16, which said that trade and commerce, subject to any law made by Parliament, shall be free throughout the territory of India. The other articles, namely, 243, 244 and 245 were included in some other part of the Draft Constitution. It was found in the course of discussion that a large number of members of the House were not in a position to understand the implications of articles 243, 244 and 245, because these articles were dissociated from article 16. In order, therefore, to give the House a complete picture of all the provisions relating to freedom of trade and commerce the Drafting Committee felt that it was much better to assemble all these different articles scattered in the different parts of the Draft Constitution into one single part and to set them out *seriatim*, so that at one glance it would be possible to know what are the provisions with regard to the freedom of trade and commerce throughout India. I should also like to say that according to the provisions contained in this part it is not the intention to make trade and commerce absolutely free, that is to say, deprive both Parliament as well as the States of any power to depart from the fundamental provision that trade and commerce shall be free throughout India. The freedom of trade and commerce has been made subject to certain limitations which may be imposed by Parliament or which may be imposed by the Legislatures of various States, subject to the fact that the limitation contained in the power of Parliament to invade the freedom of trade and commerce is confined to cases arising from scarcity of goods in any part of the territory of India and in the case of the States it must be justified on the ground of public interest. The action of the States in invading the freedom of trade and commerce in the public interest is also made subject to a condition that any Bill affecting the freedom of trade and commerce shall have the previous sanction of the President; otherwise, the State would not be in a position to undertake such legislation. Article 274-E is merely an article which would enable Parliament to establish an authority such as the Inter-State Commission as it exists in the United States. Without specifically mentioning any such authority it is thought desirable to leave the matter in a fluid state so as to leave Parliament freedom to establish any kind of authority that it may think fit.

If any further points are raised in the course of the debate, I shall be glad to offer the necessary explanation.

Mr. President: We shall have to take up the amendments one by one. The first amendment is with regard to the heading—that is by Pandit Thakur Das Bhargava (No. 339).

Pandit Thakur Das Bhargava: Before I move this amendment, I would humbly submit that I may be permitted to move all the amendments together Sir, I move:

"That in amendment No. 269 of List IV (Seventh Week) in the heading of the proposed new Part X-A, for the words 'Trade, Commerce and Intercourse' the words 'Trade and Commerce' be substituted."

'That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274A for the word 'Part' the word 'Constitution' be substituted.'

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274B before the word 'restrictions' the word 'reasonable' be inserted."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274B, for the words 'trade, commerce or intercourse' the words 'trade or commerce' be substituted."

'That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274B for the words 'public interest' the words 'interests of the general public' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274C be deleted."

'That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274C, for the words 'to one State over another' the words 'to any State as against any other State in the Union or to any part within that State' be substituted."

'That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274C, for the words 'between one State and another' the words 'between any State and another State of the Union or between any parts within that State' be substituted."

'That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274C, the words 'by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule' be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274C, for the words 'a situation' the words 'any emergent situation' be substituted."

That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274C, before the word 'scarcity' the word 'temporary' be inserted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274C, the words 'for the period of the emergency' be added at the end."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274C, the words 'for the period of the emergency' be added at the end."

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274D be deleted."

"That in amendment No. 269 of List IV (Seventh Week), clause (b) of the proposed new article 274D be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274D, the words 'or intercourse' be deleted."

'That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274D, the words "with or' be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274D, for the words 'in the public interest' the words 'in the interests of the general public and are not inconsistent with the provisions of article 13' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article, 274D, for the words 'public interest' the words 'interests of the general public' be substituted."

[Pandit Thakur Das Bhargava].

"That in amendment No 269 of List IV (Seventh Week) in clause (b) of the proposed new article 274D, the words "during any period of emergency arising from scarcity of goods within the State for the period of such emergency be added at the end"

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274D, the following new clause be added at the end :—

"The President shall be competent to revoke such sanction when he considers it expedient to do so in the interest of the general public and on such revocation being made the law of the State imposing restrictions shall become void.'"

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274E be deleted"

"That in amendment No. 269 of List IV (Seventh Week), after the proposed new article 274E, the following new article be added :—

'274F. Notwithstanding anything contained in this Constitution, any citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 13 or Part X-A of the Constitution'"

or alternatively,

"That in article 16, after the word 'Parliament' the words and figures 'under articles 274B and 274C' be inserted."

Now, in regard to these amendments my submission is that the way in which I look at the subject is different from the way in which Dr. Ambedkar looks at it. According to me, these rights of trade and commerce and intercourse should be absolute and only circumscribed by provisions relating to emergencies, while in his view, the power of the Central Government as well as of the provincial Governments should be there, and these rights should be qualified. We have already passed article 16 which runs thus :

"Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free."

This article yet stands as it is. There has so far been no amendment that it stands abrogated. The existence of this article in the Chapter on Guaranteed Rights assures us that this is a fundamental right. The nature of this fundamental right has been, I know, curtailed to a great extent by the use of the words "and of any law made by Parliament". Subject to this, this fundamental right has been guaranteed to the citizens of India by the Constitution we have already passed. Along with this I would ask you to consider the effect of article 13, the relevant portion of which says :

"All citizens shall have the right—(d) to move freely throughout the territory of India, (e) to visit and settle in any part of the territory of India, (f) to acquire, hold and dispose of property; and (g) to practise any profession, or to carry on any occupation, trade or business."

Now, I submit that this provision of Dr. Ambedkar comes to a certain extent in collision with the parts (d) to (g) of article 13. According to my understanding of the provisions of article 13, every citizen has got the right to carry on any occupation, trade or business subject of course to article 16 which we have adopted. According to it, only in the general interests of the public some restrictions can be put on the rights of a citizen. Now you will see that the expression 'public interest' has been used in the amendment moved by Dr. Ambedkar in several places which I have sought to substitute with the words "the interests of the general public". I maintain that there is great difference between the two expressions. 'Public interest' in regard to a State would only include the interests of the inhabitants of that State at the most though the word 'public' includes portions of the public. Therefore, the interests of a part of the inhabitants of a State would also mean 'public

interest', whereas if you use the words "interests of the general public' they would have reference to the interests of the general public of India as a whole It may be that on many occasions a conflict may arise between the public interest as understood in the amendment of Dr. Ambedkar and the interests of the general public as used in article 13. When that conflict arises it would be encouraging provincialism and the interests of a few as against the general interest if we accept the words 'public interest' in the place of the words "in the interests of the general public'.

If it is true that article 16 confers on the citizens a fundamental right which could be enforced by appropriate proceedings through the Supreme Court, it means that the right given is being taken away by these articles if we pass them in their present form. Then there will be no fundamental right of an absolute character conferred by article 16. My submission, therefore, is that we are tampering with the right which has been guaranteed Therefore, to save that right, I have tabled an amendment which seeks to amend article 16 also. My attempt is to see that, either the amendment relating to article 16 may be accepted or the amendment which runs as follows: 'Notwithstanding anything contained in this Constitution, and citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 12 or Part X-A of the Constitution'.

Now, the words 'of any law made by Parliament' in article 16 will mean only that they are in conformity with the provisions which are now sought to be put in by this amendment. Articles 274C and 274D are laws of that nature which are contemplated in article 16. I cannot think of any other law by means of which the liberties of the citizens of India can be curtailed These two provisions are more than enough. But in relation to these articles also my humble submission is that if the provinces are allowed to have their own way to impose restrictions upon the citizens of any other State, then this one-Nation talk, this unity and this one-Government and one-country talk will mean nothing It has happened even now. The Government of India exercises some powers and the provinces exercise other powers in relation to the commodities essential for the life of the community. In regard to this, the whole House knows and we of the East Punjab know to our best how these provisions are being worked. It has happened that while the whole country is suffering from scarcity of food-stuffs and very large quantities of food are being imported from other countries and the grow-more-food campaign is being vigorously pursued we know that as the result of the exercise of the powers enjoyed by the Government of India and the Provincial Government, today the position is that food-grains of the value of crores of rupees are being wasted in East Punjab on account of the exercise of these powers.

Now, Sir, if you will kindly read the provisions which are to be enacted by virtue of this amendment of Dr. Ambedkar, it follows that each State is authorised to impose reasonable restrictions on the freedom of trade, commerce and intercourse as may be required in the public interest. This means that Bombay can say that in the interests of the Bombay people, they would put some restrictions on the freedom of trade in cloth. Similarly in the East Punjab, we have enough gram to spare. Well suppose these grams are not allowed to be exported by the policy of the Central Government or the local government, it may happen that while gram is selling at Rs. 6 or Rs. 7 in the East Punjab, in parts of Bengal or Madras the same gram may be selling at Rs. 20 or Rs. 22. Neither Madras nor Bombay would be benefited by the existence of surplus gram in the East Punjab, nor the people of the East Punjab would be benefited by the increase in the prices elsewhere. This is not a picture which is due to my imagination. This is what is happening and what has happened in the past. I have approached people in the Central Government as well as the provincial government and told them the whole story but still they have not moved.

[Pandit Thakur Das Bhargava]

I want, Sir, that so far as this question of freedom of trade, commerce and intercourse is concerned, it should be absolutely free, only subject in times of scarcity or times of national emergencies to such restrictions as may be imposed in the public interest. Otherwise, in normal times no restrictions should be allowed, if we really mean that we all belong to parts of the same country or we are living under the same government. The whole scheme of article 243 is that it speaks of certain kind of preference or discrimination. Now, 274A give us a proposition which I welcome because it says that trade and commerce shall be free But what I object to in this is the words "subject to the other provisions of this Part". I want the word "part" to be substituted by the word "Constitution". So far as the Constitution puts restrictions, I am ready to accept them, but this part puts so many restrictions upon this freedom of trade which are irksome and unnecessary. It is the same thing throughout in this Constitution that what is given by one hand is taken away by the other. I want, Sir, that the rights given under article 13 should be restricted only by the restrictions which we have already placed on them, but not to the extent in which they are sought to be restricted now. I feel that such restriction will give rise to provincial jealousies, and provincial patriotism will do great injury to India as a whole.

Now, in regard to section 274B I have submitted that I want before the word "restrictions" the word "reasonable" to be inserted. In article 13 which is justiciable we have used the word "reasonable". The question which arises is whether the rights under this chapter will be justiciable or not. According to my reading, and according to the meaning of the words which Dr. Ambedkar has been pleased to use, I apprehend that he does not want that this should be justiciable. If he says that they are justiciable, then I will take back some of the amendments which I have tabled.

Dr. P. S. Deshmukh: Dr. Ambedkar has already told us that he is going to alter the fundamental rights provided by article 16.

Pandit Thakur Das Bhargava: Sir, article 16 is of the fundamental rights and as such justiciable. I know the reply would be that the words used are "subject to any law made by Parliament". But now it is much more restricted because even the States can take away those rights. My whole point is that this fundamental right of the citizen should not be taken away and therefore all the amendments that I have moved should be accepted and this right should be made justiciable.

As regards the other amendments which I have read out to the House, I will not take any more time of the House. I will not speak on each of the amendments the words in which they are couched make their meanings quite clear. I will only speak on the principles on which they are based.

Now, speaking about trade and intercourse, Sir, I have taken exception to this: article 13 says that every citizen has got a right to go, reside and settle in any part of India. This is the intercourse which I can understand. I do not know what other meaning is there of the word "intercourse". As regards article 13, we have already provided for reasonable restrictions and we need not make any further restrictions. I do not understand what intercourse can there be between State and State. I can understand it only in relation to individuals. Now, Sir, the difference between this chapter and article 13 is this. The State is not an individual. Between State and State there will be very few occasions for inter-State commerce, trade and intercourse, but very many occasions will arise for that when the interests of individuals are involved. If article 13 remains as such, my submission is that it will be difficult to deny this fundamental right to individuals under 274A.

etc. If I practise a trade or a profession, I want to understand how it is possible for any State to put restrictions on that, so long as my fundamental right under 13 exists. Occasions are bound to arise when there will be conflicts between article 13 and the present article. There ore I have moved an amendment to the effect that these restrictions should be subject to the provisions of article 13. If this is accepted, this can be made justiciable. My submission is that the prevailing idea in the minds of the mover of the amendment seems to be that the rights under 13 and 16 are too wide and he wants to restrict those rights. I do not think that these rights should be tampered with in this way.

With regard to my amendment relating to 274C, I have submitted that the last two lines should be taken away. My point is that if you removed the words "by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule", this will become fool-proof and no discrimination or preference would be possible anywhere.

Again in 274C(2) these words have been used "for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India". In times of famine, etc., by all means let this be used; I have no objection. But that power must be restricted to real emergencies. Otherwise, this right will be abused to the detriment of the general public, though it may be to the advantage of the inhabitants of the particular State.

Similarly Sir, in regard to article 274D, I have no objection to clause (a); but so far as (b) is concerned, this is the clause to which I object most seriously. I think this is unnecessary because when the powers are given to the Parliament as originally they were given to the Parliament, I have no objection. The Parliament shall have to consider it from the general standpoint, from the standpoint of the whole of India, whereas a State is bound to consider it from a parochial point of view, from the point of view of the State and therefore, this mutual jealousy is bound to arise if we allow these powers to the State. Therefore, the policy of the Government should be that so far as the State is concerned, they should not be allowed to exercise that power unless it be through Parliament. If a State is empowered to use its powers under clause (a) I have no quarrel as it will be a salutary power; but if you allow clause (b) to remain as it is, I do not understand what it may lead to. I can understand that under article 13, considerations of health when epidemic, like plague etc. justify quarantine regulations, intercourse may be restricted but if general intercourse in normal times is disallowed or restricted it amount to passing against the people in general orders under the Safety Acts and placing embargo on their entering any State, which is absolutely wrong. Every person has a right to go into any State and no State has a right to prevent intercourse of people in the rest of India. I consider it is most dangerous to arm a State with this power especially with the words as they stand "as may be required in the public interest."

Then again, Sir, the safeguard of sanction is provided so that this power may not be abused. After all the safeguard is quite illusory. The only safeguard is that the previous sanction of the President is there. We know how the President's sanction is given. It only means that some secretary, some Minister, some person who is interested may be able to get the order of the President. In this way sanction could easily be secured. Therefore, this power should not be allowed to remain with the State. If clause (b) is to be retained, then I will propose that the sanction may be such as may be revocable and as soon as Government thinks that this power is being abused, it should be able to withdraw that sanction so that ultimately the powers of the province may be curtailed to that extent.

[Pandit Thakur Das Bhargava].

In regard to all these amendments, the House has to be very careful because this is one of the most important matters which we have so far dealt with, considering that the amendments which are coming in are curtailing the rights of the individual in the whole of India; and therefore the powers given to the State, according to me, should never in any case be allowed, because that would mean that every State shall be able to raise barriers against the rest of India and people living in other States and they will constitute a state of things, which I feel, will not conduce to the unity of the whole of India.

Shri Brajeshwar Prasad: There are a large number of amendments standing in my name. I would like to move one amendment only, that is 295. It has reference to article 274D.

Mr. President: We shall see when we come to 274D. I will take the amendments first as they appear on the Order Paper in regard to the new articles.

(Amendments Nos. 317, 318, 319 and 320 were not moved.)

Dr. P. S. Deshmukh: Mr. President, Sir, I move:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274A, the following be substituted :—

'274-A. Subject to other provisions made in this Constitution, trade and commerce in any State or territory of India or between any two or more States of the Union, shall be as may be determined by the Parliament from time to time.' "

I move:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274B, the following be substituted :—

'274B. Parliament may by law enacted by virtue of powers conferred by this Constitution impose such restrictions on trade and commerce in or between any parts of India as may be determined by the Parliament from time to time.

I move:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274C, the following be substituted :—

'274C. (1) Legislature of a State shall not make any law giving or authorizing the giving of preference to one State over another or making any discrimination or authorizing the making of any discrimination between one State and another except with the consent of the Parliament.

(2) Legislature of a State may, however, by law—

(a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on trade and commerce or inter-commerce with or within that State as may be required in the public interest with the previous approval of the Parliament.' "

I move:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274D, the following be substituted :—

'274-D. Parliament may, by law, appoint such authority or delegate its powers to such person or persons and confer on then, such powers and duties as it thinks necessary.' "

Mr. President, Sir, I for one, do not regret the fact that we are already finding our fundamental rights cumbersome and impending our progress, if not the Constitution itself. I have always regarded these fundamental rights as so many ghosts which we are going to place permanently on the chest of the future Parliaments for ever to wage battles and wars with. I am not therefore

surprised that long before the ink of these articles has dried, we have discovered that some powers and privileges which we thought were indispensable, some fundamental rights which we considered it our solemn duty to promulgate and enunciate are no longer convenient for us to maintain. Dr. Ambedkar has made bold to say that it is impossible to leave the trade and commerce between the various parts of India so free as we contemplated. We gave this article (Article 16) the dignity of a fundamental right, a right moreover which is justiciable; and now before even the second reading is complete, we are going to tell the people, we are going to resolve and decide that the justiciable right shall not be any more justiciable. I wonder if it will remain any right at all. I for one hope that before we make the draft final, we will realize our mistakes in having these fundamental rights. As a matter of fact most of them have not remained as fundamental as we should have liked them to be; and the rest of them which are fundamental in some way or the other, they are also tampered with from time to time. This, as I have already stated, affects the supremacy and sovereignty of the Parliament. So far as my amendments are concerned, I do not wish that we should complicate the whole commercial and trade relations between the various States and fetter the discretion of Parliament for all time.

Trade and commerce are not things which are decided once for all; they are things that arise and grow from day to day. They may be varied; there may be circumstances and situations when the whole thing will have to be revised. This may arise so far as a particular State is concerned or in respect of more than one State. How pompously did we decide that there shall be "free trade" everywhere! It is not such an easy thing as that and I hope that this is now broadly realized For instance, we know that the stage of advancement and progress of the various units of the Union varies considerably. Some of them are backward like Assam or Orissa where there are very few industries and very little trade is in the hands, at least of the indigenous population. We may have probably to give them some protection in order that they may rapidly come on par with other units. It may be necessary also from time to time to vary our provisions so far as aid and concessions to industries and other things are concerned. I therefore do not think that is right to bar all discrimination, as it is called (in fact it is not), barring all possibility of help to those who are backward and who are unable to compete with the more advanced, and who therefore stand in need of assistance. From that point of view, my amendment seeks to give Parliament a blank cheque and leave to it entirely the determination of the policy with regard to trade and commerce not only of the whole Union or in regard to any particular State or States, but so far as all States and their trade and commerce *inter se* is concerned. Therefore, I have proposed a very simple provision as has been embodied in my amendment No. 340.

If we analyse the new articles that have been proposed, it is very difficult to understand them and I think the comment is absolutely justified that this is going to be a lawyers' constitution, "a paradise for lawyers" where there will be so many innumerable loopholes that we will be wasting years and years before we could come to the final and correct interpretation of many clauses. If we read this article 274, you will find, Sir, that this is one of the most wonderful articles in the whole Constitution. This is not the only one; there are many others. If we count the use of the word 'notwithstanding' in this Constitution, I am certain that the number of times that word is used will far exceed the use of the word 'Parliament' or 'Constitution' in the whole Constitution. If you will permit me, Sir, I will describe the situation a little graphically We first of all provide and say or declare that a certain person is a man. Then, we say, notwithstanding this declaration, you shall wear a *sari* and nothing but a *sari*.

Shri T. T. Krishnamachari: There is no bar to that.

Dr. P. S. Deshmukh: Then, notwithstanding the fact that you are considered a man, and notwithstanding the fact that you wear nothing else but *saris,* you will wear a Gandhi cap also. Then we have another 'notwithstanding'. Notwithstanding that you are a man, notwithstanding that you shall wear nothing but a *sari,* notwithstanding that you shall also wear a Gandhi cap, you will be at liberty to describe yourself as a woman. (*Laughter*) Some thing of that sort, as funny and as amusing, is really the situation so far as this article 274 is concerned. If you read through it, you will see that as soon as the first part is over, we start with "notwithstanding whatever is said in the first part, such and such a thing will happen". In the next clause, we say, not only notwithstanding what is contained in the first clause, together with notwithstanding what is contained in the other clauses' and then add something more. I think there is a better method of drafting. Even if it is necessary to cope with complex situations and to provide something on the lines proposed, there should be a simpler and more direct way of drafting and making a provision which is not so ununderstandable that only supermen could read this constitution, even assuming that only supermen are to be born in India hereafter. If this Constitution is made for the average man, if it is going to affect the rights and privileges of the ordinary common man, it is necessary that the drafters of this constitution should be more clear and use phraseology which is more easily understandable and simpler.

My honourable Friend, Pandit Thakur Das Bhargava, pointed out, and he for one regretted the fact that not only trade and commerce, but intercourse also, with a hyphen in between, was not going to be free. We are going to interfere also with inter-course. By this means, we are going to fetter the discretion of the future Parliament. I think trade and commerce is a thing which cannot be determined once for all, knowing the varying degree of progress which the various units of the Union have attained. It may become necessary to give protection to several States because they are not, on the mere ground of merit and competition, in a position to compete with the rest. I have studied this question with some care and I can say that there are many issues which are likely to arise. For instance, the question of rationalisation of industries, *i.e.,* deciding in what places there should be new industries started, whether in the places where there are no industries or only where there are. It will be the policy of the Indian Union to encourage starting of new industries. If it is necessary to encourage them, it may be necessary to assist them in more than one way and give them concessions.

There was at one time a complaint that all the industrialists were rushing to the Indian States because they got certain monopolies, privileges and advantages there which were not available to them in British India. Therefore, they had to decide upon a policy of restricting the growth of industries in the Indian States. Just as we have had to restrict the growth of industries in Indian States, it may be necessary on the other hand to encourage them not only by giving them certain concessions and privileges, but also by putting certain handicap on the States which are advanced enough so as not to allow anybody else to compete with them. Such situations are imaginable.

I hope therefore that the whole chapter will be made simpler. Instead of tying the hands of both the States as well as of Parliament, it would be far better not to commit ourselves to any policy, but to leave the whole thing to Parliament. Otherwise, the situation which has arisen already in respect of article 16 may arise in respect of article 274 itself. It is therefore better to have simpler provisions and I have given them the simplest form. I hope

that this will appeal to the drafters of the Constitution and if they accept it. I can tell them that they will be out of much of the trouble. But if they insist upon the draft that they have produced, it will be very difficult for trade and commerce not only to prosper but even to exist.

Shri B. Das (Orissa : General) : Mr. President, I move :

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274C, after the words 'prevent Parliament from making any law' the words 'with previous consultation of the Government and legislature of a State' be inserted."

Sir, I welcome this new part XA. It is necessary that the conditions of our trade and commerce and intercourse within the territory of India, between the different States, are all codified at one place so that we know how trade and commerce should be regulated under the new Constitution. I will confine my remarks only to the amendment I have moved. I do not apprehend any interference by Parliament and the Union into the affairs of the States that I heard of from the two previous speakers. But as regards my own amendment, while article 274C (1) allows restrictions on the legislative powers of the Union and of the States with regard to trade and commerce, in clause (2) it takes away that power and gives Parliament special power when a situation will arise when there is scarcity of goods in any part of the territory of India. I concede that the Parliament will have such a power but I do want the points would be clarified by acceptance of my amendments and the States which shall be affected, their Governments and Legislatures must have to be consulted before clause (2) of article 274C will operate. Mine is not a revolutionary idea to what is contained in the original draft. I only wish the position of the Provincial Legislature and the Provincial Government be clarified and it will be obligatory on the Union Government to consult the State Governments and State Legislatures.

Mr. President : Mr Brajeshwar Prasad.

Shri B. P. Jhunjhunwala (Bihar : General) : There are other amendments also to this article.

Mr. President : We shall see later on.

Shri Brajeshwar Prasad : Amendment 295 fits in with new article 274-D. The old article 244 has now been replaced by 274D. Sir, I move :

"That in amendment No 269 of the List of Amendments, for the proposed article 274D, the following be substituted :—

'It shall not be lawful for any State either to impose any tax on goods imported from any State or to impose any restrictions on the freedom of trade, commerce or intercourse with any state' "

I want that there should not be any obstacle in the way of the development of a feeling of common consciousness of oneness and unity in this country The doctrine of nationalism has been accepted by each and every citizen. Now to give a loophole in this mater will lead to undesirable consequences. I know this power has been restricted. In spite of that, I feel that it will be better if we conform to the old fundamental principle that we have accepted in the Fundamental Rights. I do not care what will happen to the finances of the Provincial Governments. Constitution or no Constitution, it is the duty of the Government of India to see that there is peace and progress in this country, that there is general prosperity in all parts of the country. I have nothing more to add.

Shri B. P. Jhunjhunwala : Sir, I have tabled an amendment to the amendment of Pandit Thakur Das Bhargava. My amendments are amendments to

[Shri B. P. Jhunjhunwala]

the old articles 243, 244, etc. I beg to move :

"That in amendment No. 287 above, in clause (b) of the proposed article 244, after the word and figure 'article 13' (proposed to be inserted), the words 'and with the general economic improvement of India as a whole' be added."

There is another amendment No. 293 as follows :—

"That in amendment No. 292 above in the proposed clause (c) of the proposed article 244, after the word 'Constitution' the words 'and with the general economic improvement of India as a whole' be added."

Now all these articles have been changed and I could not give my amendment to those changed articles, but Pandit Bhargava has given an amendment to all those articles as have been changed which are given as 274A, 274B, 274C, 274D and 274E.

The main purpose of my amendment is that whatever a State Legislature or the Parliament may pass any law or order putting any restriction regarding trade and commerce, between one State and another, that should not be inconsistent with articles 13 and 16 of the Constitution and the general economic improvement of India as a whole. Pandit Bhargava has dealt with article 13 and he has said that there is a fundamental right of every citizen to have free trade and commerce. He has also dealt at length on the use of the words "public interest" and shown how it has been misused by the State. He has given example of grams in Eastern Punjab as to how the Punjab Government has muddled this trade by putting queer restrictions. Similarly there are many instances where you will find that the States in making certain law or order have totally forgotten the interest of India as a whole and have acted only on the temporary interest either of their State or of any particular interest. If there is any time when there is necessity to have any check on the passing of such laws and orders, it is at present when we find that our economic condition is deteriorating in such a way. Without any disrespect to provincial or Parliament Legislature I would like to say that these require some check and Pandit Bhargava has tabled his amendment No. 366 which is 274E wherein he says—

"Notwithstanding anything contained in this Constitution any citizen of a State shall have the right to move the Supreme Court by appropriate proceedings by the enforcement of the rights conferred by article 13 or part XA of the Constitution."

To this I want to add that this right of moving the Supreme Court is also open to a citizen or State when the law or order passed by a State legislature or Parliament is inconsistent with the general economic policy improvement of India as a whole.

I am told that article 16 of the Constitution which gives free right of trade will also be taken away and the right to move the Supreme Court will also be taken away by the amendment which Dr. Ambedkar has moved. If that right is taken away, it is very necessary that the amendment of Pandit Bhargava which is given as 274F, with my addition be accepted. I shall give a few instances as to how the different laws of the Parliament and of the States have acted against the general economic improvement of India as a whole.

If the honourable Members have seen the communique and the comment of a Staff Reporter as to how our export trade has gone down-in which one of the causes he has mentioned is that we have been unable to export our oil-seeds to such an extent as we would have been able to do but for some restrictions on the movement of the same by Provincial Governments, thereby raising its price. This has told a great deal upon the economy of India as a whole. The U.P. Government put restrictions on the movement of mustard seeds and did not allow the mustard seeds to move from its province to another place, with the result that the whole thing was confined to U.P. traders to crush

those seeds and sell the oil at a very high rate in the U.P. and other markets and that oil was allowed to be sent from U.P. to other places so that the mills of other places may not have the advantage of taking that seed and crush it and then sell it at a competitive rate to the people. This year mustard seed is not available in many of the provinces and even people who crush the seed by country method, that is, by means of *ghani*, they do not get seeds. I got a complaint from the Sadaquat Ashram of Patna which has started various village industries that they are not in a position to get mustard seeds as the U.P. Government had put a ban on its export and that some people were getting it by some other means and so on, and they asked me if I could help them to get supplies of these seeds, from persons who are getting their supplies. Of course that was arranged. But my point here is that the U.P. Government in dealing with this thing did not take into consideration the interests and the economic condition of India as a whole and especially of the general masses.

Then, Sir, I shall give another instance, and that is about potato seeds. Recently an order was promulgated that potato seeds should not be allowed to be exported from one province to another unless the exporter obtained a certificate from the consignee's agricultural department, I mean from the agricultural department of the consignee's province. This thing was enquired into, as to what they meant by it and when the agricultural department of the consignee's province was approached, it was said that all the seeds in the cold storages established in the province should be consumed first, and after that export from other provinces will be allowed. Here, Sir, there are two disadvantages in this arrangement. The first is that this restriction will increase the price of potato seeds in the province of U.P. because those who had stored the seeds would have the monopoly of it and they will charge higher and higher prices. And the second and most important point is that the Government of the U.P. did not take into consideration when promulgamating their order—which order was agreed to by the Government of India, Railway Department—the fact that it is not the seeds grown in the U.P. which will give good result. Seeds of the same place or the same kind of soil are not as suitable for giving good results as the seeds brought from other provinces. Bihar produces very good potato seeds and that province supplies to the whole of India. As such, this order of the U.P. Government, in addition to raising the price of potato seeds in their province will result in less production of potato in their and other provinces.

Sir, the Agricultural Officer had said that he would allow it after the whole cold-storage seeds of this province are used up. But the planting season lasts only for a few days, and what with the red-tapism in Government Departments, and the long delay in getting an order passed, by the time they allow the import of seeds from other provinces, the planting season would be over and the seeds in Bihar would be spoilt and the cultivators they will find their potato seeds all have got rotten and apart from their suffering a great loss the other provinces will not get seeds in time resulting in less plantation and less congentment production. Sir, after a great deal of difficulty this order was removed.

Then, recently there was another order from the Himachal Pradesh putting an export duty on potato sent out from Himachal Pradesh. We all knows that at present it is essential that the price of foodstuffs should go down as fast as possible. Though potato may be regarded a vegetable, it serves more or less as a cereal also. This export duty on potato may yield more revenue to the State, but it will tell upon the price of potato. If they had allowed free export of potato, then the price of potato here would have come down, and people would have got it at a much lower rate, than the price at which they get now.

[Shri B. P. Jhunjhunwala]

There is another instance, to which though it may not be quite relevant here, with your permission I would like to refer. In the year 1940, the Governments of Bihar and U.P. passed an order that as there was surplus of sugar, no more cane should be allowed to be crushed. The industry and the general public tried its best to see that canes were allowed to be crushed so that the poor cultivators may not suffer, but their requests were not heard. The result was that the cane was allowed to dry in the fields, resulting in the loss of crores of rupees to the poor cultivators. Not only that, subsequently, the U.P. and Bihar Governments brought down the price of cane. In 1940 or 1939—I do not exactly remember, it was 11 or 12 annas and this was suddenly brought down to 4 annas 9 pies in the subsequent year with the result there was a great set-back in the sugar industry, due to less plantation of cane; at least the industry in Bihar has not yet recovered from that set-back.

I may give you another one instance, the instance of sugar. At present I find that every day the Government of India is issuing a communique to control the price of sugar. It is right that they should try to stop the price from going higher and higher and whether they will succeed or not is a different question. It was very bad of the syndicate to have allowed the factories to sell the sugar at higher price and charge a premium privately or publicly. Even if the sugar going into the market was being sold at a higher price, the millers and the syndicate should not have indulged in charging premiums as I feel fair play must begin at some source and one should not take to wrong thing by saying that otherwise others will get benefit out of it and thereby create vicious circle. Well, it was pointed out as far back as November 1948 to the Government of India that there would be a shortage of sugar and certain suggestions were made by which the production of sugar could be increased, even with the standing crop of cane. One of the suggestions was that the price of cane should be higher which comes from a long distance and the other suggestion was that if the cane is crushed at a later stage when there is less sucrose in cane, for that sugar some allowance should be made in price of sugar. If those two suggestions had been accepted by the Government of India and they had taken it into their head to understand those suggestions, this situation would not have arisen and we would have had sugar at a cheaper rate. As I said in the beginning, without any disrespect, without any disregard of the State legislature or Parliament or any of the Ministers either in the provinces or in the Centre, I would suggest that the amendment moved by Pandit Thakur Das Bhargava with the addition I have proposed is very essential and this question should be regarded as justiciable of course making exception when such law or order is for temporary emergency purposes; as it will act as a check on them.

Shri Kuladhar Chaliha (Assam : General) : Sir, I have not been able to follow Mr. Jhunjhunwala as to why his amendment has been moved. The objectionable provision has already been deleted and Dr. Ambedkar has put in a new article which is a great improvement on the original. Though we have often had to disagreed with the Drafting Committee, in this particular case it could not have been better. I find when textiles are purchased in Bombay, they are taxed there and again it is done in Assam. This discrimination is taken away. We shall have uniformtiy of law in inter-State trade. If potato seeds are taken from Shillong to Calcutta or Bihar they will not be taxed as before. I do not know why Mr. Jhunjhunwala made such a long speech on his amendment. I find Dr. Ambedkar's amendment is a great improvement on the existing law and I support it whole-heartedly and oppose Mr. Jhunjhunwala's amendment.

Shri Prabhu Dayal Himatsingka (West Bengal: General): Sir, I beg to support the various amendments moved by the honourable Member, Pandit Bhargava. So far as these articles are concerned the idea should be to put as few restrictions as possible, and trade and commerce should be allowed to be free without any restriction. Restriction should be only when it is absolutely necessary and in the interest of the general public or in a special emergency. Pandit Bhargava's amendments seek to limit the power of the Government to reasonable restrictions and when such restrictions are required in the interest of the general public. He has also suggested certain amendments to article 274C by introducing the word "temporary" by his amendment No. 353 before the word "scarcity" and also by adding the words "for the period of the emergency", which is amendment No. 354. I would request the Drafting Committee to consider whether or not they should accept his amendment No. 343 suggesting the introduction of the word "reasonable" before the word "restriction" in article 274B, and amendment No. 345 suggesting the substitution of the words "interests of the general public", for the words "public interest". Similarly I would request them to consider accepting amendments Nos. 353 and 354.

As it is intended that article 16 should be removed from the present chapter on Fundamental Rights and 274A is intended in substitution of that section, I think amendment No. 366, suggested by Pandit Bhargava for adding an additional clause as 274F has also become absolutely necessary. Otherwise it would be a question of doubt even when we know that certain restrictions and proceedings are invalid as to whether a person is entitled to seek redress in a court of law. Therefore, I support the various amendments moved by Pandit Bhargava and would request the Drafting Committee specially to consider his amendments Nos. 343, 345, 353, 354 and 366. With these words I support the amendments moved by Pandit Thakur Das Bhargava.

Prof. Shibban Lal Saksena: Sir, this new chapter, Part X-A, is a very important one. This article 274A is what was formerly article 16 in the Constitution as a fundamental right. It would now become an ordinary article of the constitution and in that respect we have lost. But the other articles which have been proposed also need to be carefully amended and I am very glad that Pandit Thakur Das Bhargava has tabled his amendments to these. I myself had tabled an amendment to the former article 244 for the abolition of clause (b) of that article. Now of course that amendment is out of order, because the whole thing has been changed and put in a different form. I therefore desire only to support the amendments moved by Pandit Bhargava. Particularly, I do not see that there can be any argument against his amendment No. 343 to article 274B. In fact even in article 13 on fundamental rights he had succeeded in getting the word "reasonable" introduced before all those restrictions imposed on those fundamental rights. I therefore think that this right of freedom of trade is very essential and if any restrictions are to be imposed upon it they should be "reasonable" so that the rights may be justiciable and people may go to a court if Parliament or a State legislature tried to impose any restrictions which are not reasonable.

Mr. Jhunjhunwala dealt at length with the way in which freedom of trade may be interfered with. I could also have gone into such details but I am conscious of the urgency with which you, Sir, are trying to finish the article, so that I will not go into details. But I must say that I was shocked to learn only recently that in East Punjab several crores of maunds of gram had not been moved outside because of the restrictions which the Government had imposed. When India is importing grain from outside and spending crores of rupees, I think it is criminal waste that crores of maunds of gram should have been allowed to be spoilt in that area and reasonable facilities for interprovincial trades should not have been allowed so that the gram could have been used elsewhere.

[Prof. Shibban Lal Saksena]

I think my amendment which is intended to remove part (2) of 274C, which has also been sought to be done by Pandit Thakur Das Bhargava, should be accepted, so that there may not be any discrimination and the Centre may be at liberty at least to restrict the freedom of provinces to keep such grains for themselves. I think the amendment is a very important amendment and I hope Dr. Ambedkar will see the wisdom of accepting it.

Shri T. T. Krishnamachari: Mr. President, Sir, I have no desire to flatter the Drafting Committee, but I do believe that the amendments that have been placed before the House in respect of trade, commerce and intercourse within the territory of India are about as nearly perfect as human ingenuity could possibly make them.

There are two sets of arguments against these articles that this House has had to face. The first is by my honourable Friend, Pandit Thakur Das Bhargava, who has moved a series of amendments, the main purport of them being to whittle down the limited discretion that is given to Parliament, or to the Legislature of a State as the case may be, in respect of these articles. My honourable Friend wants in article 274B the word "reasonable" to be introduced so that restrictions imposed may be reasonable. I know in another instance we have accepted his amendment, particularly in regard to article 13, and I am also aware how it is going to open up an absolute flood-gate of litigation. My honourable Friend also objects to any power being given to the States in order to put restrictions on trade and commerce to a very limited extent. The other amendments he has suggested are only consequential. It is certainly a matter of opinion whether the wording has to be "in the public interest" or "in the interests of the general public". Actually the idea seems to be that it must be made as vague as possible.

Let me tell the House that so far as I am concerned I think this is about the maximum amount of liberty that we can give for trade and commerce, the maximum amount of concession that we can give to trade and commerce consistent with the future economic improvement of this country. Even as it was originally suggested, that we should make it a matter of fundamental right, and even without the restriction that have been put in article 16, I am afraid the economic progress of the country will become well-nigh impossible. There is absolutely no use in the honourable Member trying to confuse a matter of civil liberty with a matter of rights in respect of trade and commerce. The world has well-nigh come to a position when trade and commerce cannot be run without control and some kind of direction by the Government. If my honourable friends think that we are in the days of the nineteenth century when the *laissez-faire* enthusiast had practically the ordering of everything in the world I am afraid they are mistaken.

Let me take one particular amendment of my honourable Friend Pandit Thakur Das Bhargava. He objects to the wording of clause (2) of article 274C. He says that a situation arising from scarcity of goods must be qualified by the word "temporary". I am asking my honourable Friend if he can today say that the scarcity of goods in this country which manifests itself in various parts of this country is going to be a temporary affair. Is it not a matter which is going to be more or less permanent, certainly for a period of years, probably decades ?

Pandit Thakur Das Bhargava: Certainly not.

Shri T. T. Krishnamachari: If my honourable Friend holds that opinion I can only agree to differ. I for my part do hold that our present position in the matter of food and certain other essential commodities—the scarcity that is attached to them—is a thing which it will be difficult for us to get over even in a

period of a decade and over. If my honourable Friend is an optimist, I have no quarrel with him but I am not one of the category that holds such opinions. I have a right to say that the fundamental purpose of this Constitution is that it should enable the citizen of this country to live. On this fundamental principle there can be no difference of opinion. I do believe that we cannot fetter the right of a State to order the economy of the country in such a way that the maximum number of people will be benefited by it.

I would say this in regard to the structure of this Chapter. A certain amount of freedom of trade and commerce has to be permitted. No doubt restrictions by the State have to be prevented so that the particular idiosyncrasy of some people in power or narrow provincial policies of certain States should not be allowed to come into play and affect the general economy of the country. That I think is amply covered by a general statement of the proposition in article 274A and also by permitting Parliament, which I have no doubt will be free from provincial prejudices and would not like to favour one province against another normally, to control the extent of limitation power, trade and commerce. Certain amount of powers in regard to restriction on trade is necessary and has been provided for.

Then again the question arises whether it will be right to allow Parliament to discriminate between one State and another. It may be that the people who are in power—at any rate the majority of them—have got particular leanings, and we have to put a check against any improper discrimination between one State and another. That is provided for by article 274C. At the same time a certain amount of discrimination would sometimes become necessary and also desirable. I might give an extreme case though it might not altogether fit in with all the contingencies that have been envisaged by my friends. If supposing in ordering the distribution of cloth which is being produced by and large by the Bombay mills the Government of India says that the distribution so far as Madras is concerned must be restricted to a *per capita* basis of ten yards as against twenty yards to Punjab or twenty-five yards to Punjab and Delhi, having in view the fact that Madras produces a certain amount of handloom goods which ought to be consumed in that area for the benefit of those people, and one of the citizens to whom my honourable Friend, Pandit Thakur Das Bhargava wants to give a right to go to the Supreme Court might feel offended for the reason that he has to pay a much higher price for the handloom cloth. He has, by reason of this restriction of import of mill-made cloth into Madras. to purchase more handloom cloth, at perhaps relatively higher price and he therefore feels aggrieved and he wants to take it to the Supreme Court. Can such a thing be allowed? There would be plenty of cloth available of a general category. It may be that it is necessary for the general well being of the country as a whole that the Madras consumer is asked to pay a little more in regard to a portion of the cloth that he buys. It is a perfectly reasonable restriction. But if my honourable Friend Pandit Thakur Das Bhargava has his own way, any person who is offended or aggrieved by a decision of the Government of India on these lines could go to the Supreme Court. Sir, the idea of 274C (2) is merely to allow the Government of India permission to restrict the movement of goods so as to arrange the whole economy in such a manner that the economy of the country will be well-balanced and everybody will be supplied with his necessities. As my honourable Friend Prof. Shibban Lal Saksena said the other day, the primary condition in regard to satisfaction of human needs must be satisfaction of their necessities. And I do feel that if the Government which is going to come into being as a result of this Constitution has to stay put for a long time, has to carry out the directives and purposes of this Constitution, it must be given enough power to control the economy of the country for the benefit of the masses of the country and not for the benefit of a few traders or merchants.

So far as 274D is concerned, my honourable Friend Pandit Thakur Das Bhargava will either wholly amend it in such a way as to completely change its

[Shri T. T. Krishnamachari]

shape or completely eliminate it. I feel that it arises—I have no doubt—from a particular bitter experience of his in which a Provincial Government has not executed its duty towards its people in the proper way. But hard cases do not always mean bad law. There is no reason for us to completely shut out discretion of the States in so far as the Central Government will have enough power not merely to have a uniform fiscal policy but also as far as possible to have a uniform economic policy. And that is provided by the fact that the President's previous sanction is necessary in regard to any legislation undertaken by the State under clause (b) of 274D.

Pandit Thakur Das Bhargava: Is it not exactly the reason why the Provinces and the State Legislatures should not be given the power?

Shri T. T. Krishnamachari: That is exactly the reason why they should be given the power. The State should be given a certain amount of right in this matter and the only reason why the Centre should interfere is to see that the economic and fiscal policy of the Centre is not unduly interfered with, and to the extent that it cannot be interfered with the State must be given a reasonable amount of power to order its own affairs.

I would like to say a word more before closing about the details mentioned in this Chapter. The reason for such detailed provision and a balancing of the interests of both the Centre and the Provinces is not one that has arisen because of a very particular whim or wish of either Dr. Ambedkar of the other Members of the Drafting Committee. It is more or less based on the experience of how this restriction on the power of the other Central Legislatures in the other Constitutions—or the conferment of a special power on the Central Legislatures by certain other Constitutions—has operated in practice. My honourable Friend Pandit Thakur Das Bhargava knows the amount of case law that has grown round the commerce clause so far as the United States Constitution is concerned. On the other hand, I do not know if he realises that an ombnibus right such as the one that we recognise should not be given so far as freedom of trade and commerce is concerned, which perhaps has an echo in article 92 of the Australian Constitution, which has made the economic position of Australia a very difficult one today. They in Australia find that by reason of the fact that their provisions for amendment of the Constitution are so difficult that they are not able to amend the Constitution, and article 92 stands as a bar to any progressive legislation which they have undertaken. It may be right or it may be wrong—the people of Australia are behind the Government—but when they wanted to nationalise banking, article 92 of the Australian Constitution has been held as a bar to the Government's power to nationalise the banks. There is no point in shutting the hands of the future Government in operating this Constitution.

Dr. P. S. Deshmukh: When was this situation understood and realised for the first time?

Shri T. T. Krishnamachari: If my honourable friend wants me to say that I owe the realisation of this fact to my honourable Friend Dr. Deshmukh, I must deny any such idea. The thing has been realised long ago; any student of constitutions knows that there are similar articles in the various constitutions, and it is only because of the difficulties experienced by the people who work those constitutions that we have taken the liberty of putting forward this balanced and comprehensive chapter in regard to control of trade and commerce before the House. I do suggest, Sir, that the House would do well not to depart from the scheme, as the scheme as I said before is the best that could possibly be forged at the present moment having in view the demands of the future and the well-being of the country which would depend on how this Constitution would work.

Sir, I support the motion made by Dr. Ambedkar.

Shri Alladi Krishnaswami Ayyar: Mr. President, Sir, in the first place, I venture to state that these articles form a very well-thought-out scheme in regard to inter-State trade and commerce. This problem of inter-State trade and commerce has baffled constitutional experts in Australia, in America and in other Federal Constitutions. My Friend Dr. Ambedkar, in the scheme he has evolved, has taken into account the larger interests of India as well as the interests of particular State and the wide geography of this country in which the interests of one region differ from the interests of another region. There is no need to mention that famine may be raging in one part of the country while there is plenty in another part. It may be that manure and other things are required in one part of the country while profiteers from another part of the country may try to transport the goods from the part affected. At the same time, in the interests of the larger economy and the future prosperity of our country, a certain degree of freedom of trade must be guaranteed.

My Friend Mr. Krishnamachari has pointed out that this freedom clause in the Austrialian Constitution has given rise to considerable trouble and to conflicting decisions of the highest Court. There has been a feeling in those parts of Australia which depend for their well-being on agricultural conditions that their interests are being sacrificed to manufacturing regions, and there has been rivalry between manufacturing and agricultural interests. Therefore, in a federation what you have to do is, first, you will have to take into account the larger interests of India and permit freedom of trade and intercourse as far as possible. Secondly, you cannot ignore altogether regional interests. Thirdly, there must be the power intervention of the Centre in any case of crisis to deal with peculiar problems that might arise in any part of India. All these three factors are taken into account in the scheme that has been placed before you.

Now, let us take the comments that have been made. The scheme is this. Article 274A lays down the general principles of freedom of trade and commerce as the governing principle. Then 274B deals with certain restrictions, "as may be required in the public interests". I do not want to go into that metaphysical or subtle distinction between "the interests of the public" and "public interest". I do not think there is any substance in that contention; the interest of the public and the public interest are in my view identical. Therefore, instead of leaving the freedom of trade guaranteed under article 274 unfettered, it clothes Parliament with the power to interfere with the freedom in certain cases in 274B; that is, certain restriction may be made in the interests of any part of the territory of India as may be required in public interest. That is the principle of article 274B.

Now about article 274C, I am rather surprised that people should take exception to it while they stand by the original article 16. If anything, it enlarges the freedom of trade which has been guaranteed under article 16. Article 16 gives an omnibus power to Parliament to make any inroad on the rights that are guaranteed under article 16. So far as 274C is concerned, it further secures freedom of trade by enlarging the freedom trade and putting an embargo upon the Parliament as well as the Legislature of the State, namely that they shall not discriminate. Therefore, the advocates of the freedom of trade throughout the territory of India cannot take exception to an article which far from restricting the freedom of trade enlarges it.

The next comment was, there should be no reference to the power in relation to trade and commerce. It was advisedly put in for the reason that there might be very many powers which may be exercised by the different States in regard to supply of goods, the internal or indigenous industry, which may trench upon trade and commerce but which may not bear directly upon trade and

[Shri Alladi Krishnaswami Ayyar]

commerce. It is not the intention to interfere with these powers of the Provinces or States. Therefore the main article itself provides that by virtue of any power vested in them in regard to trade and commerce, neither Parliament nor the legislature shall enact any discriminatory law.

Then as to the principle of article 274C. The situation in the great continent of India may not be the same everywhere; there may be profiteers in one part and entrepreneurs in another and famine and scarcity in a third part—to deal with particular situations a certain course of action may have to be taken. When there is scarcity in one part it need not be accentuated by people from another part of the country exporting articles from profits motives. Parliament should have power to control it. That is the object of this article.

Then I am surprised at exception being taken to the terms of article 274D. It does not give any unfettered power to the States. The proviso clearly lays down—

"No Bill or amendment for the purposes of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the previous sanction of the President."

Therefore, if on account of parochial patriotism or separatism, without consulting the larger interests of India as a whole if any Bill or amendment is introduced, it will be open to the President, namely, the Cabinet of India to withhold sanction. This is therefore a very restricted power that is conferred on the legislature of a State. After all what is the nature of the power given? The power is confined to imposing such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest therefore the President who has to grant sanction will have the opportunity to see that the legislation is in the public interest and that the restriction imposed is reasonable. It is not possible to devise a water-tight formula for the purpose of defining these restrictions.

Lastly, I want to say that there is absolutely no substance in the observation that this offends against any fundamental rights guaranteed. If a man has a right to move about the territory of India, hold property and so on, under article 13, this does not in any way restrict that right conferred by that article. So far as article 16 is concerned, the substance of the freedom of trade guarantee is preserved. We have prohibited the States and the Centre from passing discriminatory laws.

Shrimati G. Durgabai (Madras : General) : Sir, the question may now be put.

The President: The question is :

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Mr. President, I do not think I can usefully add anything to what my Friends Shri T. T. Krishnamachari and Shri Alladi Krishnaswami Ayyar have said.

Mr. President: Now I will put the amendments to vote. The first amendment relates to the heading. The question is :

"That in amendment No. 269 of List IV (Seventh Week), in the heading of the proposed new Part X-A, for the words "Trade, Commerce and Inter-course" the words "Trade and Commerce" be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274A, the following be substituted:

'274-A. Subject to other provisions made in this Constitution, trade and commerce in any State or territory of India or between any two or more States of the Union, shall be as may be determined by the Parliament from time to time.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 292 above, in the proposed clause (c) of the proposed article 274A, for the word 'Part' the word 'Constitution' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That proposed article 274-A stand part of the Constitution."

The motion was adopted.

Article 274-A was added to the Constitution.

Mr. President: The question is:

Pandit Thakur Das Bhargava: You may put all the amendments together to the vote. That will save time. They are all being negatived.

Mr. President: I thought the formality had to be observed. I will adopt the course suggested. The question is:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274B, the following be substituted:—

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274B, before the word "restrictions" the word "reasonable" be inserted.'"

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274B, for the words 'trade, commerce or inter-course the words 'trade or commerce' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274B, for the words 'public interest' the words 'interests of the general public' be substituted."

The amendments were negatived.

Mr. President: The question is:

"That proposed article 274B stand part of the Constitution."

The motion was adopted.

Article 274-B was added to the Constitution.

Mr. President: The question is:

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274C be deleted."

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274C, the following be substituted:—

'274-C. (1) Legislature of a State shall not make any law giving or authorizing the giving of preference to one State over another or making any discrimination or authorizing the making of any discrimination between one State and another except with the consent of the Parliament.

[Mr. President]

(2) Legislature of a State may, however, by law—

(a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so as not to discriminate between goods so imported and goods so manufactured or produced, and

(b) impose such reasonable restrictions on trade and commerce or inter-commerce with or within that State as may be required in the public interest with the previous approval of the Parliament.' "

"That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274-C, for the words 'to one State over another' the words 'to any State as against any other State in the Union or to any part within that State' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274C, for the words 'between one State and another' the words 'between any State and another State of the Union or between any parts within that State' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274-C, the words 'by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule' be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, after the words 'prevent Parliament from making any law' the words 'with previous consultation of the Government and Legislature of a State' be inserted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, for the words 'a situation' the words 'any emergent situation' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, before the word 'scarcity' the word 'temporary' be inserted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, the words 'for the period of the emergency' be added at the end."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, the words 'for such period as the situation lasts' be added at the end."

The amendments were negatived.

Mr. President: The question is:

"That proposed article 274-C stand part of the Constitution."

The motion was adopted.

Article 274-C was added to the Constitution.

Mr. President: The question is:

"That in amendment No. 2821 of the List of Amendments, for the proposed article 244, the following be substituted:—

'244. It shall not be lawful for any State either to impose any tax on goods imported from any State or to impose any restrictions on the freedom of trade, commerce or inter-course with any State.' "

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274-D, the following be substituted:—

'274-D. Parliament may, by law, appoint such authority or delegate its powers to such person or persons and confer on them such powers and duties as it thinks necessary.' "

"That in amendment No. 269 of List IV (Seventh Week), clause (b) of the proposed new article 274-D be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words 'or inter-course' be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words 'with or' be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, for the words 'in the public interest', the words 'in the interests of the general public and are not inconsistent with the provisions of article 13' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, for the words 'public interest' the words 'interests of the general public' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words during any period of emergency arising from scarcity of goods within the State for the period of such emergency' be added at the end."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274-D, the following new clause be added at the end :—

'The President shall be competent to revoke such sanction when he considers it expedient to do so in the interests of the general public and on such revocation being made the law of the State imposing restrictions shall become void.' "

The amendments were negatived.

Mr. President: The question is :

"That proposed article 274-D stand part of the Constitution."

The motion was adopted.

Article 274-D was added to the Constitution.

Mr. President: The question is :

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274-E be deleted "

The amendment was negatived.

Mr. President: The question is :

"That proposed article 274-E stand part of the Constitution."

The motion was adopted.

Article 274-E was added to the Constitution.

Mr. President: The question is :

"That in amendment No. 269 of List IV (Seventh Week), after the proposed new article 274-E the following new article be added :—

'274-F. Notwithstanding anything contained in this Constitution, any citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 13 or Part X-A of the Constitution.' "

The amendment was negatived.

Mr. President: I think these are all the amendments to deal with.

The House will now adjourn till Nine of the Clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Friday the 9th September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 9th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*contd.*)

Shri Yudhisthir Misra (Orissa States): Before we begin today's proceedings, may I draw your attention, Sir, to a pamphlet which has been issued yesterday about international numerals and which was circulated from the Office of the Constituent Assembly. The pamphlet has been issued by the Hindi Sahitya Sammelan and contains certain offensive paragraphs, and for your information I will read one or two sentences from it First may I know, Sir, whether this pamphlet can be issued from the office of the Constituent Assembly, as it contains certain offensive remarks against the Prime Minister and also against some other Members?

Mr. President: It is not issued by the Office of the Constituent Assembly.

Shri Yudhisthir Misra: It was in the dak which was circulated from the office to the Members.

Mr. President: It should not have been done by the office. I was not aware of it. I received a complaint about the distribution of another pamphlet by another Member, but that was not to the Members of the House, but it was in the Press Gallery. As it was in the Press Gallery, I did not take any notice of it, but this has been distributed from the officer. I am really sorry; it should not have been done.

We shall begin with article 264 now Amendment No. 270

Article 264

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move:

"That for article 264, the following article be substituted —

Exemption of property. of the Union from State Taxation

"264 (1) The property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) of this article shall, until Parliament by law otherwise provides, prevent any local authority within a State from imposing any tax on any property of the Union to which such property was immediately before the commencement of this Consitution liable or treated as liable so long as that tax continues to be levied in that State."

I will speak after the amendments have been moved, if there is any debate.

Mr. President: Amendment No. 303 of which notice has been given by Mr. Brajeshwar Prasad, but that relates to the original article. Do you wish to move it?

Shri R. K. Sidhva (C.P. & Berar: General): There are amendments Nos. 208 and 209 on page 28 of the printed list standing in my name. I had given notice of these amendments long ago in conformity with the rules of procedure. There is also another amendment, No. 435 in List IX Seventh Week to that effect standing in my name.

Mr. President: We will come to that.

Shri Brajeshwar Prasad (Bihar: General): Sir, I move my amendment No. 303.

Mr. President: Your amendment does not fit in with this article.

Shri Brajeshwar Prasad: May I move (b), Sir?

Shri T. T. Krishnamachari (Madras: General): Nor does that fit in the proviso, Sir.

Mr. President: There is no proviso in this and therefore (b) does not fit in.

Shri R. K. Sidhva: I do not think that amendments that came late should be given preference over the amendments which I have given notice of according to rules of procedure.

Mr. President: I think this list was circulated several days ago.

(Amendment No. 304 was not moved.)

Shri R. K. Sidva: Sir, I beg to move:

"That in amendment No. 270 of List IV (Seventh Week), for the proposed article 264, the following be substituted:—

'264. The property of the Union shall, save in so far as the Parliament may by law otherwise provide, be as much liable to all taxes imposed by any local authority within a State as any property of an individual'."

Sir, this amendment is of very vital importance as far as the taxes of the Union properties are concerned. The Union properties in the territory of India are the Posts and Telegraphs, the Customs House, the Excise, the Auditor-General and the most important is the railway properties. These properties are sought to be exempted from the payment of taxes by the local bodies. This contentious subject has been a bone of contention between the Provincial Governments and the Union Government for the last 25 years. The local authorities render service to these properties and therefore tax them. So I do not see any reason why the Union property should be exempted and invidious distinction should be made. Because the Union is the supreme Government, it does not mean that taxes which are due to be paid to the local bodies, which are weaker bodies in the matter of finances, should not even take their legitimate taxes to which they are entitled. As regards the buildings which I stated of Customs, and Posts and Telegraphs, in many towns they are in rented buildings and there the question does not arise but as regards the properties of the Union themselves the question of taxes arise. In almost each town and each village there is railway property and railway properties have been sought to be exempted by this article. Under section 35 of the Railway Act which is known as the Railway Local Authority Taxation Act, 1941, if any local authority seeks for the levy of the tax a notification has to be issued by the railway authorities. Not only that, Sir, the local authority has to prove to the officials that the tax is due. Secondly, it is stated that the onus of proof lies with the authorities, although it is apparent to everyone that the local authority render service for sanitation, hygiene, conservancy, roads, lighting, fire-brigade; all these are maintained in the railway buildings, yet when they are asked to pay and which they are entitled, in many cases these dues are not paid. I will quote instances where the railway authorities in spite of the local authorities complying with their requests have not paid their dues which they are supposed to pay. In this respect almost all the provincial ministers have unanimously resolved that this tax should be paid. I will quote you presently the opinion of various Governments in regard to the payment of taxes on these Union buildings from which it will be seen that not one Provincial Government has stated that there should be exemption.

In Bengal in Rishra-Konnagar a notification for declaring liability for holding and conservancy rates was published in 1916. On 16th January 1944 the area was split up into two Municipalities and the Railways suddenly stopped payment on 1st April 1946 on the ground that fresh notification was necessary. Such a notification was issued only on 25th August 1948. Moreover, although liability to pay lighting tax was declared in 1945 by the Government of India, the railway administration held up payment on one pretext or another and then the Railway Board agreed, and yet the Board later on stated that these liabilities are not due and they should not be paid. In Kanchrapara Municipality, prolonged correspondence has failed to elicite the Railway Board's consent to pay conservancy rate, the Railway Board replying on 2nd November 1948 that it did not get any drainage service from the Municipality in spite of the fact that all these requests were complied with.

On account of this controversy, Sir, a conference was held in Delhi of the various ministers from the Provinces in August 1948 and the opinion of Ministers who assembled there was that they unequivocally and unanimously supported that the Union property should be taxed. The Minister from Madras.....

Mr. President: Mr. Sidhva, the unfortunate fact is that there are many Premiers of provinces who are Members of this Assembly and not one of them has thought fit to send in an amendment to this article and to which you have given your amendment.

Shri R. K. Sidhva: Sir, that does not matter. I represent all the provinces, as far this matter is concerned. I am speaking in my capacity as the President of the Local Authorities Union and on the initiation of the local authorities a conference was called.....

Mr. President: I may draw atteniton to the fact that you cannot draw any inference from what they said at conferences when they have not themselves thought fit to say anything in this Assembly.

Shri R. K. Sidhva: Though they have not sent amendments, they have reliance on me as an authoritative speaker and they have left the matter entirely to me. Sir, what I was stating was that this income is one of the major incomes of the local bodies. No Member, I can assure you, Sir, who is interested in the local bodies will say that these taxes should not be levied.

Mr. President: I am not saying anything on the merits. I am only saying...

Shri R. K. Sidhva: I say, Sir, any Member who is interested in the local bodies; there are many Members who have no interest....

Mr. President: You cannot rely upon the authority of what the Ministers said elsewhere when they are not repeating the same thing here in this House.

Shri R. K. Sidhva: I am quoting from the records to state what is happening in the provinces so far as these taxes are concerned. The Madras Minister was of the opinion that the general principle of taxation applicable to private property and those belonging to provincial Governments should be followed in regard to taxation of railway property as well. I do not want to quote the speech at length. The Bombay Government has very strongly stated that the railways are commercial undertakings, run for profit, and there is no equitable reason for giving them a privileged position in respect of local taxation, especially as the residents of the railway colonies take advantage of the road and other amenities which are provided by the local authorities. In the province of Bombay, Sir, no exemption is admissible even to the provincial Government in respect of property used for purposes of profit, and local taxes have to be paid in respect of property and there is no reason why the railway administration should not be treated exactly like other commercial undertakings

[Shri R. K. Sidhva]

whether private or State. The Assam Government's view is that the Central Government railway property should be liable to local taxation like provincial Government property. The Central Provinces and Berar Government are of the view that the railways are commercial undertakings making large profits and it would only be just and proper that they should like other commercial undertakings contribute towards the cost and maintenance of sanitation, and other amenities in the municipal areas in which the properties are located. The United Provinces Government have very strongly stated that this exemption has no justification and that there is no reason why the Dominion Government property should enjoy such privileges while enjoying the amenities provided by the local bodies by virtue of such properties being situated within the jurisdiction of local bodies. These are the opinions of some of the Governments. From these it will be seen how keen the provincial Governments are to support the local bodies in getting these taxes, because this is a major source of income. I can give you, Sir, one illustration. The Howrah Municipality has represented to the Government that if these taxes are exempted, it will lose to the extent of Rs. 206,000. You can understand, Sir, a small Municipality like the Howrah Municipality losing such a large amount.

Mr. President: This article does not cause that loss. The second paragraph saves that.

Shri R. K. Sidhva: I quite admit that, Sir. I am only just quoting what is happening despite the second paragraph which is more or less existing in the present Act. Further, this question has been before the Legislative Assembly and discussed many times, and many Members have taken great exception in this matter in protesting against the Government for making a discriminatory law exempting the Union Government from payment of these taxes.

The result of this would be that the economic strain to the local bodies would be great and they are likely to suffer as they are even at present suffering. I may assure you, Sir, that the terminal taxes and taxes on property are main sources of income of the local bodies. After all, we must not forget that the Central Government is our own Government; the provincial Governments are our own Governments and the local bodies are our own Governments. The local bodies are the bodies which should be supported to a large extent. These are the bodies where our future Members in the legislature take their first training.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Terminal taxes are not affected by this article.

Shri R. K. Sidhva: I was only mentioning that. Those members of the legislature who have been in the local bodies have been very useful really. That is the training ground. The local bodies require to flourish and they should be supported by the Central Government and the provincial Governments. They are crippled from all sides from the financial point of view. They are asked to levy their taxes; but their sources are very limited. If you go to foreign countries the local bodies are given great assistance and lump grants are made by the Central Government. They are given grants for all their departments. In England, one-fourth of the taxes on State property are given to the local bodies. Similarly in the United States also because they feel that the local bodies are the pivot of the whole national Government.

I feel that this matter has been lightly treated by this House and by some of the honourable Members. I am sure that those Members who have taken an interest in local bodies are very keen in this matter. I am sorry that the Honourable Pandit Govind Ballabh Pant who has given notice of an amendment is not here to move it. He has actually fought with cudgels on this matter I do not see why against the unanimous opinion of the provincial Ministers,

the Finance Minister or the Railway Minister should come in the way; that is my difficulty. If you do not care to listen to the unanimous opinion of all the provincial Governments and only depend upon one Minister in the Centre, then I can tell you, the local bodies and the provincial Governments cannot function satisfactorily. These are creatures of our own Constitution. If you are not prepared to listen to these bodies who express their view unanimously, as I have quoted just now, I do know what more proof could be produced to show that these bodies require help.

Having gone into this question, I might mention that the Railways feel, as they generally feel and complain, that they are not legitimately taxed or that they are likely to be taxed heavily. The Madras Government have made a suggestion : appoint a committee consisting of some members of the Central Government, some members of the provincial Government and some members of local bodies and find out a solution and fix the amount which is legitimately due. My honourable Friend Dr. Ambedkar has not made any speech while moving his amendment. I do not know therefore what his objections are. But, if he feels, as I anticipate rightly, that the Union Government is the supreme Government, and the Union Government having no voice in the local bodies, no taxes could be levied on the Union Government, I say, Sir, if that analogy is accepted, there are commercial and industrial interests which are not represented in the local bodies and the local bodies cannot levy any taxes on them. Moreover, he would say no taxation without representation, therefore no representation being given to the local bodies by the Union Government, it is not proper that they should be taxed. I can tell my Friend Dr. Ambedkar that the power of levying taxes by local bodies is not absolute. It is subject to the sanction of the provincial Government and the Central Government. I can cite the Municipal laws, Borough Municipal laws, District Municipality laws, Corporation laws where it is laid down that any tax, big or small which is levied by the local bodies shall be subject to the sanction of the provincial Government and the Union Government.

That being so my Friend Dr. Ambedkar cannot come and say that because there is no representation given to them, therefore they cannot levy the tax. If any tax is levied the matter will finally come to Central Government for approval. The Central Government can reject that. They have rejected in the past. Several municipal corporations have passed certain taxes and the Central Government have turned them down. Therefore that argument does not stand to reason for one moment. I wish he had given his reason while moving the amendment and I would like to know why his Committee is adamant in not acceding to the unanimous opinion of the Ministers of Provincial Governments. My friend may say that this article was framed probably after consultation with the Premiers of all the provinces. I have no access to that. I am prepared to believe what he says, but I do not know. If I were there, I would have faced those Premiers with the opinions of their own Provincial Local Self-Government Ministers who attended this Conference and gave their opinions.

The Local Finance Committee which was appointed at the instance of the Health Minister of the Government of India met as early as 11th June 1949 to consider this subject when the Constitution was being framed because they felt that if they did not consider this matter, their question will go by default. I quote to you the unanimous resolution of all the Provincial Ministers who were present in the Committee meeting.

> "As regards Union properties (except the railways), the same basis of local taxation, *viz.*, the basis applicable to Provincial Government properties, should be applied and the same method of assessment as suggested above (*i.e.*, in Resolution No. 1) should also apply."

Resolution No. 1 is in connection with railway property.

[Shri R. K. Sidhva]

"After holding discussions with the representatives of the Central Government, the Committee is of the opinion that railway property should be held liable for the payment of local taxes in the same way as Provincial Government properties are. As regards the assessment of railway property, the Committee feels that there should be an independent machinery consisting of representatives of the railway authorities, provincial governments and local bodies in order to ensure a proper assessment."

You can see from this that any kind of excess levy, although they do not levy, they cannot levy, still a *via media* has been found out to meet the wishes of the Railway Ministry and despite this, this resolution was communicated to the Drafting Committee; I do not know whether Dr. Ambedkar took this into consideration or not. He owes an explanation to this Committee because this Committee was appointed by the Government of India; to facilitate the finances of the local bodies this Committee was appointed, and despite all these facts, the opinion of the Ministers and the opinion of this Committee have not been taken into consideration, and we are told that either the Railway Minister or the Finance Minister are not prepared to accept the unanimous decision of this Committee. Why are you throttling the opinion unanimously expressed by this Committee? This is not a hypothetical question. If the argument is that there can be no taxation without representation, then I have given him the answer that that argument cannot stand for one moment. Many interests are taxed by local bodies but they have no representation there. Even if it is taxed they have no absolute right to tax and they have to go to Central Government for approval finally. Why do you come in the way of local bodies doing some good work? The Central Government say we do not recognise them. Is the object of this Constitution to throw out these small bodies? Our aim is that these small bodies should be brought up to that level where they could be happy and prosperous. The Central Government are not prepared to give the necessary amount to these bodies. Some of the provincial Governments are doing their best from their money. The Central Government takes the terminal tax. The other day I broke my head with the Drafting Committee for the terminal tax. They have stopped asking the provincial government to levy terminal tax. Everybody wants money. I am a member of the Central Legislature. I am as keen as my friend that the Centre should be strong. At the same time I do not want the local bodies' finances to be jeopardised by this method.

I am very strong in the matter because I have been fighting for this for the last twenty years. Not only myself but the provincial Governments and everybody has been fighting for this. I am prepared to prove by facts. It is for Dr. Ambedkar to disprove these. If he is prepared to prove that, I am subject to any enquiry to show that the Provincial Government are absolutely in favour of allowing the Union property to be taxed. If not, let me have his views. With these words I move this amendment.

Pandit Lakshmi Kanta Maitra: Mr. President, Sir, I feel myself called upon to make certain observations in connection with this article. In my opinion this article raises certain very important issues. The question is, whether the property of the Union should be subject to the taxation in the States or whether there should be an absolute exemption from such taxation. I am not going to examine or controvert the theory that State properties should not be taxed. But I am placing certain observations in the light of what has actually been the practice in this country with regard to taxation of the Union property.

I think most of the Members of this House are not aware that this question came up for consideration in the shape of a Bill in 1941. I am not going to give any details from the proceedings of the Central Legislative Assembly of 1941 when this Bill was discussed and passed, but I will make a passing reference to some pages and I invite the attention of the House to the proceedings reported in Volume IV of 1941 November Session of the Legislative Assembly

in 1941. The Bill that came up for consideration and was eventually passed was 'The Railways Local Authorities Taxation Bill'. In that Bill—I give the gist of it—it was contended that the railway property as such would not be subject to any form of local taxes unless the local bodies rendered specific services to the railways. I may tell you at once that I stoutly resisted that proposition and throughout the discussion of this Bill I put up a stiff fight on behalf of local authorities as I felt that such a condition would act very disastrously on the finances of local self-governing institutions of the country. However, there was a settlement, a compromise. All the Mayors of the different corporations in India were called together, a conference was held in which I was a participant, and eventually a formula was evolved which somehow was acceptable to us.

Now the point that has to be considered in connection with this, is this: Are we in a position now to exempt all the Union property from local taxes? Look at the equity of it, apart from the theory involved in it, from the practical aspect. In all municipalities there are certain types of taxes imposed on holdings, and holdings are defined in municipal laws in different ways. Generally a particular plot of land with certain boundaries is a holding. Now, municipalities have got different forms of rates. They have holding rates, conservancy rates, lighting rate, education rates, water rates and other rates. It so happens that no property situated within the limits of the municipal jurisdiction is exempt in any way from any of these items of taxation. Even if there is a fallow piece of land in a municipality and practically the municipality renders no service to it, even then this fallow land is a holding and as such is subject to all these forms of taxation : no question arises of services rendered by the municipality. Similarly in big cities like Calcutta, Bombay, Madras, Allahbad, Moghulsarai, look at the vast amount of railway property that is there. The railway workshops at Kanchrapara, Lilooah, Jamalpur, Moghulsarai and other places the staff quarters, the railway colonies, railway sidings, railway-lines and so on. There was a perpetual controversy between the corporations and the government with regard to local taxation of these railways. And in order to avoid the taxes the railways in many cases later on had their own sources of water-supply, electricity and conservancy arrangements and things like that, and then they contended, "We have provided our own arrangements, and government properties will therefore not be liable to taxation". I submit that this is a very questionable proposition. As I said, there is absolutely no consideration shown to any private person for granting immunity on the grounds that I have stated. I agree that the Drafting Committee's latest amendment is a great improvement on the original draft. It provides that for the period immediately following the commencement of the Constitution, such taxes as were leviable on the Union property would continue to be levied, unless and until Parliament prescribed otherwise. This certainly is an improvement. But it is necessary for me to place on record for future reference by the Indian Parliament that this is a very vital issue. It is not a question of railway property alone, though that forms the bulk of the Union property in the States. According to the Act of 1941, if there is a notification to that effect by the Government local taxes in respect of them, could be collected. But the taxes would be in a modified form. There the criterion is services rendered.

The Honourable Dr. B. R. Ambedkar: You have taken more than five minutes.

Pandit Lakshmi Kanta Maitra: It does not matter. Nobody is going to speak after me. This is a very vital issue and I have been fighting for the protection of municipalities and all other local bodies, and I feel it my duty to warn future parliamentarians to proceed very slowly and very cautiously in this matter and that they should not be guided by mere theory. The taxes from

[Pandit Lakshmi Kanta Maitra]

railway properties is an important source of revenue to the corporations, municipalities, district boards and union boards. Let this fact not be forgotten that grant of exemption will be a serious encroachment on the finances of these local self-governing institutions. That is one side. Now there is the other side. You have provided in the article—and of course, theoretically it is all right—you have provided in article 264 that Union property shall not be taxed. And in article 266 you have provided that income of the State shall not be taxed by Central Government. Of course, here is the principle of reciprocity which in vulgar language means, "You scratch my back, and I will scratch yours". And in between these two arrangements the local self-governing institutions have to suffer. That is the whole point for consideration. In municipalities even the humanitarian and public institutions like orphanages, dispensaries, schools, temples, mosques, dharmsalas etc.—bodies that are not profit-earning institutions—are not exempt from local taxes. And as I said, no discrimination is shown in their favour even when they have not utilised any of the services offered by the municipality in any way. That is no consideration either for reduction of tax or exemption from it. That being so, it becomes a very dangerous thing to prescribe that Union property as such shall not be subject to taxes.

But it is not railway property alone : Government of India has got a lot of other varieties of property. Take for instance the fertilizer factory at Sindhri. Do you mean to say that the local body there, whatever it be, say, the local board or Union board there would not be entitled to levy any local taxes thereon? Then there is the Mint, the Currency Offices, Post and Telegraph and Telephone office buildings in different places; the Reserve Bank Offices. Numerous other central institutions are springing up all over the country and if you make a sort of general provision that no Union property shall be subjected to local taxes, it will be very difficult for us to accept it, in view of the very delicate nature of the finances of the local self-governing institutions at present and the reaction it will inevitably have on them, if these provisions are literally put into effect. But the only salient feature about the Provision is that at least from the date of the commencement of this Constitution, these institutions will be entitled to levy these taxes as before, and I am thankful to the Drafting Committee for conceding that much. But I would have very much liked that this kind of statutory exemption for all forms of Union property, were not embodied in the Constitution. It could have been left out, it should not have found a place in the Constitution. The whole matter could have been left to the Parliament for decision one way or the other. But as the Drafting Committee is closely following the Government of India Act, 1935, as a model, I have no quarrel. I would only sound a note of warning; let not the authority in the future lightly deal with this question, because it affects the well-being and the very existence of local self-governing institutions, such as corporations, municipalities, district boards, local boards, union boards etc. The fate of all these is inextricably bound up with the provisions contained here. If their taxation is allowed to be continued, it is all right. It will leave them some modicum of wherewithal to carry on. If this is withdrawn, it will mean nothing but disaster to the self-governing institutions. This is all that I have to say. Thank you, Sir.

Shri Chimanlal Chakubhai Shah (Saurashtra): Mr. President, Sir, article 264 has to be read with article 266 which I suppose will be moved presently under amendment 272. The two articles embody a principle of mutuality, namely, the property of the Union shall not be subject to tax by the State and the property of the State shall not be subject to tax by the Union. That is a principle which I accept. But when the property of the Union is exempted from taxation by the State it also means exemption from taxation by any

authority within the State. I also agree that should be so, because if the local authorities were left free to tax the property of the Union as they like, it will be easy for the State merely to assign the tax to the local authority which will enable the local authority to tax Union property which the State itself could not tax. I have therefore no quarrel with the principle embodied in articles 264 and 266. There are, however, two points on which I wish to draw the attention of the House.

Speaking on behalf of the local authority with which I have been associated, namely, the Bombay Municipal Corporation, the Bombay Municipal Corporation has been carrying on a controversy with the Bombay Government since many years to augment its sources of revenue. That controversy is still not at an end. Only recently the Bombay Government appointed a committee with Mr. A. D. Shroff as President to consider the question of giving additional sources of revenue to the Corporation. After all, the sources of revenue of a local body are very limited and also very inelastic. The local body has merely to tax within the four corners of the Act which enables it to tax. The Centre can tax to an unlimited degree. The liabilities and responsibilities of local authorities are increasing and also their expenditure. The Bombay Municipal Corporation, though it is supposed to be one of the richest Corporations, is finding it difficult to make both ends meet. Last year the Bombay Government was pleased to give Rs. 50 lakhs as a grant to meet its deficit and similarly this year also they have given Rs. 50 lakhs. That is possible because the Congress Government in the province is sympathetic and the Congress Party is in majority in the Corporation and each of them work in co-operation. But I submit that the local authority should not be left in the position of having to beg every time. Nothing should therefore be done to deprive the local authorities of their legitimate sources of revenue. I am sure it is not the intention of article 264 to starve the local authorities and I would be glad if the Honourable the Finance Minister can give an assurance on that point.

In article 266 it is said that the property and income of a State shall be exempt from Union taxation. Will that necessarily mean that the property and income of any local authority within the State will also be exempt? If it means that, I should be happy. Secondly, clauses (2) and (3) of article 266 empower the Parliament to tax any trade or business which may be carried on by the State. Should there not be a corresponding provision in article 264 also? Because, with the policy of nationalisation on which we are embarking it is possible that the Union will acquire large undertakings and will own considerable property. These may be within the limits of the State. Would you not permit the State and the local authority to tax those properties of the Union which the Union owns for business? For instance, several local authorities are taking over transport services, public utility concerns, electricity undertakings, etc. I should like an assurance that the income of the local authorities from such transport services and public utility services will be exempt from taxation of the Union, particularly income-tax. The Bombay Municipal Corporation has, for example, recently taken over the Tramway, Bus and Electricity undertakings. It will be a considerable additional source of revenue for them. If these are liable to tax, particularly income-tax, it will reduce their sources of revenue. I would therefore request Dr. Ambedkar to consider these two points, namely, (1) whether in article 266 it is not necessary.....

The Honourable Dr. B. R. Ambedkar: We are for the moment considering 264 and not 266. That may be dealt with when we come to article 266.

Shri Chimanlal Chakubhai Shah: If you do not want me to say anything on that at the present moment, I will not. But I think the two articles are correlated and the one has to be read with the other. That is the only reason

[Shri Chimanlal Chakubhai Shah]

why local bodies are not being permitted to tax the Union property, because under 266 you are also exempting the State property and income from State property from Union taxation. These are the two points to which I wanted to draw the attention of the House.

Shri B. M. Gupte (Bombay : General): Sir, I rise to support the amendment of Mr. Sidhva. Exemption of Central Government property from taxes of local bodies has been a long standing grievance and it is a pity the Drafting Committee did not see its way to remove it. The present position is defended on certain principles and theoretically, I am prepared to concede, that they are correct; but I am afraid that in practical application they are not so.

One of the principles on which it is defended is that the Central Government has no representation in local bodies and has no means of controlling the taxation and it is argued that the power to tax is almost a power to destroy. Naturally therefore, the Central Government cannot give blindly such power to the local bodies. In theory, it is correct, but in practice it is not; because after all local bodies are subordinate to the State and the States are subordinate to the Central Government.

Shri T. T. Krishnamachari: It is not so.

Shri B. M. Gupte: Although in the Constitution we are framing for the country, we call it a Federal State, still the picture that is emerging is not a picture of a federal State. I would rather describe it to be a decentralized form of unitary government. Under this Constitution, not only the local body but even a State cannot afford to defy or be recalcitrant to the Union. Therefore, it is no use saying that the centre has no control over the local body. In other ways also, there are practical limits to the taxation. The local body cannot put a higher rate of tax on Union property than that they can impose on ordinary persons. If there is an exorbitant rate, the rate payers will rise in revolt. And if the rate is not exorbitant, there is no reason why the same rate should not apply to the Union property. Then even judicial appeals are allowed to the District Judge or the City Magistrate. Therefore, it is no use saying that the Centre has got no control over the taxing power of the local body and on that ground therefore the present position cannot be defended.

Then there is another principle which is urged; and that is that local bodies are after all subordinate units of the Government itself; the Central Government, the States and local bodies together form the entire Government and one part of the Government cannot tax another part of the Government. This argument also is not valid. I will give you another example. Take two departments of the same government. If one department of the Central Government sends a telegram to another department, naturally it has to pay the telegraph charges. One department debits it and another credits it. Therefore, I submit that in this matter it is more a question of convenience and of comparative need than of absolute principle or a hard and fast rule.

With regard to comparative need. I will put it to Dr. Ambedkar whether the need of the local body for finance is greater than the need of the Union property for exemption. The local bodies come into daily contact with the people : their activities touch the daily life of the people and naturally therefore their responsibilities are great. Their financial condition is already very straightened today. The Central Government gives them no grant. So if the Central Government gives them no grant, why should not they at least pay taxes to the local bodies on their properties ? These taxes will increase the efficiency of the local bodies and to that extent the Central Government properties that are situated there and the persons who take advantage of those properties would

be benefited by the increased efficiency of the local bodies. Then a difference is made by the Union Government. It is prepared to pay the service taxes I know a distinction is made between service taxes and non-service taxes but that distinction is made simply for the sake of the principle that the local bodies should not make any profit from service taxes. A service tax should be strictly limited to that amount which is necessary for the purpose of that service. That was the intention in devising that classification service and non-service taxes. That does not mean that non-service taxes do not confer any benefit. There is indirect benefit that is derived from the amenities provided by the local bodies. Suppose a very large office is maintained in a city by the Central Government and there is access to that office from the road. That road is built, lighted and swept by the local body. You will say that you derive no direct benefit and therefore you are not bound to pay the non-service taxes, but you do derive benefit from the general service of the local body maintained by those non-service taxes. Therefore this distinction should not be taken advantage of in this connection. The local bodies have to be maintained and they cannot function without grants either from the State or the Centre. There is no question of principle in the matter : the article itself contains an exception and therefore there should be no objection to accepting the amendment.

It must be admitted that the Centre must be strong but a strong Centre cannot be sustained on weak units or weak sub-units. These local bodies are the sub-units which come into intimate contact with the people and unless they function efficiently and are strong, their inefficiency and weakness are bound to recoil on the Union Government itself. I therefore support the amendment.

Shri T. T. Krishnamachari: Sir, the question be now put.

Mr. President: The question is :

"That the question be now put".

The motion was adopted.

Shri R. K. Sidhva: In view of the unanimous views of the Members who have spoken, will the Honourable Dr. Ambedkar kindly reconsider the position ?

Babu Ramnarayan Singh (Bihar : General) : Sir, this is a very important article and the discussion should not be closed so quickly.

Mr. President: The view points have been placed before the House. Dr. Ambedkar will now reply to the debate.

The Honourable Dr. B. R. Ambedkar: Sir, I will first refer to the provisions contained in clause (2) of the proposed article 264. I think it would be agreed that the intention of this clause (2) is to maintain the *status quo*. Consequently under the provisions of clause (2) those municipalities which are levying any particular tax on the properties of the Union immediately before the commencement of the Constitution or on such property as is liable or treated as liable for the levy of these taxes, will continue to levy those taxes. All that clause (2) does is that Parliament should have the authority to examine the nature of the taxes that are being imposed at present. There is nothing more in clause (2), except the saving clause, *viz.*, "until Parliament by law otherwise provides". Until Parliament otherwise provides the existing local authorities, whether they are municipalities or local boards, will continue to levy the taxes on the properties of the Centre. Therefore, so far as the *status quo* is concerned, there can be no quarrel with the provisions contained in article 264.

The only question that can arise is whether the right given by clause (2) should be absolute or should be subject to the proviso contained therein, until

[The Honourable Dr. B. R. Ambedkar]

Parliament otherwise provides. In another place where this matter was discussed I submitted certain arguments for the consideration of the House.

Pandit Hirday Nath Kunzru (United Provinces : General) : Which is the other place that my honourable Friend is referring to ? Is there any other Chamber of the Assembly ?

The Honourable Dr. B. R. Ambedkar : It is unmentionable and therefore I am saying "another place". Because the arguments that I presented there have been reproduced in a garbled fashion I think they have not succeeded in impressing the House with their importance and therefore I should like to repeat my arguments because they are my own, and I should like to repeat them in the way I should like the House to understand them.

I said then that it was difficult to give a *carte blanche* to the local authority to levy taxes on the properties of the Union without any kind of limitation or condition and the arguments were two-fold. First of all, I said and I say right now here that it is impossible theoretically to conceive of any property of a person who is not represented or whose interests are not represented in any particular organisation,—to allow that organisation a right *ad infinitum* to levy any tax upon the property of such persons. It is a principle contrary to the principles of natural justice and I said that so far as the local authorities are concerned, whether they are municipalities or local or district boards, there is practically no representative of the Central Government in those bodies. I said the same thing elsewhere. Secondly, I said that the taxing authority of a local body is derived from a law made by the local legislature, the legislature of the State. It is quit impossible for the Centre to know what particular source of taxation, which has been made over by the Constitution to the State legislature, will be transferred by such State legislature to the local authority. After all, the taxing power of the local authority will be derived from a law made by the State Legislature. It is quite impossible at present to know what particular tax a local body may be authorised by the State Legislature to tax the property of the Central Government. Consequently, not knowing what is to be the nature of the tax, what is to be the extent of the tax, it is really quite impossible to expect the Central Government to surrender without knowing the nature of the tax, the nature of the extent of the tax, to submit itself to the authority of the local body.

That is the reason why in clause (2) it is proposed to make this reservation that parliament should have an opportunity to examine the taxing power of the local authority, the amount of tax that they propose to levy, before parliament will submit itself to allow its property to be taxed by the local authority. As I said, there is not the slightest intention on the part of the parliament or on the part of those who have proposed this article, that parliament when it exercises this authority which is given to it by clause (2) will exempt itself completely from the taxation levied by the local authority. The only reason why this proviso is introduced is to allow Parliament an opportunity to examine the taxation proposals before it is called upon to submit itself to that taxation. I do not think that there is any inequity so far as clause (2) is concerned. Secondly, clause (2) does not take away anything by way of the financial resources now possessed by the local authorities from what they are getting now.

There is, however, one point which I have discovered now, that is a sort of lacuna in clause (1) which I am prepared to rectify. Clause (2) deals with the cases of those municipalities or local authorities which have been levying that tax. We also think that it is desirabe that this right should not be confined to those municipalities or local authorities which have been exercising that right, but Parliament may also extend that privilege of taxing the property of the Centre to those municipalities and local boards which have not so far

exercised that power or failed to do that. Therefore, I am prepared to introduce these words in clause (1) :

"After the words 'The property of the Union shall' the words 'save in so far as Parliament may by law otherwise provide', be added."

That is to say, it would permit Parliament to confer power or to recognise taxation by other municipalities and other local boards which are so far not recognised. I think that is a lacuna which I am prepared to make good so that there may be no discrimination between local authorities which have been taxing and those which have not been taxing. It would be open to Parliament, even after the passing of the Constitution, to make a law permitting those municipalities and local authorities which have not so far levied a tax to levy a tax. Beyond that I am not prepared to go.

Shri Syamanandan Sahaya (Bihar : General): Even under the existing Government of India Act, 1935, municipalities were not allowed to tax buildings belonging to the Government of India.

The Honourable Dr. B. R. Ambedkar : That is what I have said. I could have elaborated the argument a great deal but I do not want to do it because I have accepted that the *status quo* should be maintained. Purely from the constitutional point of view, I would have tremendous objection to clause (2) and I would not allow it, but we are not having a clean slate; we are having so much written on it and therefore I do not want to wipe off what is written. That is the reason why I will have clause (2) and also modify clause (1) to permit Parliament to enable those municipalities which have not been taxing Central property to tax them.

Babu Ramnarayan Singh : Dr. Ambedkar said Parliament will consider the respective claims of the local bodies later on. I want to know what will be the immediate effect of the passing of this Constitution. For instance, in my Province of Bihar certain district boards, especially the District Board of Hazaribagh, always gets a large amount of money from the Government colliery as road cess. May I know whether that payment will be stopped as soon as this Constitution is passed or will it continue to be paid till it is decided upon by the Parliament ?

The Honourable Dr. B. R. Ambedkar : Sir, I cannot express any opinion upon individual taxes that are being levied, but the general proposition is quite clear that if any municipality or local board has been levying a tax that tax will continue to be levied against the property of the Centre and against such other property as will be held liable to taxation. There will be no change in the position of those municipalities which are levying those taxes.

Shri R. K. Sidhva : At present under the Indian Railways Taxation Act, a notification has to be issued in the event of local bodies demanding payment of tax. May I know whether Dr. Ambedkar is prepared to consider that section to be amended ? Of course it cannot be amended here but is there any assurance from the Railway Minister that it is going to be amended in Parliament ?

The Honourable Dr. B. R. Ambedkar : Sir, I wish my Friend Mr. Sidhva drew a proper lesson from the Railway Taxation Act. Parliament voluntarily submitted itself by passing an Act to allow the properties of the Railways to be taxed by the local authorities. Any Parliament can voluntarily submit its properties to be taxed by local authorities and there is no reason to suspect that Parliament will not volunteer to allow its other properties also to be taxed in the same manner. If the Railway Property Taxation Act is not properly carried out or if there is any lacuna, it would be open to Parliament to amend it, and I suppose it would be also open to Mr. Sidhva to go to a court of law

[The Honourable Dr. B. R. Ambedkar]

and have the money paid if it becomes payable and due under the Railway Property Taxation Act.

Mr. President: I will now put the amendments to vote. No. 435, Mr. Sidhva.

Shri R. K. Sidhva: Sir, in view of the improvement that he has made in clause (1), I do not press it.

The amendment was by leave of the Assembly, withdrawn.

Mr. President: Then I will put the proposed article to vote as modified by Dr. Ambedkar's amendment to clause (1) :

The question is :

"That proposed article 264, as amended, stand part of the Constitution."

The motion was adopted.

Article 264, as amended, was added to the Constitution.

Article 265

Mr. President: Article 265. There is an amendment, notice of which has been given by Pandit Govind Ballabh Pant; to have an article 264-A, but he is not here. Then we come to article 265, amendment No. 306.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That in article 265, for the words 'a Union railway', wherever they occur, the words 'any railway' be substituted."

This is mainly consequential upon the changes we have made in List I of Schedule VII.

Shri Brajeshwar Prasad: I beg to move :

"That with reference to amendment No. 2953 of the List of Amendments, in article 265—

(a) the words 'save in so far as Parliament may, by law, otherwise provide' be deleted;

(b) the words beginning with 'and any such law imposing' and ending with 'a substantial quantity of electricity' be deleted."

Mr. President: As there is no other amendment to be moved to this article, if no Member wishes to speak on it, I shall put the question to vote. The question is :

"That in article 265, for the words 'a Union railway', wherever they occur, the words 'any railway' be substituted."

The amendment was adopted.

Mr. President: The question is :

"That with reference to amendment No. 2953 of the List of Amendments, in article 265—

(a) the words 'save in so far as Parliament may, by law, otherwise provide' be deleted;

(b) the words beginning with 'and any such law imposing' and ending with 'a substantial quantity of electricity' be deleted."

The amendment was negatived.

Mr. President: The question is :

"That article 265, as amended, stand part of the Constitution."

The motion was adopted.

Article 265, as amended, was added to the Constitution.

New Article 265-A

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after article 265, the following article be inserted:—

'265A. (1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Exemption from taxation by states in respect of water or electricity in case of certain authorities.

Explanation.—In this clause, the expression "law in force" has the same meaning as in article 307 of this Constitution'."

In the following paragraph of the article, I wish to introduce some new words with your permission and move it with those words.

"(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1) of this article but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order."

Mr. President: Mr. Naziruddin Ahmad is not moving amendment No. 308. As there is no other amendment to this motion, I will put it to vote. The question is:

"That new article 265-A, as moved in the amended form, stand part of the Constitution."

The motion was adopted.

New article 265-A was added to the Constitution

Article 266

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 266 the following article be substituted:—

'266. (1) The property and income of a State shall be exempt from Union taxation.

(2) Nothing in clause (1) of this article shall prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes thereof, or any income accruing or arising therefrom.

Exemption of the Governments of States in respect of Union taxation.

(3) Nothing in clause (2) of this article shall apply to any trade or business, or to any class of trade or business, which Parliament, may, by law declare as being incidental to the ordinary functions of government'."

Mr. Naziruddin Ahmad (West Bengal: Muslim): I am not moving amendment No. 309.

Shri P. T. Chacko (United State of Travancore and Cochin): I beg to move:

"That in amendment No. 272 of List IV (Seventh Week), in clause (2) of the proposed article 266, after the words 'trade or business of any kind carried on' the words 'beyond its limits' be inserted."

The purpose of my amendment is to exempt all properties and income of a State from Union taxation, even when the State is carrying on a business or trade within its own limits. The Union will have no power to tax properties or income of a State in one case where the State carried on a business

[Shri P. T. Chacko]

or trade outside its limits. This principle of immunity from inter-governmental taxation wass accepted by this House when it accepted article 264 where it is provided that the properties of the Union shall be exempt from taxation by a State. I only want that this principle should be extended and applied in the case of the States as well. In the United States Constitution there is no provision exempting the Union properties or State properties from reciprocal taxation. But, in interpreting the Constitution the Supreme Court has very clearly laid down this principle of immunity from reciprocal taxation. Power to tax was held to involve power to destroy. Until recently, even the income of an officer of a State was exempted from the taxation of the Union. Later on, however, in applying this principle the Supreme Court began to draw a sharp line of distinction between the governmental and traditional functions of a government on one side and the business or trade carried on by a State merely for the purpose of profit on the other. Immunity was denied in cases where the State carried on a business or trade as distinct from a governmental function. But to define 'governmental function' is not easy. What might have been deemed in earlier days as a dangerous expansion of State activities may today be deemed to be an indispensable function of the Government. The State Government does not exist for its own sake. It enters the field of private enterprise, not with profit motive alone. It is no doubt the duty of a State to nationalise public utility services and also the key industries. The modern concept of a State is such that the conduct of a business or trade within its own limit very often becomes a function of a State. There is an express provision in the Constitution of the Commonwealth of Australia granting immunity from reciprocal taxation. Section 114 of the Constitution reads :

> "A state shall not without the consent of the Parliament of the Commonwealth raise or maintain any naval or military force or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State."

The provision is imperative and properties of all kinds belonging to a State are exempted.

Secondly, Sir, this power, if vested in the Union, to tax the properties of a State indiscriminately, would hamper the progress of the State. Taxation is always a double-edged weapon and it has a tremendous power to regulate the subject of taxation. Any tax on industries conducted by a State serves the purpose of discouraging the State from running any industry. The result would be to discourage the State from nationalising public utility services and other industries. Some progressive States may have a well-defined scheme of social programme. You are destroying such social programme by adding one more obstacle to the innumerable obstacles already in existence.

In short, this taxation would prevent the State from carrying on its social functions and would in effect reduce the capacity of the State to serve its own people. A State cannot be looked upon just like an individual who is conducting business. In the case of an individual, the profit goes to his own pocket, resulting in concentration of wealth in his hands and thereby giving him more economic power, which may be utilised for the further exploitation of his own fellow-beings. His income is taxed purposely to prevent the concentration of wealth in the hands of the private individual. In the case of a State, the profit obtained by the State obviously enables the State to serve its own people better.

I would also like to point out that the proposed taxation would even prevent the expansion of industrialisation, which is so much needed for us. Take for example a State like my own, Travancore. It is a State which is thickly populated. It is one of the most thickly populated States not only in India but probably in the whole world. The majority of the people are agriculturists

Land suitable for cultivation is limited there. Whereas, in other places the problem is to obtain the labour force for cultivating the available land, the problem in Travancore is to obtain land to utilise the available labour force. In such a State, there was only one salvation for the people, that is, industrialising the State, and the State came forward with a steady policy of industrialisation and invested a large amount of money, four to five crores of rupees. The State has succeeded to a very large extent in its venture to industrialise. The effect of the proposed taxation is definitely to discourage a State like this from investing any further amount of money in industries.

Now, in a State like this, industrialisation is a vital problem, a problem of life and death for the seven million inhabitants of the State. The industrialisation of the State becomes a governmental function there. To give the Centre the power to tax the properties of the State and the industries conducted by the State will be to discourage the State from investing any further amount in industries. Again it would be impossible for private enterprise to exploit certain resources of a State. In such cases where private capital refuses to venture, it is the duty of the State to invest capital for that purpose. This tax would prevent, would discourage the State from investing any amount to exploit such resources.

Finally, Sir, the proposed tax may cripple or obstruct the ordinary governmental functions of a State. As Chief Justice Marshal put it, the power to tax involves the power to destory also. If power to tax is conceded, the State will have no voice in fixing the extent of taxation. As a matter of right, if a State can be taxed lightly it can also be taxed heavily. If it can be taxed justly, it can also probably be taxed oppressively. Generally, the business or trade carried on beyond the limits of the State may be assessed as something distinct from a purely Governmental function. The State may have only a profit motive in conducting business outside the limits of that State, a just reason why the business or trade carried on by a State beyond its own limits could be taxed by the Union. I only point out, Sir, that the principle underlying the proposed article is not sound. The power proposed to be invested in the Union will necessarily retard the progress of a State. It will act as a check to social programmes of a State. It will check the expansion industrialisation and finally it may cripple the State itself. I request the House to consider its repercussions on the States and their social programmes.

Shri S. P. Nataraja Pillai (United State of Travancore & Cochin): Mr. President, Sir, I beg to motive :

> "That in amendment No. 272 of List IV (Seventh Week), the following proviso be added to clause (2) of the proposed article 266 :—
>
> 'Provided that the trade or business which was carried on by or on behalf of the Government of a State before the commencement of this Constitution and any income accruing or arising therefrom shall not be liable to Union taxation'."

Sir, my amendment has only a limited scope. I want to exclude from Union taxation the existing trade or business in a State or any income accruing therefrom. In this connection, I would like to submit before the House that, if this article as it stand is given effect to immediately, it will have the effect of paralysing the finances of the State, probably leading to a financial breakdown. I am sure it will be the case in some of the South Indian States at least. For example, Sir, in Mysore and Travancore, for the last two decades and more, an active policy of industrialisation was adopted and followed and crores of rupees have been invested in industries. If we take the case of Travancore alone, nearly five to six crores of rupees have been invested in industries and annually there is a net revenue of fifty to sixty lakhs of rupees to the State from this sources. The policy of industrialization

[Shri P. S. Nataraja Pillai]

was adopted not only to improve the material condition of the people but also as a method to find funds to meet the progressive needs of the Government. This attempt was successful. Now as a result of the financial integration scheme which has now been adopted as a result of the Federation that is being hammered out here, according to the present estimate Travancore State is expected to lose at least 40 per cent. of its revenues. Curiously enough in Travancore 40 per cent. of its revenue is being budgeted for expenditure on education, public health and public works. If, in addition to the gap which is expected to occur as a result of this financial integration, this Union tax is to be enforced immediately on the income which the State derives from trade and industries, that will widen the gap still further and will result in a financial breakdown as it were.

But when I say this, Sir, I do not for a moment forget the tremendous responsibilities of the Union and the absolute necessity of providing financial resources to discharge its activities. But at the same time, Sir, the Centre has also to see that if the States are to shoulder their responsibilities and discharge their duties, financial resources must be available to them too. I have heard it said here, Sir, that the authority of the Centre is all prevailing and pervasive and their demands are paramount; but I feel that that approach is not quite correct. As far as the States and the Centre are concerned, they are only discharging two different and distinct functions of the Union Government. The inefficiency or ineffectiveness of one is sure to react on the efficiency and the effectiveness of the other.

In these circumstances, it is absolutely necessary that the State finances should not in any manner be affected so as to prevent the State from functioning with efficiency. At this time of transition as I pointed out before, when this State stands the chance of losing at least 40 per cent. of its revenue as a result of the financial integration scheme that is being worked out, this provision to tax the income from trade or business in the State should not be given effect to.

The Government of India appointed a Committee known as Indian States Finances Enquiry Committee and they have published a very valuable report after carefully going into the question of State finances. In page 47 of Vol. I of that report they refer to article 266 of the Draft Constitution, that is about this identical article, and the following words occur :

> "We cannot however, overlook the fact that if it should be enacted in its present form (that is, in the form of giving the right to the Centre to tax the State trade) it will have adverse consequences upon the finances of Indian States, to the extent that they are now dependent upon the tax-free income from those enterprises; in some States such income is considerable. We recommend, therefore, that should article 266 be enacted in its present form, the *existing* State-owned and operated enterprises should be exempted from federal taxes on income to the extent to which they now enjoy such immunity..... "

I have only put this idea in my amendment and my object is only to exempt the existing State-owned and operated enterprises from the Union taxation. That will give relief to the State when the State is faced with a difficult financial situation on account of the new Constitution that comes into force immediately. And when its revenues stand to lose a good portion of it we should not enact a provision by which it will be reduced still further Clause (2) of the proposed article vests the authority with the Parliament to tax the business or trade or income accruing therefrom in future in the States. So when that is being done, I completely agree with the general principle since tax on income being an item of the federal finance, the Union may have the right and necessity to tax the income to meet its demand. But when the State has been enjoying a particular amount of revenue on an investment

they have made and when on the basis of that a financial system has been evolved and when their administrative structure has been based on that, it will be unwise to immediately enforce this taxation and dislocate it. It will paralyse the Government's activities and at the same time lower the efficiency of that administration.

I therefore, very earnestly request the Drafting Committee to consider whether this exemption could not be granted as recommended by the Indian States Finances Enquiry Committee and accept my amendment which I feel will substantially help the State in its present situation. Travancore situated as it is, having to face grave problems of over-population and re-organization schemes, having adopted compulsory primary education, having enforced prohibition as the next step and having introduced reforms in the land revenue assessment and taxation to a basic tax, I think it is only fair that such a State as that should be given all facilities to carry on that administration without lowering its present standards.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, Sir, I have tabled two amendments Nos. 312 and 436. I will move both of them; they apply to the same question.

Sir, I move :

"That in amendment No. 272 of List IV (Seventh Week) for clause (3) of the proposed article 266, the following be substituted :—

'(3) Nothing in clause (2) shall apply to—

(a) any trade or business, or to any class of trade or business which the Government of a State was carrying on as an ordinary function of such Government, at the commencement of this Constitution.'"

Sir, I do not move clause (b) as it is already there.

Sir, I also move :

"That in amendment No. 312 of List V (Seventh Week), in sub-caluse (a) of the proposed clause (3) of article 266, after the words 'at the commencement of this Constitution' the words 'and such programmes of their development and expansion the preparations for which are complete' be inserted.'

Sir, article 266 clause (1) gives general immunity to the income and property of a State. . . .

Mr. President: You are not moving clause (b) of amendment No. 312 ?

Shri S. V. Krishnamoorthy Rao: Clause (b) is already there in the present clause (3) of article 266; therefore I am not moving this. It is already there

Clause (1) gives a general immunity to the property and income of the State. Clause (2) gives power to Parliament to tax any trade or business carried on by a State. Clause (3) gives exemption to clause (2), so that Parliament may declare by law any trade or business as being incidental to the ordinary functions of Government. My submission is that clause (3) will seriously affect the finances of a State like Mysore or Travancore, as already submitted by my honourable Friends, Mr. Chacko and Mr. Nataraja Pillai. The Mysore Government have, during the past fifty years, by a judicious policy of state enterprise and state aid, developed a number of industries. According to the proposal of financial integration as recommended by the States Finances Enquiry Committee, a number of central taxes will go to the Centre. In fact, at page 30, paragraph 32 of their report, they say that present dependence of Mysore on federal sources of revenue is indeed considerable and the immediate scope for developing provincial taxes is rather limited. By these proposals Mysore stands to lose nearly 321·59 lakhs of Rupees. Of course the Central Government proposes to make good sixty per cent. of this loss during the course of fifteen years. But, what remains will be a few indus-

[Shri S. V. Krishnamoorthy Rao]

trial concerns and public utility concerns like Hydro-electric works, industrial and other works, the Iron and Steel works. The Mysore Government have already invested nearly fifteen crores of Rupees as reported at page 31 of the States Finances Enquiry Committee report on Hydro-electric works, industrial works, Iron and Steel works. They are running nearly twelve items of industries like the Central Industrial works, Soap factory, Porcelain factory, Silk Weaving factory, Electric factory, the Mysore Implements Factory. The Mysore Chromate factory, Silk and filature factory, Iron and Steel works, Nationalised Motor Transport, the Sandalwood oil factory, etc. If all these industries which were started and developed during a period when there were no central taxes, were now to be taxed as a result of article 266, my submission to this House is that the finances of the State will be very greatly crippled. Mysore has got vast schemes of electrification of every village with a population of 1,000 and more, within the course of next two or three years. We have got a scheme for introducing electric trolly buses in the Bangalore city. We have got schemes of rural development, and spread of education. With the taking over of the central resources of revenue, the financial position of Mysore will be greatly jeopardised. If additional taxes also were to be introduced on the trade and business that are being carried on by the Government as part of the Government—these are industries which are being carried by the Industries Department of the Government of Mysore—it will greatly hamper the financial position and further development of educational and other facilities that the State intends to give to the people.

My respectful submission is that the financial policy of the Government of India should be to help the States and not to hamper their development. In fact, I learn that such an assurance was given in the Finance Ministers' Conference. Dr. John Matthai, our Finance Minister, is here and if an assurance were to be given by him that those industries which have been already started and are being run by the State as an ordinary function of the Government, will not be taxed, I am not going to press the amendments. In fact, the supply of electricity is the cheapest in Mysore. Industrial concerns are supplied from six to two pies per unit for the development of industries. For irrigation purposes, we supply electricity at half an anna per unit. I think nowhere in India is electricity supplied so cheap. If we are to continue this policy of industrialisation my submission is that the central taxes should not fall on the industries and trade which are already being carried on by the Government. Of course, clause (3) says that Parliament may by law declare I too accept this proposition so far as future industries that are to be started by the State are concerned. Some States may, in order to avoid central taxes, take over certain industries and certain private trade and business and run them as a department of State. Such things should be prevented; but that would apply to future industries, future trade and business. Trade and business, and industries which have already been started by the Government as part of their routine, I submit, should not be taxed and this clause should not act as a hindrance for the development of the State. My respectful submission is that these amendments should be accepted or if the Honourable Dr. Ambedkar is not willing to accept them, if an assurance is given, I do not propose to press these amendments.

Mr. President: There are four amendments of which notice has been given by Mr. Brajeshwar Prasad. As they all relate to the other amendment.....

Shri Brajeshwar Prasad: There are five amendments; the fifth amendment is number 338 in List VI which I want to move.

Mr. President: You may move that; the others do not arise.

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment No. 272 of List IV (Seventh Week), in clause (1) of the proposed article 266, for the words 'exempt from' the words 'subject to' be substituted."

Sir, the only constitutional justification which may be urged in support of this provision is that such a provision finds a place in the Canadian or in the Australian Constitution. I am convinced that the analogy does not hold good in our case. The constituent units in India, the Indian States and the provinces are not on a par with the constituent units of Canada and Australia. The facts of Indian history cannot be ignored. These provinces and the Indian States have never been sovereign in any sense of the term. They have been servants and agents of the Government of India. I think that the scope must be widened for union taxation; nothing is lost by restricting the sphere of union taxation.

It is not only on constitutional grounds, but also on political grounds that I am opposed to this article. It is risky, it is dangerous to give wider autonomy to the provinces. I am convinced that the only reason why we are making provision for this article in our Constitution is that the majority of Members of this House are champions of State rights. The fact is that all the provinces and the Indian States, whatever constitutional status we may confer on them, are the agents and servants of the Government of India. Let us not blink at these facts. There is one party ruling in this country and there is not the slightest possibility of any other party coming into power or of the provinces becoming autonomous. They are all knit together under the aegis under the leadership of the Congress Party. There is neither historical nor constitutional justification for vesting this power of taxation into the hands of the States. A realistic approach of the situation would entitle us to subject the property and income of a State to Union taxation.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, with my intimate acquaintance for over twenty years with conditions in Mysore and also with my acquaintance with condition at present in Travancore, I may at once say, my sympathy is in favour of certain observations made by the Mysore and Travancore representatives, so ably presented to this House. At the same time we will have to look at the matter in the large perspective of Indian industry and Indian advancement.

So far as any exemption is called for in regard to Mysore, and Travancore industries which have been going on for some time, I do not believe that there would be any controversy in that regard. I am sure the Government of India and the Parliament of India will take a very favourable view of the situation and will extend the necessary encouragement to those industries which have been thriving for such a long time. It is unnecessary to say that under the able Dewanship of Sir M. Seshadri Iyer, Sir M. Viswesvarayya and other talented Dewans of Mysore; Mysore has made a very rapid progress in this regard, and I think we on this side of India are equally interested in the progress of Mysore. We are not anxious that Mysore should live on mere subsidies from the Government of India, as is necessarily apt to for some time until the finances are in proper order—upto fifteen years. That is so far as these particular States are concerned; you have an express provision that parliament may exempt. It is a permissive power that is given to Parliament under the section. There is no duty cast upon Parliament to levy a tax and I am sure in the larger interest of trade and industry, Parliament will certainly not go to the length of taxing these industries which have been thriving.

With regard to the other parts of India, the question will have to be viewed somewhat differently. For various reasons under the British regime no socialisation of industries began. The provinces were functioning practically as

[Shri Alladi Krishnaswami Ayyar]

police states and not interesting themselves in the large schemes of industry excepting in regard to Pykara scheme and similar projects when Sir C. P. Ramaswamy Iyer was a Member of the Madras Government. There is the danger on the part of the provinces to start a number of industries which may not be financially successful but at the same time they may kill private enterprise. Our objective may be towards socialisation of key industries, but if that objective is to fructify and to yield excellent results, it has to be necessarily a little slow. As we advance there is no doubt that the time will come when most of the key industries will be taken up by the State. That is the object of the provision to the effect that if trade is started, it shall be open to the Centre to levy a tax.

Reference has been made to Australian, Canadian and American Constitutions. There is no need to go into that. At the time when the Canadian and Australian Constitutions were drafted it was not thought that large schemes of socialisation would be undertaken. Therefore they put it simply in the general language that the property of the State shall not be subject to taxation by the Union or Federal Government and the property of the Union Government shall not be subject to tax at the instance of the Provincial Government. So far as the United States is concerned in the early days though there was no express provision through the medium of the doctrine of Instrumentality, they held that the State cannot tax the Federal Government and the Federal Government cannot tax the State instrumentality because both are parts of a single composite mechanism and if you permit one to tax the other, it may destroy the whole mechanism. Later, the doctrine if instrumentality itself was felt to be not in the large interest of the State, and quite recently the swing of the pendulum is the other way. The other day one of the most enlightened of Supreme Court Judges held in what is known as the Spring of the State of New York, in regard to certain springs which were worked by the State of New York—for this part of business they held that there is no immunity of the State from tax. They said 'You have to draw some line between one kind of activity of a State and another kind of activity. Of course it cannot be a rigid definition. What may be in one sphere may easily pass into another sphere with the progress of the State and with the development of the polity in the particular State'.

But, normally speaking, you cannot regard at the present day under existing conditions the carrying on of trade and business as a normal or ordinary function of the Government. It may develop into ordinary function—certain aspects of it, especially the transport service and certain key industries, may soon become the parts of the State enterprise. The clause runs thus :

"Nothing in clause (1) of this article shall prevent the Union from imposing or authorising the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State or any operations or connected therewith, or any property used or occupied for the purposes thereof, or any income accruing or arising therefrom."

The Parliament will take note of the progressive tendency of the particular times and may at once declare accordingly. It might not have been the ordinary function of Government before. Now it may become an ordinary function. There will be sufficient elasticity in clause (3) to enable the Government to exempt from taxation particular trades or industries which are started as public utility services or declare them as regular State industries. Nobody can question a law made by Parliament because the Parliament has stated that a particular industry is an ordinary function of the State whereas according to the nations of an individual economist A or B it is not an ordinary function of a Government. Parliament will lay down the law of the land and it will be the sole arbiter of the question as to whether it is an ordinary function of Government or not.

Therefore having regard :

(a) to the plenary power of Parliament to exempt any particular industries, and particular business from the operation of the tax provision,

(b) having regard to the fact that it is not obligatory on Parliament to levy any tax.

(c) that the very conception of State industry may change with the further evolution of the State and changing times, and

(d) to the inter-connection between one State and another.

it will be very difficult to differentiate between particular States, between States which have been working certain industries and other States. But as a matter of administrative policy and as a matter of Parliamentary legislation it may exempt States like Mysore and Travancore which have been carrying on trade and business for a very long time and such industries to-day are as solid and stable footing so as to warrant an exemption, but on the other hand to lay down a general principle of law that even at the present day before the provinces are on their feet every trade or business is exempt from taxation will lead to wild-goose schemes being started by various provinces They may not take into account the general interests of the trade and industry in the whole country. They may not have regard to the difference between one kind of industry and another. Under those circumstances the particular provision which has been inserted by Dr. Ambedkar is a very salutary one and is consistent with the most advanced principles of democratic and federal policy in all the countries. With these words I support Dr. Ambedkar's amendment.

The Honourable Dr. John Matthai (United Provinces : General): Sir, I do not propose to go into the details of the various suggestions that have been made in the course of the debate this morning on this subject. But there are certain general observations that I would like to make and which I hope would allay the fears that have been expressed by honourable Members who have taken part in the discussion.

My friends from Travancore have been extremely apprehensive as to the sort of use that might be made of this provision by a Travancore who happens to be the Finance Minister of the Centre today, and Travancore's fears appear to be shared by the neighbouring State of Mysore. I want to make this perfectly clear that, speaking for myself and for my colleagues in the Central Government today, there is nothing which we are more anxious to encourage and put through than the industrialisation of the country. And if there is any apprehension that this provision is likely to have the effect of checking the progress of industrialisation in the country, either through private enterprise or through State enterprise. I want this House to take this assurance from me, that that is about the last thing we want to do in the use of this particular provision; because if there is the slightest possibility of the operation of this particular provision having the effect of putting some restriction or curb upon the industrialisation of the country, then as far as we in the Centre are concerned, the House may rest assured that the operation of the provision would certainly be adjusted to the requirements of the country in this regard.

There is really no greater problem, for example, the faces me today as the Finance Minister at the Centre than the determination of the precise repercussions upon industrial development, of the present structure of direct taxation in the country. And as far as we are concerned at the Centre, we are anxious that consistently with public requirements, the structure of direct taxation in the country should be so modified that all unnecessary handicaps in the way of industrial development are not merely removed, but removed as early as possible. Well, that is the point of view from which the

[The Honourable Dr. John Matthai]

Central Government as looking at the problem of industrialisation. I am justified in asking the House to accept this assurance from me that if this provision should have the slightest effect in checking industrialisation in any of the States concerned, then we would be the last to make of this provision.

There is another matter also in regard to which I should like to make a general observation. The speeches this morning, to my mind, seem to be based on the assumption that there is a kind of inevitable conflict between the financial objectives of the Centre and the financial objectives of the States. Nothing could be farther from the truth.

Shri T. T. Krishnamachari: Hear, hear.

The Honourable Dr. John Matthai: As things are shaping today, and as we realise more and more the need for a united structure in the country, both politically and economically, the identity of interests between the Centre and the States is bound to be extremely close. If by the operation of a provision of this kind it is found that the finances of a State are rendered difficult, then it is a problem which will cause anxiety not merely to that State, but to the Centre also. I am faced with that problem in a large number of cases today. Therefore, if the operation of this provision is going to have the effect of causing budgetary difficulties to any State, the House may depend upon it that it would be as much the interest of the Centre as it would be the interest of the State to see that necessary adjustments are made.

Most of the particular industries to which reference has been made by those who have spoken this morning on behalf of Travancore and Cochin and Mysore are industries which belong to the category of what are called public utility undertakings. Now, public utilities are not quite an easy matter to define with the precision required in a court of law. But we all have a general idea of what public utility concerns imply. I would therefore give this assurance not merely on behalf of the Central Government, but I know I can give this assurance also on behalf of the Drafting Committee who are responsible for this provision, that it is not our intention to levy any tax of the kind referred to in this provision, upon industries run by States whose object is to produce services of a public utility character. That, as far as our intentions go, is clearly outside the scope of the provision that is under debate today.

There is another assurance that I would like to give. If it happens that this operation is brought into force in respect of any industrial undertaking owned by a State, and if there happens to be, at the same time, an undertaking owned by the Centre of the same character, it is our intention that the liabilities imposed upon the State should be equally imposed upon the Centre. As the House knows, it is our idea that when the Centre hereafter, promotes undertaking of an industrial character, those undertakings should, as far as possible, be organised and managed on the basis of independent public corporations. These corporations for running industrial undertakings would be treated on exactly the same basis as the States would be treated in respect of similar industrial undertakings. With regard to undertakings run by the Centre directly, departmentally, the analogy of the railways and the Posts and Telegraphs which are expected, if there is any surplus in their budgets to make a certain contribution towards the general revenues of the country, would apply.

So I am able to give this assurance. First of all, public utility undertakings would be outside the scope of taxation under this provision; secondly, there would not be any discrimination between the Centre and the State in regard to the taxation of industrial undertakings, and I hope the House will now find less difficulty in accepting this provision.

There is just one other point to which I would like to make a reference. As regards the question of the budgetary difficulties that might be caused to the States in consequence of taxation imposed under this provision, it is necessary for the House to remember that as in the case of every federal government in the world, so here, we are rapidly making use of the expedient of subsidies or subventions from the Centre for helping the States in promoting essential undertakings of a public utility character, and development projects of national importance. If it happens that the revenue resources of a State are seriously crippled by taxation under this provision, then, assuming that the development projects are projects of national importance, it automatically follows that there is a corresponding obligation which will fall upon the Centre to make up so far as its resources permit such shortfall as might occur in the financial resources of the States. I mention this point only to enforce the suggestion with which I started, that there is today, in the set-up which is gradually growing up and which would be finalised when this Constitution comes into force, a complete identity of interests in respect of financial matters between the Centre and the States. Any objection to this provision on the assumption that there is to be a continuing conflict between the Centre and the Provinces has no justification whatsoever.

The Honourable Dr. B. R. Ambedkar: Sir, the only part of this article which has been subjected to any criticism is clause (3). There has been no comment on any other part of this article. I do not believe that after the reassuring speech which has been made by the Finance Minister there is anybody in the House who will entertain any kind of doubts or fear of Parliament exercising this power without regard to the financial resources of the State. I do not think I need say anything more on that point.

Shri P. T. Chacko: In view of the assurance given by the Honourable Finance Minister I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Shri P. S. Nataraja Pillai: I would like to withdraw my amendment also.

The amendment was, by leave of the Assembly, withdrawn.

Shri S. V. Krishnamoorthy Rao: I would like to withdraw my amendment

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: What about Mr. Brajeshwar Prasad?

Shri Brajeshwar Prasad: I am not withdrawing my amendment.

Mr. President: The question is:

"That in amendment No. 272 of List IV (Seventh Week), in clause (1) of the proposed article 266, for the words 'exempt from' the words 'subject to' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That proposed article 266 stand part of the Constitution."

The motion was adopted.

Article 266 was added to the Constitution.

Article 296 and 299

Mr. President: There are two articles 296 and 299 and some Members have represented to me that they got notice of certain amendments to these too late.

The Honourable Dr. B. R. Ambedkar: I am prepared to hold them over.

Mr. President: So these two articles (296 and 299) will stand over.

Mr. Naziruddin Ahmad: Can we have an assurance as to when these are coming up?

Mr. President: Some day next week. I may tell honourable Members that we propose to finish all the articles and all schedules except some articles dealing with States and one Schedule and certain other miscellaneous articles two or three—we want to finish all the rest. It depends on the House how soon we shall be able to complete consideration of all the rest of the articles.

The Honourable Shri Ghanashyam Singh Gupta (C.P. & Berar: General): By the 17th at the latest, I suppose.

Mr. President: I have that in my mind, but it depends on the House.

An honourable Member: Fix a date.

Mr. President: If we make quick progress I need not fix any date.

I shall now take up the entries in the Seventh Schedule which were left over—88A in List I and 58 and 58A in List II.

Seventh Schedule and Article 250—*contd.*

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 88 in List I of the Seventh Schedule, the following entry be inserted:—

'88-A. Taxes on the sale or purchase of newspapers and on advertisements published therein'."

I also move:

"That for entry 58 of List II of the Seventh Schedule, the following entries be substituted:—

'58. Taxes on the sale or purchase of goods other than newspapers.

58-A. Taxes on advertisements other than advertisements published in newspapers.'"

Sir, with your permission I shall move the other amendment—No. 374—to article 250 also as it is really part of this.

I move:

"That in clause (1) of article 250, after sub-clause (d), the following sub-clauses be added:—

"(e) taxes other than stamp duties on transactions in stock-exchanges and futures market;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein.'"

Shri T. T. Krishnamachari: I would like to mention that the formal permission of the House will have to be obtained to reopen article 250 which it will be necessary to do in respect of amendment No. 374.

Shri R. K. Sidhva: I raise a point of order that an article which has been completed and passed by the House cannot be reopened.

Mr. President: That is just the point that Mr. Krishnamachari has raised.

Shri R. K. Sidhva: No, Sir. He has moved an amendment to reopen the subject. I am raising a point or order that it cannot be reopened.

The Honourable Dr. B. R. Ambedkar: That the President will decide—whether you are right or he is right.

Mr. Naziruddin Ahmad: There is another matter to which I would like to draw your attention. In regard to the amendment to entry 88-A it is the same amendment as that of Mr. Jhunjhunwala. It has now been stolen by the Drafting Committee and is being passed on as their own. Curiously enough, Dr. Ambedkar's amendment No. is 379 which is the section of the Indian Penal Code relating to theft. Can this sort of literary piracy be allowed?

Mr. President: You can take credit for having pointed it out.

The Honourable Dr. B. R. Ambedkar: He is quite content with that. He has not lodged a complaint of theft or robbery.

Mr. Naziruddin Ahmad: But theft is a cognizable offence. It is also non-compoundable. It does not depend on the complaint of any one, absence of objection will not excuse it.

Mr. President: We shall deal with the entries first.

The Honourable Dr. B. R. Ambedkar: Sir, when this matter came up last time before the House there was a lot of debate as to what was exactly intended, what the House could do and what I was prepared to accept. You were kind enough to say that the matter might be recommitted to the Drafting Committee. The Drafting Committee after consideration of the same has brought forth new proposals. The proposals are that newspapers and taxes on advertisement in newspapers should be put in List I. That is a matter to which the Drafting Committee has now agreed. The second amendment—No. 379—is merely a consequential thing because since newspapers and taxes on the sale of newspapers and advertisements therein have been brought into List I, it is necessary to exclude the taxation on newspapers under the Sales Tax Act and advertisement therein from the jurisdiction of the State Legislature.

Shri R. K. Sidhva: Sir, I move:

"That in amendment No. 378 of List VIII (Seventh Week), for the proposed new entry 88-A in List I, the following be substituted :—

'88-A. Taxes on advertisement published in newspapers.'"

"That in amendment No. 379 of List VIII (Seventh Week), in the proposed entry 58 of List II, the words 'other than newspapers' be deleted."

Sir, when this subject came up before the House some time back my honourable Friend, Dr. Ambedkar, vehemently opposed the motion that is now sought to be moved by him, or rather moved by him and he made very strong remarks. I wish I could lay my finger on the proceedings and the speech and place them before the House, but unfortunately I could not get them. But I know the House will remember and you, Sir, will remember that he said that under no circumstances shall he allow the sales tax also to be included in List I.

Mr. President: The matter was held over for reconsideration by the Drafting Committee. The Drafting Committee is not prevented from reconsidering and putting forward another amendment.

Shri R. K. Sidhva: I know that is so. Everyone has a right to change his opinion, but Dr. Ambedkar while moving his amendment should have enlightened the House as to the reasons which necessitated him to change his views.

My point is this, that this amendment, as proposed by Dr. Ambedkar, seeks that the sales tax on newspapers which is in the State. List should also be brought under List I. Now this is an invidious distinction. Sir, I think that in the list of items on which the provinces levy a sales tax there are hundreds of items. To select one item out of them and to put it in the Union List is, in my opinion, objectionable, invidious and unfair. It might be misunderstood by the people as a whole in the country. They will be suspicious as to what has actuated the Constituent Assembly to select this particular item which is rightly put in List II, and bring it to List I. It may be argued that this is done as newspapers have a bearing on the fundamental rights as was urged the other day. As you have rightly held the other day in your ruling. Fundamental Rights relate to speeches and expressions. What have taxes to do with speeches and expressions?

[Shri R. K. Sidhva]

I, therefore, fail to understand why it is going to be brought in List I. My difficulty is that when a very responsible member as the Chairman of the Drafting Committee held a different view the other day, he should have explained to us what was the object. If I were satisfied, I would not have raised this point. Let all the sales tax go to the Centre. Sales tax, as it is at present levied in the different provinces, have worked havoc on trade and commerce. An article is taxed in Bombay; the same article is sent to C. P. and is taxed over again. Therefore, I certainly desire that the sales tax should come within the purview of the Centre. As at present levied it upsets the whole economy of the country. But why choose this particular item, I fail to understand. It might be misunderstood by the country as an instance of favouritism. The best course in the present circumstances would be to hold this item over till the whole question of the sales tax is decided. Let the Centre take over the sales tax. I am in favour of it.

I was myself a signatory to the amendment that was moved by my Friend, Mr. Goenka. I was very clear in my mind when I put my signature that it related to the advertisement only and not to the sales tax. But my attention was drawn to the fact that the language used covered the sales tax as well. I admit my mistake in signing it. Generally I do not sign anything without reading and understanding its implications. But my intention now is the same as it was before that sales tax should not go into List I.

Now, Sir, it may be that this inclusion in List I is for the purpose of exemption of newspapers from advertisement and sales tax. I have very great regard for the nationalist papers which have fought for the freedom of the country during the days of British imperialism whose main object was to crush nationalist newspapers. I do not dispute for a moment that they deserve all kind of encouragement; there is no question about it. But today I do not know which paper to call nationalist. Having been an editor and proprietor for over twelve years of a newspaper, I know the odds against which they had to struggle in those days. I take my cap off before them. *The Bombay Chronicle* one of the biggest nationalist papers in India was killed twice, but it still survives, thanks to its able editors like Mr. Horniman and Mr. Brelvi. Effort was made to kill the *Indian Daily Mail* started by a millionaire in Bombay and it was actually killed through the agency of British Imperialism. I appreciate all that the nationalist papers have done, but I want that appreciation to be expressed by the front door in recognition of the services rendered by them. Why do you want this to be put in List I and create complications and doubts in the mind of the public? My point is that if exemption is to be given, I am for it on the grounds I have urged. Never mind if other papers take advantage of it, but this tax is also bad. I know today 80 per cent. of the papers are small ones and they could not afford to bear the proposed tax. Only 15 per cent. of the papers are today rolling in money and it may be asked why should they not pay the tax? My Friend Deshbandhu Gupta—I have great respect for him. From a small man he has risen to a big man. Mr. Suresh Chander Mazumdar another gentleman deserves same compliments. But why should these others who are rolling in wealth in other business—why should they be exempted? Yesterday, I was reading that an American syndicate is going to purchase the *"Civil and Military Gazette"*. They are out to purchase important newspapers in India. Is it fair that they should be exempted? I do not want to make any distinction between Indian and foreign newspapers. If *Times of India* can be purchased, on payment of crores of rupees this syndicate can purchase all important newspapers. Why should they be exempted? When you put this tax in the Constitution, you bind down for all times. I submit the case has not been properly placed before the House and my Friend Mr. Goenka will excuse me for saying that he has bungled.

Shri T. T. Krishnamachari: May I tell my honourable Friend that no exemption whatever is contemplated?

Shri R. K. Sidhva: Well, Mr. Krishnamachari, better leave it to commonsense. You are not the authority to state here that exemption is not contemplated. I know what is contemplated. That is why I am worried. Let us be straightforward. These things should not be brought forward in this manner just to hoodwink. It is hoodwinking the people and nothing else. Let us be straightforward and honest. You cannot humbug the people or hoodwink the House. Dr. Ambedkar may be too clever but he cannot be too clever all the time. We understand what is behind the screen. I do not like this to be brought in this fashion. If this amendment is held over, let us apply our mind and put up a proper amendment. I shall be prepared to move an amendment that papers be exempted from all taxes, if it is agreeable I do realise that the nationalist papers have done service and in recognition of that service, if you want to exempt them, I am prepared for it. I am prepared to go further and exempt all papers. I suggest therefore that instead of accepting the amendment, I humbly suggest to my friends Messrs. Goenka and Gupta: "Let us apply our mind and put in an amendment for exemption, so that our position may not be misunderstood." I again repeat this august Body, this Constituent Assembly, should not be humbugged. This august Body should not be hoodwinked. I want straightforward manners to be adopted, particularly in our Constitution. I hope, Sir, that you, Mr. President, will also appeal to Dr. Ambedkar and Messrs Goenka and Gupta not to put in something for which the Constituent Assembly may be ridiculed. This august Body should not be ridiculed. Let there be no criticism that we have somehow or other, for somebody's benefit, transferred this to List I in the name of Fundamental Rights which I fundamentally oppose This is not germane to the Fundamental Rights. I again appeal, in the interests of this Constituent Assembly for which I have great respect, to you, Sir, who is the President and Custodian of this Assembly—I submit to you in all humility that you will kindly prevent invidious distinction being caused I repeat 80 per cent. of the newspapers will suffer by taxes. Only some of the newspapers can afford to pay. After all, tax on newspaper advertisements will be borne by those who advertise. The cinema tax—who pays it? The consumers pay. Provincial governments levy it on cinemas, the cinemas levy it on the consumer. Similarly, if there is to be a tax on advertisements, the advertiser has to pay. I do not want to envisage that position. I do not want small newspapers to be killed. If there are ten big newspapers who will be exempted, I do not mind. Let not 80 per cent. be injured. Let us from that point of view try to come to a settlement.

Mr. President: I confess, Mr. Sidhva, that I have not been impressed by your moral indignation. I have not seen any cause for it. It is a simple amendment moved by the Drafting Committee and I do not see anything wrong in the amendment proposed.

Shri R. K. Sidhva: Out of all, why is the newspaper singled out?

Mr. President: That is a different matter.

Shri R. K. Sidhva: That is the point. Why has it been singled out?

An honourable Member: Wait and see.

Shri Deshbandhu Gupta (Delhi): Mr. President, Sir, it is a matter of no small satisfaction to me to note that the Drafting Committee has appreciated the point of view urged by my Friend Mr. Goenka and many Members of this House in the amendments which they sought to bring before the House. It is a matter of still greater satisfaction that even Dr. Ambedkar has agreed to these amendments and that these amendments have his wholehearted support. There is much in one point made out by my Friend Mr. Sidhva. The House

[Shri Deshbandhu Gupta]

is aware that the other day when this matter was discussed on the floor of the House, I did take fundamental objection to the very imposition of taxes on newspapers. No one would be happier than myself and my friends belonging to the press, if the House were to decide today that newspapers will be free from all such taxes. Of course that is what it should be, because in no free country with a democratic Government we have any such taxes as the sales tax or the advertisement tax.

But I fail to understand the argument of my Friend Mr. Sidhva when in one breath he says that he is prepared even to go to the extent of exempting newspapers from all taxes and in the same breath he holds that there should be no distinction between newspapers and other goods so far as the imposition of sales tax is concerned. This is an argument which, I must say, is very difficult for me to understand. I claim that newspapers do deserve a distinctive treatment. They are not an industry in the sense that other industries are. This has been recognised all over the world. They have a mission to perform. And I am glad to say that the newspapers in India have performed that mission of public service very creditably and we have reason to feel proud of it. I would therefore expect this House and my Friend Mr. Sidhva to bear it in mind at the time when God forbid any proposal, comes before the Parliament for taxation. That would be the time for them to oppose it.

Sir, after all, this is an enabling clause. It does not say that there shall be sales and advertisement tax imposed on newspapers. It does not commit the House today to the imposition of a tax on the sales of or a tax on advertisements published in newspapers. All that we have emphasised is that newspapers as such should be taken away from the purview of the provincial Governments and brought to the Central List so that, if at all at any time a tax is to be imposed on newspapers it should be done by the representatives of the whole country realising the full implications of their action. It should not be an isolated act on the part of some Ministry of some Province. That was the fundamental basis of our amendment. When we tried to convince the Drafting Committee and other Members and particularly our Friend Dr. Ambedkar, our main argument in favour of transferring the subject to the Central List was a political one. It should not be taken for granted that I or my friends of the Press of India are in any way committed or agreeable to the imposition of such taxes. Not in the least. We have been all along opposed to it; we must recognise that barring the two provinces of Bombay and Madras all other Provinces have so far stood for the freedom of the Press. They have never exercised the right of taxing newspapers. But, ever since this question came up before the country the whole Press has opposed it vehemently on fundamental grounds, and demanded that if these taxes are to be levied they should be levied by the Centre. While making this demand, are we not aware that the newspapers published from the provinces that have not imposed any such taxes remain untouched today, particularly the newspapers of Delhi which are directly under the Centre and on which there can be no question of a sales tax being imposed unless the Parliament goes to the extent of imposing it? If today all newspapers including those published from Delhi, are opposing the imposition of these taxes with one voice and demanding their inclusion in the Centre List, they do so, not because it is a question of saying some money, but because the fundamental question of the liberty of the Press is involved. By advocating their transfer to the Central List we are prepared to run the risk of having these taxes imposed in Delhi, and in other provinces which have not sought to impose such taxes so far. But we do not want to leave it to the Provinces so that the liberty of the Press remains unimpaired. We have faith in the Parliament; we have faith in the collective wisdom of the country and we have no doubt that when this matter is viewed in the correct perspective, there will be no such taxes imposed on the newspapers, but we have not got that much faith in the

Provincial Ministries. It is in that hope and having a full realisation of the situation that we have agreed, as a matter of compromise, or should I say as a lesser evil, to have these two taxes transferred from the Provincial to the Central List.

I am glad to know that my Friend Mr. Sidhva was also at one time connected with the Press like so many other political leaders who in their career had at one time or other been connected with the Press; and I am sure that if the question of imposing such taxes came up before Parliament, at any time, we will have his fullest support and his voice will be raised against any attempt on the part of parliament to impose taxes on either the sales of or on advertisements in newspapers.

To my mind it appears that in certain quarters there exists a general prejudice against newspapers. As my honourable Friend Mr. Sidhva believes, some newspapers may have given the impression that they are "rolling in wealth", but what is their number? Sir I do not want to take the time of the House in discussing the economy of the newspapers and painting the true picture of the newspapers as to where they stand today as compared with the taxes of other free countries of the world. But, I may point out to Mr. Sidhva and those who think alike, that there may be some big newspapers which can afford to pay taxes and that it may be that it was to hit such newspapers that these taxes were conceived but take it from me that the bulk of the newspapers will be simply crushed and if there is any hope of independent journalism in this country, that can be realised only if we leave the newspapers alone and not impose these distinctive taxes. Otherwise we will be paving the way for the transfer of smaller newspapers which have been struggling all along for existence to the capitalist.

I believe no one knows better than you, Sir as to why the *Searchlight* of which you were the founder has joined a chain. There are other papers which have similarly joined one or the other chain. If you look into the past history of the newspapers you will find that there was not a single nationalist newspaper in India which was not started with the beggar's bowl in the hands of its founder. Sir, who does not know that the late Pandit Madan Mohan Malaviya had to go from house to house begging people to take the shares of one of the biggest papers which Delhi is proud to own today.

Mr. President: I did not want to interrupt the honourable Member. But then here we are concerned only with the entry in the Union List.

Shri Deshbandhu Gupta: Sir, as Mr. Sidhva has raised the question that the newspapers did not deserve a distinctive treatment, I am only trying to remove that prejudice. I am fully conscious of the fact that I must not take more time of the House. But then as this is an important matter I seek your permission to give me a little more time.

The history of many other newspapers will show that they too had a very precarious beginning and that those who started them did not do so with a commercial motive. It is true that during the last few years some newspapers have financially benefited by the last war. But their past history should not me forgotten and we should not ignore the fact that after all newspapers have a mission to perform and that they are essential for the very existence of a democratic form of Government. They are essential for educating the electorate and for running the democratic form of Government in the country on proper lines. In these circumstances any step taken to weaken the Press will be calculated to harm the democratic form of Government, nay, the freedom of the people will be jeopardised as has been rightly pointed out by the U. S. Supreme Court Judges to whose memorable judgment reference was made the other day. According to them "Fettering the press is fettering ourselves." So,

[Shri Deshbandhu Gupta]

in the name of the freedom of the Press and in the name of the future of Indian journalism, I appeal to this House always to bear in mind that newspapers as such to deserve a distinctive treatment. Newspapers are as essential for the Government as for the good of the country and we must always regard them as such.

Sir, I hope most of the Members of this House are well aware that in the freedom movement of 1942 out of the 145 papers, as many as 96 papers voluntarily closed their offices soon after the memorable Resolution of 9th August was adopted. Can you cite another example in the history of the whole world when such a large number of newspapers at a moment's notice, closed their shops without caring as to what will happen to them in the future? Most of them were not content with merely closing their shops, their proprietors and editors took active part in the movement and went to jail. Sir, even today there are many nationalist papers which, although struggling for existence, have imposed a voluntary check on themselves and do not publish advertisements of liquor, and foreign cloth? Can one deny, Sir, that these papers have placed an ideal before them and that they have been trying to live up to those ideals? Do not they deserve exemption from such taxes? It may be that even a few rich newspapers will benefit if no such taxes are levied. But such newspapers have been benefiting from the very beginning. They have been enjoying Government patronage in the past in large measure, and perhaps the House will be surprised to learn that there are some papers in this country today which had closed in 1942 voluntarily, and had always been the vanguards of the freedom movement, but are being discriminated against in the matter of placing advertisements by some Governments. In some cases old circulars still continue to be acted upon and these nationalist papers are being discriminated against in the matter of placing Government advertisements.

Mr. President: We are not concerned here with any circular, or any decision for levying a tax. It is only a provision in the Constitution that we are concerned with. When the question of levying a tax arises, all these arguments will arise.

Shri Deshbandhu Gupta: I only wish to say, Sir, that even our Government has recognised the distinctive nature of the press, in the matter of transport facilities, in the matter of concessions in postal rates, in the matter of so many other concessions. So it is already recognised that newspapers have to be treated distinctly.

I do not want to elaborate the argument further but I do wish to place before the House one other aspect of the question and the reason why we seek to transfer these subjects to the purview of the Centre. There is a Bill that is pending before the Select Committee in Madras. I wish to make a passing reference to some of the clauses of this Bill. Under the Madras Bill they seek to impose an advertisement tax of 10 per cent. on the gross revenue from advertisements.

Prof. N. G. Ranga (Madras: General): Only newspapers getting above a minimum revenue.

Shri Ramnath Goenka (Madras: General): It is not so.

Shri Deshbandhu Gupta: If you refer to the Bill, you will find that it applies to all newspapers. The Madras Government has not only gone to the extent of proposing a tax of 10 per cent. on press advertisement revenues of newspapers; their Bill further seeks to give to the Government the power to exempt certain papers from these taxes. It also seeks to provide the taking of a licence by newspapers before they can start functioning. So this is the respect they show to the newspapers and to the honourable profession of journalism. There is no realisation of the fact that newspapers are the real saviours of democracy, and the fighters for the rights of the common man. The Bombay

Government too has imposed a tax of 6¼ per cent., that also on the gross revenue from advertisements. This was an eye-opener to us and a clear indication of the fact that if these taxes were allowed to remain within the purview of the provincial governments, there may come a day when most of the smaller newspapers will have to close down. It was in view of this realisation, by the Press that my Friend, Mr. Goenka and other, suggested as a lesser evil that these taxes should at least be transferred to the Central List so that the country may as a whole decide whether newspapers should be taxed at all and, if to be taxed, to what extent.

One word more and I have done. Sir, although I support the amendment proposed by my Friend, Dr. Ambedkar, I only wish to make it clear that this should not be taken to mean that we agree to the imposition of any such taxes on newspapers in the future. Perhaps the House is aware that the All-India Newspaper Editors' Conference, the Indian and Eastern Newspaper Society and the Indian Languages and Newspapers Association, all these three bodies representing the Press of India met in Delhi last month and passed a unanimous resolution against all such taxes on newspapers—of course I am not referring to income-tax or super-tax, to which no one objects. All these bodies take a very serious view of this question. I hope that in any decision which this House takes now or the Parliament may take in future, they will always bear in mind that the existence of a vigorous and independent press is very essential for the good of the country and that anything done to weaken the press will weaken democracy, weaken the Government and will weaken the strength of the people. With these words, Sir, I extend my support to the amendment moved by Dr. Ambedkar and I thank him once again for having appreciated the point of view of the newspapers.

Prof. N. G. Ranga: Mr. President, Sir, I am glad that this clause has come to be included in the Constitution. It is necessary that the newspapers should come within the purview of Central taxation. It also shows how strong has come to be this fourth estate today. If the newspapers of this country, especially the daily newspapers, had not come to be so powerful, it would not have been possible for these alterations to be made in the lists of taxation that are proposed to be included in this Constitution. This question would not have come up at all for such serious consideration if the Madras Government had not taken the initiative in proposing to tax all advertisement revenues of the daily press and the other presses also. Once the taxation move was made by the Madras Government, my friends of the newspapers opened their eyes and saw that any amount of mischief could be done against themselves and their revenue if ever the provincial governments were to be given this power to tax. Therefore they have raised this matter in this forum and succeeded in including this in the Central List, as an item of Central taxation. Sir, I do not grudge this, but I do wish to maintain that the financial position of the newspapers has considerably altered ever since the last war. Whatever might have been the position of many of the daily papers in this country before the last war ever since this war most of them have come to make huge profits and many of them are not mere independent journals, mere independent newspapers, but many of them have come to be included in a series of chains of proprietors and proprietorships.

Shri Deshbandhu Gupta: May I ask honourable friend, who has been to the Western countries, as to how does the best of the Indian papers compare with those in the Western countries?

Prof. N. G. Ranga: I wish my honourable friend every success in his attempts to gain as much money as the Western proprietors are making. I would not grudge him indeed if his paper were to flower out one of these days like the *New York Times* and produce 60 or 64 pages on every Sunday and

[Prof. N. G. Ranga]

serve its readers; but I do grudge him when he has got all the revenue for himself and he is not prepared to part with a portion of it to the State. That is why I say Sir, that these daily newspapers which make these huge profits anyhow and these newspapers which are making profits over a particular prescribed minimum should not be given any special treatment but should on the other hand be made to pay as any other estate would have to pay upon the revenues that they would be deriving from advertisements.

Shri Ramnath Goenka: They pay income-tax and super-tax.

Prof. N. G. Ranga: In spite of that they make such huge profits. My honourable Friend Mr. Goenka himself must be knowing it, not to his cost, but to his benefit; and these newspapers have got to be made to pay and contribute as well as they could, and I do not see any reason why these concessions should continue to be given, and it is high time that our politicians and our legislators should be able to assert themselves in all their independence and see that these people, powerful as they are, more and more powerful as they threaten to grow in the near future, that they should be expected to make some sort of contribution correspondingly and indeed progressively as any other source of income that we find in our part of the world.

Sir, newspapers, it is true, serve a very useful national interest; otherwise, they would not be here at all. They would be prohibited just as arrack and spirits and all these things are prohibited; merely because they serve a useful purpose they are allowed to carry on their trade. As long as they are allowed to carry on their trade; let them be treated only in the same way as all other trades and let them not ask for any special privilege. My honourable Friend, Mr. Deshbandhu Gupta has grown eloquent about the contribution made by the newspapers during the national struggle. All glory to them and to such of them which had the courage to close down their offices. That is no reason why the profits they are making today, tomorrow and the day after tomorrow...

Mr. President: I wish to tell Mr. Ranga, that we are not discussing any proposal for taxation today but that we are only discussing an entry in the Constitution.

Prof. N. G. Ranga: I am very glad indeed that this entry is being made in the Constitution. But I would have been gladder if this item had been kept in the Concurrent List so that it would have been a boon to the Provincial Governments as well as the Central Government.

Shri Ramnath Goenka: Have you taxation in the Concurrent List? Have you ever heard of it in our Constitution?

Prof. N. G. Ranga: To the extent that it can possibly be kept there.

Mr. President. Mr. Goenka, I hope you would not go into the history of newspapers. All that we have already done.

Shri Ramnath Goenka: Mr. President, Sir, I did not want to intervene in this debate, but Messrs. Ranga and Sidhva have prompted me to say a few words. So far as I am concerned, I am not proud of the fact that this entry finds a place in the Central List. In fact this taxation had been condemned as far as 150 years back in the advanced democracies of the world. I am really ashamed that such an entry should be found in the Constitution of this country. There is no Constitution in the world where such an entry of taxation of newspapers exists. This is the only country where we have it, not because it is the right thing to do, but because we have Sidhvas and Rangas and therefore it is that we have this entry in this List. I am sure, Sir, when the time comes for the Central Parliament to decide the matter in

regard to the taxation, they will go by—not the revenue which the newspapers make, by circulation, advertisements and such things—but on the basis of the net profits that they make. I am one of those who will say that newspapers are not money-making propositions. I will say that newspapers are there to serve the public and give them a free flow of information. I am one of those who will go the whole hog and say that newspapers should not be allowed to make an considerable sums of money; but you shall not take away the money before they are allowed to serve the public, by taxation on sales and advertisements, whatever their incidence may be.

An honourable Member: You serve the public very rarely.

Shri Ramnath Goenka: What I would like to say is this that if any taxation is to be levied on newspapers, it should be levied on the basis of the net profits they make. I am one of those who would say that if any newspaper makes more than 3 per cent. of its capital, the rest of the money should be appropriated by the State but before you allow them to serve, you cannot take away the money from them. So far as the newspaper economy is concerned, you will be amazed to know that the cost of the newsprint used in production of a newspaper is only equal to the net proceeds of the sale of the newspaper. Therefore, the gross revenue is only the advertisement revenue and if you take away 10 per cent. 15 per cent. and 20 per cent. of the gross revenue, what will be its effect on newspaper economy? Do you want your newspapers to compare favourably with the *Manchester Guardian, the London Times* and *the New York Times* or would you like your newspapers to be some sort of a rag produced in this country?

Shri R. K. Sidhva: Produce the balance sheet.

Mr. Naziruddin Ahmad: On a point of order, are we considering the item as in the List or are we considering a proposal for taxation?

Mr. President: You are perfectly justified in raising the point of order. I have myself reminded the speaker several times that we are not considering any proposal of taxation but only an entry in the Constitution.

Shri Ramnath Goenka: I will bow to your ruling: but so far as the newspapers are concerned, they are not proud of seeing this entry either in List I or II, but as a matter of compromise we had to agree to it and I say that this taxation which has been condemned in all the advanced democracies of the world 150 years ago, should not have found a place in this Constitution and since we have certain difference of opinion in regard to this matter, we have agreed to this; and I hope, believe and trust that the Central Government will not resort to his taxation.

Mr. President: I do not think any further discussion is necessary.

Shri B. L. Sondhi (East Punjab: General): Closure, Sir.

Shri Prabhu Dayal Himatsingka (West Bengal: General): I should like to say just one or two words. I want the sales tax should be put in the Central List. In fact there was an amendment to that effect.

There is so much confusion in the different provinces on account of the sales tax that something must be done to regularize the thing and remove part of the difficulty that is being felt by all under it.

Mr. President: We are not discussing that now.

Dr. P. S. Deshmukh (C.P. & Berar: General): Closure will save exposure.

The Honourable Dr. B. R. Ambedkar: Sir, in view of what my honourable Friend Mr. Sidhva said that I have been inconsistent in my attitude towards these entries, I should like to offer one or two observations by way of explanation. Sir, I said in the course of the debate that took place last time over this matter that the newspapers were very intimately connected with article 13 which deals with Fundamental Rights. Therefore in making any provision with regard to newspapers that is a matter which has to be borne in mind.

The second thing is that so far as any regulation of fundamental rights is concerned, under article 27 of the Constitution which we have already passed we have left all matters of legislation regarding fundamental rights to Parliament and we have not left any power with the States. It therefore appeared to me and also to the Drafting Committee that in view of these consideration, namely, that newspapers were coming under fundamental rights, and all laws regarding fundamental rights were being left to Parliament, it was only a natural corollary that newspapers for purposes of taxation should also come under the authority of the Centre.

A third consideration which prevailed with the Drafting Committee as well as with myself was that in view of the fact that newspapers were connected with fundamental rights, namely the freedom of expression and thought, it was desirable that any imposition that was levied upon them should be uniform and not vary from province to province. Such uniformity can be obtained only if the matter was left to Parliament to make laws. These are the three considerations which prevailed with me and prevailed with the Drafting Committee in the view that they have taken.

The only other consideration of importance was that this item was not purely an item dealing with making laws. It also dealt with levying a tax in so far as newspapers were included in the term goods in entry 58 of List II. We therefore thought that in order not to deprive the provinces of such revenue as they might be able to make by imposing a levy upon newspapers under the Sales Tax Act, the proper thing to do was to include the sales tax on newspapers in article 250 which includes many other items and provides that if any taxation was levied upon them, the proceeds shall be distributed among the various provinces.

Therefore, the only question for consideration that arises is whether by making this transfer from List II to List I, we are injuring so to say the finances of the provinces. My answer is that we are not doing any injury to the provinces because if the House would agree to carry my amendment No. 374, the provinces will get such portion of any tax on the sale of newspapers as they may have raised and now receive, under the amendment No. 374. In making these proposals, we have taken into consideration as I said the general proposition that newspapers having been connected with fundamental rights, ought to come under the jurisdiction of the Centre, and that any financial gain which the provinces would have got should not be lost sight of. Both these considerations have prevailed with the Drafting Committee in making these changes.

I submit, notwithstanding the declamations of my honourable Friend Mr. Sidhva which I can understand, because he is smarting under a great injury which he suffered in another place, I say that there can be no objection to the entries that we have proposed.

Shri R. K. Sidhva: Sir, I take exception to Dr. Ambedkar's remarks when he said that I am smarting under some injury. I shall pay him in his own coins unless you ask him to withdraw those remarks.

The Honourable Dr. B. R. Ambedkar: I am quite prepared to withdraw them, Sir. But, I know it very well.

Mr. President: That settles the matter. I shall now put the amendments to vote.

The question is :

"That in amendment No 378 of List VIII (Seventh Week), for the proposed new entry 88-A in List I, the following be substituted :—

'88-A. Taxes on advertisement published in newspapers.' "

I think the Noes have it.

Some Honourable Members: Ayes have it, Sir.

Mr. President: No.

The amendment was negatived.

Mr. President: Then I put the original proposition moved by Dr. Ambedkar :

The question is :

That after entry 88 in List I of the Seventh Schedule, the following entry be inserted :—

'88A. Taxes on the sale or purchase of newspapers and on advertisements published therein.' "

The motion was adopted.

Entry 88-A was added to the Union List of the Seventh Schedule.

Mr. Mr. President: The question is :

"That in amendment No. 379 of List VIII (Seventh Week) in the proposed entry 58 of List II, the words 'other than newspapers' be deleted."

The amendment was negatived.

Mr. President: Then, I put the entry as moved by Dr. Ambedkar.

The question is :

"That for entry 58 of List II of the Seventh Schedule, the following entries be substituted :—

'58. Taxes on sale or purchase of goods other than newspapers.
58-A. Taxes on advertisements other than advertisements published in newspapers.' "

The motion was adopted.

Entries 58 and 58A, as amended, were added to the State List of the Seventh Schedule.

Articles Re-opened

Mr. President: We have got several articles placed in the order paper today which require reconsideration of the articles that have been passed. The first is article 250 which is intimately connected with the amendments which we have just now passed. Under the rules, no question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-fourth of the Members present and voting. I should like to know if the House gives its consent.

Honourable Members: Yes.

Shri R. K. Sidhva: In the second reading stage, Sir, when article by article is being passed, it is not permissible to reopen. If you allow this precedent, it will be very bad precedent for the future. You cannot shut out any other Member from moving for a reconsideration of any article. There will be no finality then.

Mr. President: I cannot shut out; it is for the House to shut out. If one-fourth of the Members wish a question to be reopened, it can be reopened. I find more than one-fourth of the Members are willing to reopen this article 250.

There are other articles also which will have to be reopened which are mentioned in today's Order Paper: articles 239-242, 248-A, 263, 202. May I take it that the House gives leave to reopen all these articles?

Shri R. K. Sidhva: Sir, Members may not have objection to some articles, while they may object to some. The articles may be put one by one.

Mr. President: I shall put them one by one. Articles 239—242. I take it that the House gives leave to reopen then.

Several Honourable Members: Yes.

Mr. President: Article 248-A. I take it that the House gives leave to reopen it.

Several Honourable Members: Yes.

Mr. President: Article 263. I take that the House gives leave to reopen it.

Several Honourable Members: Yes.

Mr. President: Article 202. I take it that the House gives leave to reopen it.

Several Honourable Members: Yes.

Mr. President: Leave is given to reopen all these articles. Article 250: Dr. Ambedkar.

Article 250

Shri T. T. Krishnamachari: Dr. Amberkar has already moved it. It is only a formal matter and it can be put to vote.

Mr. President: Does any one wish to say anything about amendment No. 374 moved by Dr. Ambedkar?

(*No Member rose.*)

Mr. Honourable Dr. B. R. Ambedkar: It is only a consequential thing, Sir.

Mr. President: There is no amendment to this. I shall put this to vote.

The question is:

"That in clause (1) of article 250, after sub-clause (d), the following sub-clauses be added:—

'(e) taxes other than stamp duties on transactions in stock-exchanges and futures market;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein.'"

The amendment was adopted.

Article 202

Mr. President: Article 202.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (1) of article 202. after the words 'to issue' the words 'to any person or authority including in appropriate cases any Government within those territories,' be inserted."

I said when moving an amendment to article 302 that a consequential amendment would be necessary in article 202. I am therefore moving this Article 202 as amended will now read as follows :—

"Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within those territories directions or orders in the nature of writs of *habeas corpus*, mandamus, prohibition, *quo warranto and certiorari*, for the enforcement of any of the rights conferred by Part III of this Constitution for any other purposes."

It is just consequential.

Pandit Thakur Das Bhargava (East Punjab : General) : Why do you say in appropriate cases' ?

The Honourable Dr. B. R. Ambedkar : Because appropriate cases will be laid down by law of Parliament.

Mr. Mr. President : The question is :

"That in clause (1) of article 202 after the words 'to issue' the words 'to any person or authority including in appropriate cases any Government within those territories' be inserted."

The amendment was adopted.

Article 234-A

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 234, the following new article be inserted :—

'234A. (1) The executive power of the Union shall also extend to the giving of direction as respectsprotection of railways. Control of the Union over States to a State as to the measures to be taken for the protection of the railways within the State.

(2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.' "

Sir, all police first of all are in the Provincial list. Consequential the protection of railway property also lies within the field of Provincial Government. It was felt that in particular cases the Centre might desire that the property of the railway should be protected by taking special measures by the province and for that purpose the Centre now seeks to be endowed with power to give directions in their behalf. It is possible that by reason of the special directions given by the Centre some extra cost above the normal may be incurred by the provinces. In that event what that extra cost is, may either be determined by agreement or if there is no agreement, by an arbitrator chosen by the Chief Justice of India. The second clause is analogous to many of the clauses that we have passed in the Constitution for settling the disputes between the Centre and the Provinces so far as extra cost is concerned.

Dr. P. S. Deshmukh : Mr. President, I do not feel convinced about the necessity of this provision which refers only to railway property. I do not know what cause there is for special apprehension so far as the property belong to railway is concerned. There will be property belonging to the Centre spread over the length and breadth of India; and why should there be a special and specific provision for the protection and for issuing specific directions in this case only ? The House is aware that the Centre has got

[Dr. P. S. Deshmukh]

authority for issuing directions in various spheres and giving certain directions which are necessary for the maintenance of law and order, and for protection of their property also the Centre has power of issuing those instructions generally. Therefore, I have not been able to follow why it was necessary to refer to it specifically and make special mention of the railway property and what causes there are which make us apprehensive of the possible damage to railway property only. I do not think it is proper that we should have such apprehensions apart from the general powers. We have already clothed the Centre with more than sufficient powers and this article should not be necessary. In any case the justification given has not convinced me of the necessity of having this article. There is nothing to fear that the States will not carry out directions without such an article being there and that any dispute will arise so far as the cost is concerned. These are matters which may arise in the normal administration and they can be normally settled and there is no necessity of abnormal provisions and abnormal means of settlement.

Shri Brajeshwar Prasad: Mr. President, Sir, I rise to extend my hearty support to clause (1) of this article, but I am thoroughly opposed to clause (2). There is no reason why an arbitrator should be appointed if there is a conflict between the Centre and the States regarding costs that have been incurred in excess of that that which would have been incurred in the ordinary performance of provincial duties. The master and the servant cannot be placed on the same platform. It is wrong to do anything which would bring about any deterioration of the power and position of the Majesty of the Government of India. Therefore I want that if there is any conflict between the Centre and the provinces as far as the costs are concerned, the matter may be left entirely in the hands of the President.

The Honourable Dr. B. R. Ambedkar: Sir this clause is very necessary. My Friend Mr. Deshmukh when he said, that there were adequate provisions in the existing article we have passed—I am sorry to say—he is fundamentally mistaken. Railway Police is a subject within the authority of the State. Police as an entry does not find a place in List I. Consequently the Centre has no authority to make a law with regard to any police matter at all, nor, not having the legal authority, has it any executive authority. Therefore so far as protection of the railway property is concerned, the matter is entirely within the executive authority of the State. That being so, there are only two methods of doing it. Either the Centre should be endowed with police authority for the purpose of protecting their own property in which case an article such as the one which I have moved is unnecessary or we should have the provision which I have suggested *viz.* to give directions. Supposing the Centre has a police to protect railways, that police may come in conflict with the police authority of the State. Therefore the double jurisdiction has been avoided by the scheme which has been suggested *viz.*, that the Centre should have the authority to give directions that more police may be posted on the railways, better precautions may be taken, so that there will not be any conflict, and should more expenditure be incurred the Centre should be ready to bear it. I cannot see what difficulty there can be. Dr. Deshmukh's premise that this matter is already covered in hopelessly wrong.

Dr. P. S. Deshmukh: What is the reason, why we do not need any protection so far as the rest of the property of the Union is concerned? How do you distinguish between railway property and others?

The Honourable Dr. B. R. Ambedkar: Because we find the railway property needs more attention. The safety of passengers is there.

Mr. President: The question is :

"That after article 234, the following new article be inserted :—

'234A (1) The executive power of the Union shall also extend to the giving of direction to a State as to the measures to be taken for the protection of Control of the Union over States as respects protection of railways within States

(2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State'"

The motion was adopted.

New article 234A was added to the Constitution.

New Article 242-A

Mr. President: Dr. Ambedkar, you may move amendment No. 372A regarding the heading.

Shri T. T. Krishnamachari: If No. 373 is passed, then the deletion of the heading is consequntial.

The Honourable Dr. B. R. Ambedkar: Sir, I move amendment No. 373 :

"That after article 242, the following new article be inserted :—

'242A. (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley. Adjudication of disputes relating to waters of inter state rivers or river valleys.

(2) Notwithstanding anything contained in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) of this article.'"

Sir, originally this article provided for Presidential action. It was thought that these disputes regardng water and so on may be very rare, and consequently they may be dsposed of by some kind of special machinery that might be appointed. But in view of the fact that we are now creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or pro-proposal was too hide-bound or too stereo-typed to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes.

Shri R. K. Sidhva: Article 242 is proposed to be deleted, and so how does this new article 242A come up after article 242 ?

The Honourable Dr. B. R. Ambedkar: This one only indicates the position.

Mr. President: We have passed article 242. Now, does any one want to speak on this new article ? There is no amendment to it.

Shri Brajeshwar Prasad Mr. President, Sir, I support clause (1) of this article, but I feel that there is no necessity for vesting power into the hands of Parliament to make laws for resolving disputes in connection with inter-state river and river valleys. That matter I feel, should have been left in the hands of the President alone.

Mr. President: Now, I put the new article 242-A to vote.

The question is :

"That article 242A stand part of the Constitution."

The motion was adopted.

New article 242A was added to the Constitution.

Mr. President: Amendment No. 372A.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That the heading above article 239, and articles 239, 240, 241 and 242 be deleted."

These are covered by article 242-A and therefore are unnecessary.

Mr. President: Does anyone wish to say anything about this amendment? There is no amendment. I then put it to the House.

The question is :

"That the heading above article 239, and articles 239, 240, 241 and 242 be deleted."

The motion was adopted.

The heading above article 239, and articles 239, 240, 241, and 242 were deleted.

Articles 248-A, 263 and 263-A

The Honourable Dr. B. R. Ambedkar: Sir, I should like to move the three amendments 380, 381 and 382 introducing three new articles, and I begin with amendment No. 382 because the rest are consequential.

Mr. President: All right.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That after article 263, the following new article be inserted :—

'263A. All moneys received by or deposited with—

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of a State, as the case may be, or

Custody of suitors' deposits and other moneys received by public servants and courts.

(b) any court within the territory of India to the credit of any cause, matter, account or persons shall be paid into the public account of India or of the State, as the case may be.' "

Sir, if you permit me, I shall move the other amendments also and then offer some general observations to enable Members to understand the changes that we propose to make.

Mr. President: Yes.

The Honourable Dr. B. R. Ambedkar: I move amendment No. 380 and amendment No. 381. I move :

"That for article 248A, the following article be substituted :—

'248A. (1) Subject to the provisions of article 248B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of India" and all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of the State.

Consolidated Funds and Public Accounts of India and of the States.

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India, or of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.'"

Amendment No. 381.

"That for article 263, the following article be substituted:—

'263. (1) The custody of the Consolidated Fund and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

Custody of Consolidated Funds, contingency Funds and moneys credited to the public accounts and the payment of moneys into and withdrawal of moneys from such Funds and public accounts.

(2) The custody of the Consolidated Fund and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and until provisions in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.'"

Briefly, the changes are two-fold. In the original article No. 248A as it stood, the scope of the Consolidated Fund was limited. The Consolidated Fund did not specifically refer to the proceeds of loans, treasury bills and ways and means advances. We now propose to make a specific mention of them so that they will form part of the Consolidated Fund.

The second thing is that in drawing the definition of the Consolidated Fund we lumped along with it certain other moneys which were received by the state, but which were not the proceeds of taxes or loans, etc., with the result that public money received by the state otherwise than as part of the revenues or loans also became subject to an Appropriation Act, namely the provision contained in sub-clause (3) of article 248A. Obviously the withdrawal of money which should strictly not form part of the Consolidated Fund of the State cannot be made subject to any Appropriation Act. They will be left open to be drawn upon in such manner, for such purposes and at such times subject to such conditions as may be laid down by Parliament in that behalf specifically. It is, therefore, to enlarge the definition expressly of the Consolidated Fund and to separate the Consolidated Fund from other funds which go necessarily into the public account that these changes are made. There is no other purpose in these changes. The Finance Ministry drew attention to the fact that our provision in regard to the Appropriation Act was also made applicable to other moneys which generally went into the public account and that that was likely to create trouble. It is in order to remove these difficulties that these provisions are now introduced in the original article.

Mr. Mr. President: The question is:

"That after article 263, the following new article be inserted:—

'263A. All moneys received by or deposited with—

[Mr. President]

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of a State, as the case may be, or

Custody of suitors' deposits and other moneys received by public servants and courts.

(b) any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or of the State, as the case may be.'"

The motion was adopted.

New article 263A was added to the Constitution.

Mr. Mr. President: The question is:

"That for article 248A. the following article be substituted:—

'248A. (1) Subject to the provisions of article 248B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled. 'The Consolidated Fund of India' and all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of the State".

Consolidated Funds and public accounts of India and of the States.

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.'"

The motion was adopted.

Article 248-A was added to the Constitution.

Mr. Mr. President: The question is:

381. "That for article 263, the following article be substituted:—

'263. (1) The custody of the Consolidated Fund and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

Custody of consolidated Funds, contingency Funds and moneys credited to the public accounts and the payment of moneys into and withdrawal of moneys from such Funds and public accounts.

(2) The custody of the Consolidated Fund and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and until provision in that behalf is so made by the Legislature of the State, shall be regulated by rules made by the Governor of the State.'"

The motion was adopted.

Article 263, as amended, was added to the Constitution.

The Assembly then adjourned till Nine of the Clock on Saturday, the 10th September 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 24

Mr. President: We shall take up article 24 this morning and we shall begin with amendment No. 369. I desire to impress upon honourable Members that we must finish the discussion of this article today, as we have fixed the other question regarding language for Monday and Tuesday.

I have got some 97 amendments to this amendment: many of them overlap each other and others repeat similar amendments. I hope Members will bear this in mind when insisting upon moving their particular amendments, so that we may not have the same arguments repeated by different Members while moving their amendments. The first amendment we shall take up is No. 369.

Seth Govind Das (C.P. & Berar: General): Sir, may I take it that if the discussion of this article is not over by one o'clock it will be continued in the afternoon also, so that we will have Monday and Tuesday free for the language question?

Mr. President: That we shall see on Monday. Today we shall have an afternoon session if necessary.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Mr. President, I move:

"That for article 24, the following article be substituted:—

'24. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.

(3) No such law as is referred to in clause (2), of this article made by the Legislature of a State shall have effect unless such law having been reserved for the consideration of the President has received his assent.

(4) If any Bill pending before the Legislature of a State at the commencement of this Constitution has, after it has been passed by such Legislature, received the assent of the President, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article.

(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect—

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the promotion of public health or the prevention of danger to life or property.

[The Honourable Shri Jawaharlal Nehru]

(6) Any law of a State enacted, not more than one year before the commencement of this Constitution, may within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or sub-section (2) of section 299 of the Government of India Act, 1935.'"

Sir, this House has discussed many articles of this Constitution at considerable length. I doubt if there are many other articles which have given rise to so such discussion and debate as this present article that I have moved. In this discussion many eminent lawyers have taken part, in private discussions and discussion in another place, and naturally they have thrown a great deal of light—so much light indeed that the conflicting beams of light have often produced a certain measure of darkness. But the questions before us really are fairly simple.....

Shri H. V. Kamath (C.P. & Berar : General) : Sir, the Honourable the Prime Minister is hardly audible on this side.

Shri Jaspat Roy Kapoor (United Provinces : General) : We want to hear every word of what he says.

The Honourable Shri Jawaharlal Nehru : Sir, I was saying that in spite of the great argument that has taken place, not in this House but outside among Members over this article, the questions involved are relatively simple. It is true that there are two approaches to those questions, the two approaches being the individual right to property and the community's interest in that property or the community's right. There is no conflict necessarily between those two: sometimes the two may overlap and sometimes there might be, if you like, some petty conflict. This amendment that I have moved tries to remove or to avoid that conflict and also tries to take into consideration fully both these rights—the right of the individual and the right of the community.

First of all let us be quite clear that there is no question of any expropriation without compensation so far as this Constitution is concerned. If property is required for public use it is a well established law that it should be acquired by the State, by compulsion if necessary and compensation is paid and the law has laid down methods of judging that compensation. Now, normally speaking in regard to such acquisition—what might be called petty acquisition or acquisition of small bits of property or even relatively large bits, if you like, for the improvement of a town, etc.—the law has been clearly laid down. But more and more today the community has to deal with large schemes of social reform, social engineering etc., which can hardly be considered from the point of view of that individual acquisition of a small bit of land or structure. Difficulties arise—apart from every other difficulty, the question of time. Here is a piece of legislation that the community, as presented in its chosen representatives, considers quite essential for the progress and the safety of the State and it is a piece of legislation which affects millions of people. Obviously you cannot leave that piece of legislation too long, widespread and continuous litigation in the courts of law. Otherwise the future of millions of people may be affected; otherwise the whole structure of the State may be shaken to its foundations : so that we have to keep these things in view. If we have to take the property, if the State so wills, we have to see that fair and equitable compensation is given, because we proceed on the basis of fair and equitable compensation. But when we consider the equity of it we have always to remember that the equity does not apply only to the individual but to the community. No individual can override ultimately the rights of the community at large. No community should injure and invade the rights of the individual unless it be for the most urgent and important reasons.

How is it going to balance all this? You may balance it to some extent by legal means, but ultimately the balancing authority can only be the sovereign legislature of the country which can keep before it all the various factors—all the public, political and other factors—that come into the picture. This article, if you will be good enough to read it, leads you by a chain of thought and refers to these various factors and I think refers to them in an equitable manner. It is true that some honourable Members may criticise this article because of a certain perhaps overlapping, because of a certain perhaps—what they might consider—lack of clarity in a word here or there or a phrase. That to some extent is inevitable when you try to bring together a large number of ideas and approaches and factors and put them in one or a number of phrases.

This draft article which I have the honour to propose is the result of a great deal of consultation, is the result in fact of the attempt to bring together and compromise various approaches to this question. I feel that that attempt has in a very large measure succeeded. It may not meet the wishes of every individual who may like to emphasize one part of it more than the other. But I think it is a just compromise and it does justice and equity not only to the individual but to the community.

The first clause in this article lays down the basic principle that no person shall be deprived of his property save by authority of law. The next clause says that the law should provide for the compensation for the property and should either fix the amount of compensation or specify the principles under which or the manner in which the compensation is to be determined. The law should do it. Parliament should do it. There is no reference in this to any judiciary coming into the picture. Much thought has been given to it and there has been much debate as to where the judiciary comes in. Eminent lawyers have told us that on a proper construction of this clause, normally speaking, the judiciary should not and does not come in. Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution. Naturally the judiciary comes in to see if there has been a fraud on the Constitution or not. But normally speaking one presumes that any Parliament representing the entire community of the nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as the community.

In regard to the other clauses I need say very little except that clause (4) relates to Bills now pending before the Legislature of a State. The House will know that there are such Bills pending. In order to avoid any doubt with regard to those measures, it says that as soon as the President has assented to that law no question should be raised in a court of law in regard to the provisions of that enactment. Previous to this it has already been said that the matter has to go to the President. That is, if you like, a kind of a check to see that in a hurry the Legislature has not done something which it should not have done. If so, the President no doubt will draw their attention to it and suggest such changes as he may consider fit and proper for Parliament's consideration.

Finally, there are certain other saving clauses about which I need not say much. Clause (6) again refers to any law which has been passed within the last year or the year before the commencement of the Constitution. It says that, if the President certifies that, no other obstruction should be raised. Reading this article, it seems to me surprising that we have had this tremendous debate on it—not here but elsewhere. That debate was due perhaps not to this article but to rather other conflicts of opinion which are in the minds of Members and, I believe, many outside.

[The Honourable Shri Jawaharlal Nehru]

We are passing through a tremendous age of transition. That of course is a platitude. Nevertheless platitudes have to be repeated and to be remembered lest in forgetting them we land ourselves in great difficulties and in crisis. When we pass through great ages of transition, the various systems—even systems of law—have to undergo changes. Conceptions which had appeared to us basic undergo changes. And I draw the attention of the House to the very conception of property which may seem to us an unchanging conception but which has changed throughout the times, and changed very greatly, and which is today undergoing a very rapid change. There was a period when there was property in human beings. The king owned everything—the land, the cattle, the human beings. Property used to be measured in terms of the cows and bullocks you possessed in old days. Property in land then became more important. Gradually the property in human beings ceased to exist. If you go back to the period when there were debates on slavery you will see how very much the same arguments were advanced in regard to the property in human beings as are sometimes advanced now with regard to the other property. Well, slavery ceased to exist.

Gradually the idea of property underwent changes not so much by law, but by the development of human society. Land today, as it has been yesterday, is likely to be a very important kind of property. One cannot overlook it. Nevertheless, other kinds of property today are very important in industrially-developed countries. Ultimately you arrive at an idea of property which consists chiefly in a millionaire having a bundle of paper in his hands which represents millions, securities, promissory notes, etc. That is the conception of property today; that is the real conception of the millionaire. It is rather an odd conception to have to protect carefully that property which, in the larger concept of vastly greater properties, is paper. In other words, property becomes today more and more a question of credit. It becomes more and more immaterial and more and more a shadow. A man with credit has more property and can raise property and can do wonders with that credit. But a man with no credit can do nothing at all. I am merely mentioning this to the House to show how this idea of property has been a changing one where society has been changing rapidly owing to the various revolutions, industrial and other.

Again, another change takes place. Property remains of course property, but the ownership of property begins to spread out. The individual, instead of owning a very small share, more or less begins to own a very large share partly and thereafter becomes the co-sharer of a very large property and gets the benefit of that, although he is not complete master of it. So co-operative undertakings, so in a sense the joint-stock system, etc., began. So in a sense also spread the idea of an individual becoming a part owner as a member of a group of properties on a big scale which no single individual can ever hold except very rarely. In recent years the tendency has been for monopoly of wealth and property in a limited number of hands. This does not apply to India so much, because we have not grown so much in that direction. But where industrially countries have grown fast there has been monopoly of capital with the result that even the old idea of property and free enterprise is not easily applicable, because in the ultimate analysis the few persons who possess a large monopoly of capital really dominate the scene. They can crush out the little shop-keeper by their methods of business and by the fact that they have large sums of money at their command. Without giving the slightest compensation, they can crush him out of existence. The small man is crushed out of existence by the modern tendency to have money power concentrated in some hands. Thus the old conception of the individual owner of property suffers not only from social developments, as we see them taking place and from new conceptions of co-operative ownership of property, but from the development on the old lines when a rich man with capital can buy out the small one for a song.

How are you going to protect the individual? I began by saying that there are two approaches—the approach of the individual and the approach of the community. But how are we to protect the individual today except the few who are strong enough to protect themselves? They have become fewer and fewer. In such a state of affairs, the State has to protect the individual right to property. He may possess property, but it may mean nothing to him, because some monopoly comes in the way and prevents him from the enjoyment of his property. The subject therefore is not a simple one when you say you are protecting the individual's rights, because the individual may lose that right completely by the functioning of various forces today both in the capitalist direction and in the socialist direction.

Well, this is a large question and one can consider the various aspects of it at length. I wish to place before the House just a hint of these broader issues. because I am a little afraid that this House may be moved by legal arguments of extreme subtedly and extreme cleverness, ignoring the human aspect of the problem and the other aspects which are really changing the world today.

The House has to keep in mind the transitional and the revolutionary aspects of the problem, because, when you think of the land question in India today, you are thinking of something which is dynamic, moving, changing and revolutionary. These may well change the face of India either way; whether you deal with it or do not deal with it, it is not a static thing. It is something which is not entirely, absolutely within the control of law and Parliaments. That is to say, if law and Parliaments do not fit themselves into the changing picture, they cannot control the situation completely. This is a big fact. Therefore it is in this context of the fast-changing situation in India that we have to view this question and it is with this context in the wide world and in Asia we are concerned.

It must be said that we have to consider these problems not in the narrow, legalistic and juristic sense. There are some honourable Members here who, at the very outset, were owners of land, owners of zamindaries. Naturally they feel that their interests might be affected by this land legislation. But I think that the way this land legislation is being dealt with today—and I am acquainted a little more intimately with the land legislation in the United Provinces than elsewhere—the way this question is being dealt with may appear to them not completely right so far as they are concerned; but it is a better way and a juster way, from their point of view, than any other way that is going to come later. That way may not be by any process of legislation. The land question may be settled differently. If you look at the situation all the world over and all over Asia, nothing is more important and vital than a gradual reform of the big estates.

It has been not today's policy, but the old policy of the National Congress laid down years ago that the zamindari institution in India, that is the big estate system must be abolished. So far as we are concerned, we, who are connected with the Congress, shall give effect to that pledge naturally completely, one hundred per cent. and no legal subtedly and no change is going to come in our way. That is quite clear. We will honour our pledges. Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, ultimately the whole Constitution is a creature of Parliament. But we must respect the judiciary, the Supreme Court and the other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the

[The Honourable Shri Jawaharlal Nehru]

detached atmosphere of the courts, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term. Therefore, if such a thing occurs, they should draw attention to that fact, but it is obvious that no court, no system of judiciary can function in the nature of a third House, as a kind of Third House of correction. So, it is important that with this limitation the judiciary should function.

You have decided, the House has decided, rather most of the Provincial Governments have decided to have a Second Chamber. Why has it been so decided? The Second Chamber also is an elected Chamber mostly. Presumably, they have so decided because we want some check somewhere to any rapid decision of the First Chamber, which that Chamber itself may later regret and may wish to go back on. So, from that point of view, it is desirable to have people whose duty is, not in any small matters but with regard to the basic principles that you lay down, to see that you do not go wrong, as sometimes even the Legislature may go wrong, but ultimately the fact remains that the legislature must be supreme and must not be interfered with by the courts of law in such measures of social reform. Otherwise, you will have strange procedures adopted. Of course, one is the method of changing the Constitution. The other is that which we have seen in great countries across the seas that the executive, which is the appointing authority of the judiciary, begins to appoint judges of its own liking for getting decisions in its own favour, but that is not a very good method.

I submit, therefore, that in this Resolution the approach made protects both the individual and the community. It gives the final authortiy to Parliament, subject only to the scrutiny of the superior courts in case of some grave error, in case of contravention of the Constitution or the like, not otherwise. And finally in regard to certain pending measures or measures that have been passed, it makes it clear beyond any doubt that there should be no interference. I beg to place this amendment before the House.

Shri Syamanandan Sahaya (Bihar: General): Mr. President, Sir, before we proceed with the discussion of this amendment which is really the draft of article 24 now, I would like to raise a preliminary objection on a point of order. Before I make my submission, I would like to point out that I am doing so, not for obstructing this article, but in my own humble way to draw attention to a defect which exists in this. Sir, I wish to draw your attention and the attention of the honourable the Mover to clause (4) of this article which reads thus :—

"If any Bill pending before the Legislature of a State at the commencement of this Constitution has, after it has been passed by such Legislature, received the assent of the President, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article."

If you will kindly refer, Sir, to the discussion in this House on the recommendations of the Fundamental Rights Committee, you will find that they accepted the principle that no property shall be taken possession of or acquired without the payment of compensation. This view, Sir, has also just now been expressed by the Honourable the Prime Minister when he said in his opening speech that there is no question of expropriation without compensation. I take my stand on that principle which we accepted in this House and on the statement just now made by the Honourable the Prime Minister in moving his amendment. Now, if we carefully read the wording of clause (4).....

Shri B. Das (Orissa: General): May I enquire what fundamental right my friend is referring to?

Shri Syamanandan Sahaya: Clause 19 of the Fundamental Rights Committee's report. If you want the page, I will give you.

Some Honourable Member: But what is the article that we have passed?

Mr. President: I would ask honourable Members to allow the Member to make his point. He has not yet come to his point of order. He is making his preliminary observations. Let him make his point of order.

Shri Syamanandan Sahaya: If you read clause (4) of this article, it will appear that a Bill which is pending [illegible] not be called in question in a court of law if it contravenes the provisions of clause (2) of this article. It is only in clause (2) that we have provided that any law that is passed for taking possession of or acquiring private property shall provide for compensation and either fixes the amount of the compensation or lays down the principles and the manner in which the compensation is to be determined. Now, clause (4) lays down that if a Bill contravenes the provisions of clause (2), even then no question can be raised in any court, which means that it is empowering the legislature to pass if necessary, a law taking possession of or acquiring private property without paying any compensation. The compensation provision is in clause (2) only and nowhere else.

Pandit Balkrishna Sharma (United Provinces: General): May I point out, Sir, that the arguments that are being advanced by the honourable Member are in no way related to any point of order? He is only discussing the proposition before the House, and therefore.....

Mr. President: So far as I have followed him, he is raising his point of order with regard to clause (4). I do not know whether he is right or wrong. I am just explaining what he is driving at, as I have understood him. Under clause (4) in the form in which it is at present presented, if a Bill which is now pending or which will be pending at the time of the commencement of this Constitution does not contain any provision for payment of compensation or for laying down the principles and the manner in which the compensation is to be determined, if that Bill is passed and if it receives the assent of the President, that cannot be questioned in any court of law. His point of order is that you are thereby nullifying clause (2) in the case of pending Bills. That is his point of order.

Shri Syamanandan Sahaya: That is precisely my point.

Pandit Balkrishna Sharma: Is there any point of order involved in it if we are modifying the previous clause? We are a supreme body.

Shri Syamanandan Sahaya: Quite right. Let us understand it. Let the House be sure of what it is passing. If the House is prepared to pass a legislation which empowers the legislature to pass even a legislation of expropriation without compensation, and if that is precisely what is also the idea of the Honourable Premier, who is the mover of the amendment, then I have nothing to say. I take my stand, as I have stated, on what we have already passed in this House before in clause 19 of the Fundamental Committee Report and articles 13 and 15 of this Constitution and what is already incorporated in clause (2) of this very article; and when I find that clause (4) contravenes those provisions, and infringes upon them, then, Sir, I naturally feel that such a provision ought not to find a place in the Constitution, unless it is suitably amended. That is my whole point. Of course, these arguments relate to clause (6) also, but the point being similar, I do not want to take your further time.

What I desire to say before I sit down is that this is a point which is very vital. The House must know where we stand. We want to pass a law whereby we could expropriate without compensation. If that is not the view of the House

[Shri Syamanandan Sahaya]

and if that is not the underlying idea of this amendment, then this should be suitably amended. If, Sir, it is contended that it is not possible, that a legislation without compensation will be passed by the legislatures which have men of the highest ability and also in the various Governments and that we should not feel in any way apprehensive about such a legislation going through, I will only say that a democratic leader of the stature of the Honourable the Prime Minister would not advise us to depend upon the goodwill of individuals and not on the provision for the safety of our rights in the Constitution itself.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General) : Mr. President, there is no doubt that clause (4) is an exception to clause (2), In all articles there are exceptions to previous articles. We always say "notwithstanding this", "Provided that", etc., and I do not see that any point of order arises because clause (4) is simply an exception to clause (2). Whether we should have such an exception is a different matter and whether there can be an exception to a substantive clause is quite different matter. We authorize such exception in every proviso. Therefore, all that I wanted to submit is no point of order has been raised by the honourable Member. Of course, if we remove the exception and give powers to the Prime Minister that such exceptions would not be made to clause (2) that is a different matter.

Shri Biswanath Das (Orissa : General) : I wish to speak.

Mr. President : Do you want to support the point of order ?

Shri Biswanath Das : I want to oppose the point of order raised.

Mr. President : Then you need not.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, I wish to partly support and partly oppose.

Mr. President : You have made out a case for speaking certainly !

Mr. Naziruddin Ahmad : Sir, the point of order raises two questions. The first is that we are going against our own decisions on the Fundamental Rights. So far as that part of the argument is concerned, I am here to support it. The decision which was taken in the House can be changed only in the regular way and if we are to accept clause (4), we must change our decision in the regular way, namely, in the manner laid down in the rules. So this part of the point of order is conditionally right, subject to our decision being changed in the regular way.

With regard to the other part of the point of order, namely, that it contravenes clause (2), that is not reolly a point of order. It is rather an argument on the merits. I do not wish to go into the merits, but I think it is not a point of order. Legally this House has the power to make a law and provide exceptions.

Mr. President : I do not think that the honourable Member has raised a point of order. There are several clauses in this article, some of them qualify what is stated in the previous clause. That very often happens in all legislations and it does not raise really a point of order. It is a question whether this clause should remain as it is on its merits and that is for the House to decide, and therefore no point of order arises.

Then I will ask the Members to take up the amendments.

Shri B. Das : On a point of information, Sir, will each Member move his amendment and make the speech or will speeches be allowed after all the amendments have been moved ?

Mr. President: I will expect every Member who moves the amendment to make his speech, so that he may not have to speak again.

Shri H. V. Kamath: Sir, there is another difficulty. I want to know whether the amendments will be taken up clause by clause, because I find from the lists that they are grouped together that way.

Mr. President: I will take the amendments and the discussion and then at the time of voting, I shall decide whether to take the whole article or take the clauses separately.

Shri Damodar Swarup Seth (United Provinces: General): Mr. President, Sir, with your permission, I move:

"That in amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted:—

'24 (a) The property of the entire people is the mainstay of the State in the development of the national economy.

(b) The administration and disposal of the property of the entire people are determined by law.

(c) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses.

(d) Private property and economic enterprises as well as their inheritance may be taxed, regulated, limited, acquired and requisitioned, expropriated and socialised but only in accordance with the law. It will be determined by law in which cases and to what extent the owner shall be compensated.

(e) Expropriation over against the States, local self-governing institutions, serving the public welfare, **may take place only upon the payment of compensation.**'"

Now, Sir, before actually speaking in support of my amendment, I hope I will be excused to say something by way of introduction to the proposed amendment. The Draft Constitution has, in my humble opinion, failed, and failed rather miserably to deal properly with the question of the economic rights of the people. This article 24, which is now under discussion, I am sure, is soon going to be a *Magna Charta* in the hands of the capitalists of India. While we were under foreign rule, a few years back, we had been hoping fondly, not against hope, that in a free India the people of this country will be able to frame a really peoples' constitution which will as a whole be the *Magna Charta* of the toiling masses. But, alas, Sir, two years of Swadeshi rule have not only sadly disillusioned us, but all our hopes of better living and a prosperous India have been dashed to the ground. The standard of living of the masses is slowly going down and the index of prices of necessaries of life is daily rising. It is not possible for one to say as to where and when this rise in prices and the worsening of the economic condition of the masses will end. The plight of the middle class people, Sir, is indescribably piteous. All this is happening in the face of the famous and historical Quit India Resolution in which the toiling masses of this country were solemnly promised Ram Rajya, *i.e.*, that the power, political and economic, snatched from the foreigners will be vested in their hands. It is true that the toiling masses are even now attempted to be lulled into sleep by some tempting promises and sweet words. Even now if I correctly remember, Sir, the Honourable Prime Minister of India who has just moved this article 24, while speaking on the Objectives Resolution had declared in the most clear and emphatic terms that he stood for socialism and that India would go to the making of a Socialist Republic. If a Socialist Republic has actually to be established in this country, or as the President of the Indian National Congress promises every now and then, that there will be a classless society in this country during the next five years, then a Socialist Republic or a classless society are not to be dropped on this

[Shri Damodar Swarup Seth]

land of ours from Heaven like Manna. If they do mean anything, it requires some spade-work and clearing of way by dealing properly with the question of the economic rights of the people.

Now, Sir, this article 24 as a whole and clause (2) in particular, is worded not only vaguely, but unhappily. It is not clear whether the words "acquisition of property for public purposes" include socialisation of land and Industries or compulsory transfer of property from one set of persons to the other. It may well be argued that these words mean acquisition of property only for the general use of the Government, local self-governing, bodies and other charitable and public institutions and cannot be allowed to be stretched to nationalisation or socialisation. The subject therefore needs clarification, and that clarification, in my humble opinion, is not possible unless we discard the idea or I should say the theory, that man has natural right in property and also the idea that property is a projection of personality and any invasion on property is an interference with the personality itself. We cannot confuse personality with property; nor can we forget the social and functional character of property. Man has no natural right in property. Claim to property is acquired by law recognised by community. The community, Sir, has always reserved to itself the right to modify laws with respect to property and acquire it from its owners in the common, social and economic interests of the people. Property is a social institution and like all other social institutions, it is subject to regulations and claim of common interests.

Laws of property have been changed from time to time. Many proprietary laws of the middle ages have been abolished without compensation. For example, when the law of slavery was abolished in America, no compensation whatsoever was paid to the slave-owners although many of them had to pay hard cash while acquiring that claim. The property of the entire people, it must be understood, is the main-stay of the State in the development of national economy and the right to private property cannot be allowed to stand in the way or used to the detriment of the community. The State must have the full right to regulate, limit and expropriate property by means of law in the common interests of the people. The doctrine of compensation as a condition for expropriation cannot be accepted as a Gospel truth. Death duty is a form of partial expropriation without compensation and it forms an essential feature of the financial systems of many a progressive country in the world.

It is almost universally recognised that full compensation to the owners of properties will make impossible any large project of social and economic amelioration to be materialised. It is impossible for the State to pay owners of property in all cases and at market value for the property requisitioned or acquired in times of emergency or for the purpose of socialization of big industries with a view to eliminating exploitation and promoting general economic welfare. Partial compensation is therefore suggested by many thinkers in the world as a *via media* and they maintain that partial compensation will neither hinder socialisation nor at the same time will it deprive a large number of persons of the means of their livelihood. Much can be said in favour of partial compensation, if socialisation is to be carried on gradually and individual economy is retained over a wide field. Even partial compensation will have no justification when general transformation of economic structure on socialist lines takes place. In such a case all that the persons of vested interests can claim in a socialist economy is an opportunity and a share on par with all other citizens of the State. Thus it is not possible, Sir, to be dogmatic on the question of compensation and the State should be left free to determine compensation according to social will and prevailing social conditions.

Now, public needs often require, Sir, transference of property from one authority to another. For instance, public utility undertakings, owned and managed by various Municipalities, may after some time be required to be pooled together on a provincial basis. Public good, may thus need their transference from one authority to another, *i.e.*, to the Provincial [illegible] but this transference must be accompanied with compensation, especially when different public authorities are allowed, by Law, to keep separate accounts, finances, assets and liabilities. Transference of public property from one authority to another therefore without compensation may undermine the financial stability of the institutions or bodies of lower grade and may also undermine the mutual harmony so essential amongst various constituents of a Federated State. It is therefore necessary to provide for compensation in cases of expropriation even against the provinces, the States, Local Self-Governing bodies and the associations serving public interests.

I, therefore, hope, Sir, that this amendment of mine will be given serious consideration by the Honourable Members of the House and if they think it desirable in the interest of the toiling masses of India that their economic rights should be dealt with properly and [illegible] then I feel, Sir, that there will be no difficulty for the honourable Members of this House in accepting my amendment.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President, Sir I beg to move :

"That with reference to amendments Nos. 720 to 763 of the List of Amendments, for article 24, the following be substituted :—

'24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition except on payment in cash or bonds or both of the amount determined as compensation in accordance with principles laid down by such law.

(3) Nothing in clause (2) of this article shall affect—

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.'"

Sir, may I also move amendment No. 516 which really forms part of this ?

Mr. President : That is separate. We will take it up later.

Prof. Shibban Lal Saksena : Sir, before making any comments upon this I wish the House to understand the difference between my amendment and the amendment of the Honourable the Prime Minister. The Prime Minister's Resolution in clause (1) says the same thing that none should be deprived of his property without authority of law but it is in clause (2) that the chief difference lies. This clause (2) in his amendment is a pure reproduction of section 299 of the Government of India Act, 1935. Only three words have been taken away and these are 'the payment of'. I may read out clause (2) :

"Neither the Dominion Legislature nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for *the payment of* compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined."

So then by this new article proposed by the Honourable Pt. Jawaharlal Nehru, we are really perpetuating the provisions of section 299 in our new Constitution. Only two exceptions have been made and these are in clauses (4) and (6).

[Prof. Shibban Lal Saksena]

These amendments have been specially devised to protect the Zamindari legislation of the U.P. and Bihar and Madras, clause (4) to protect the Zamindari abolition Bill in the U.P. and clause (6) to protect the Zamindari abolition Acts passed by the Bihar and Madras Legislatures. Even there I am afraid the new amendment of which notice has been given by Shri Alladi and Shri Munshi Nos. 504 to 506—if they are accepted—then I think the Madras and Bihar Bills will also become somewhat *ultra vires* of this Constitution in their present form. So in fact the only Act protected will be the U.P. Zamindari legislation.

Now, Sir, I want to ask this question of the House. Is the House prepared to protect the position that, excepting the zamindari property of the U.P., no other property in the country shall be acquired for public purposes, or in the interests of the State? The words used in the article moved by the Honourable Prime Minister are—

"No property .... etc. ..... shall be taken possession of .... etc. unless the law provides for *compensation* for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined."

In law, the word 'Compensation' means 'fair and equitable compensation'. What is to be fair and equitable compensation? Parliament, under the amendment of Pt. Jawaharlal Nehru, is not the final authority to decide that. The Parliament or the State legislatures may fix any amount or specify any principles to determine compensation, yet the Supreme Court will finally decide whether the amount fixed or the principles specified to determine compensation ensure fair and equitable compensation. So the final decision lies with the Supreme Court in the amendment moved by Pt. Nehru, and it can well declare that the principles specified by the Parliament for determining compensation are 'fraudulent'. The Supreme Court and not the Sovereign Parliament is thus the ultimate authority to decide what is 'fair and equitable compensation'. So you cannot acquire the key industries of the country and nationalise them, because you cannot pay fair and equitable compensation. You cannot acquire even the zamindari property in any other province, *e.g.*, in Rajasthan, for the same reason. If the article is passed in the form proposed by the Honourable the Prime Minister, it will mean permitting the capitalistic system in the country to remain intact. We cannot nationalise the key industries, nor even take over the zamindaries, except in the province of the U.P.

This being the position, I wonder if the House will accept this article as it has been proposed by Jawaharlalji. In my amendment, I say—

"No property movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition *except on payment in cash or bond or both of the amount determined as compensation in accordance with principles laid down by such law.*"

So under my amendment Parliament can lay down the rules for fixing the compensation to be paid for taking over properties, and whatever Parliament thinks is the proper compensation for any particular property shall be the fair and equitable compensation, and the law made by our Sovereign Parliament shall be final. No Supreme Court or any other body will sit in judgment over the principles laid down by our Sovereign Parliament.

I want this House to consider this fundamental question, whether it is prepared to put some other authority over the sovereignty of the Parliament which will be elected on the basis of adult franchise. Is it prepared to bind the hands of the future Parliament in this manner? Our present Constituent

Assembly has been criticised on the ground that it has been elected on the basis of indirect votes of persons who themselves have been elected on a narrow and not adult franchise. The new Parliament is to be elected by adult franchise and by this article, we bind the sovereign Parliament of the future, which will be elected by adult suffrage and say that it shall not be the final authority to determine the principles on which properties should be acquired for national purposes.

Sir, I feel that we should not bind the future sovereign Parliament in this manner in such a vital matter over which this House is itself so keenly divided. My amendment in fact, leaves the Parliament sovereign and it can determine the principles on which compensation shall be paid and nobody, not even the Supreme Court, can question its decisions regarding those principles. In some cases in the interests of the nation, property may have to be taken even without paying any compensation, and it is quite possible that Parliament may decide to give full compensation in some other cases, but it will be entirely according to the judgment of the Parliament. and we trust the judgment of Parliament will be quite fair. According to the article 24 of the Prime Minister, the law made by Parliament can be questioned by the Supreme Court and the judgment of the Court will be final, as to whether the compensation and the principles according to which this compensation is determined, are fair or not. The question to be decided is whether we should have article 24 in that form or in some other form as the one proposed by me according to which the decision of Parliament shall be final.

Sir, I have taken keen interest throughout in the making of this Constitution and I have vehemently opposed some of the articles. I have called these articles such as articles 15 and 280 which we have passed as wholly undemocratic and have said that they are a blot on the Constitution which we have framed. But I think that this article, if it is passed in the form in which the Prime Minister has proposed it, will be the darkest blot on our Constitution. I say this, firstly because as I have said, this amendment takes away the sovereignty of the Parliament and secondly because it will be a negation of all that the Congress has stood for all these so many years.

There is one interesting thing about this article which I must point out. Clauses (4) and (6) of this article are a sort of confession that the principles laid down in clause (2) of the article would lead to chaos and revolution if applied to acquisition of huge zamindari properties in the U.P., Bihar and Madras. Clauses (4) and (6) say that whatever Acts or Bills which are passed or are pending before legislatures on the commencement of this Constitution shall not be questioned before the Supreme Court, but all other Acts or Bills shall be liable to be questioned. Therefore there is discrimination here, even so far as zamindari properties are concerned, discrimination between zamindari property already acquired or to be acquired under a pending Bill and zamindari property to be acquired hereafter. There is thus also discrimination between industrial property and zamindari property. And let me tell the House that the Congress has always stood against discrimination.

I was surprised to hear the Honourable Prime Minister making a reference several times in his speech to the ultimate sovereignty of Parliament, and yet he has proposed an article in a form which will take away that sovereignty and this sovereignty has been put in the hands of the few judges of the Supreme Court who, however able they may be, will be empowered to set at naught the considered will of the Parliament. Now let us see who will really gain ultimately by this article? I say only the lawyers will gain, lawyers who will fight out the cases in the Supreme Court, and the major portion of the property will find its way into the pockets of these lawyers. It will be a lawyers' paradise if this article is passed in this form.

[Prof. Shibban Lal Saksena]

As I said, this article is a negation of all that the Congress has stood for during all these years and it goes against the various resolutions of the Congress. Here I will quote certain paragraphs from the speech delivered by the revered Father of the Nation, Mahatma Gandhi, at the Round Table Conference, so that we may know what he said. He said :

> "India free, I would love to think, would give a different kind of lesson and set a different kind of example to the whole world. I would not wish India to live a life of complete isolation whereby, it would live in water-tight compartments and allow nobody to enter her borders or to trade within her borders. But, having said that, I have in mind many things that I would have to do in order to equalize conditions. I am afraid that for years to come India would be engaged in passing legislation in order to raise the down-trodden, the fallen from the mire into which they have been sunk by the capitalists, by the landlords, by the so-called higher classes, and then, subsequently and scientifically, by the British rulers. If we are to lift these people from the mire, then it would be the bounden duty of the National Government of India, in order to set its house in order, continually to give preference to these people and even free them from the burdens under which they are being crushed. And, if the landlords, zamindars, monied men and those who are today enjoying privileges—I do not care whether they are Europeans or Indians—if they find that they are discriminated against, I shall sympathize with them, but I will not be able to help them, even if I could possibly do so, because I would seek their assistance in that process and without their assistance it would not be possible to raise these people out of the mire.
>
> Look at the condition, if you will, of the untouchables if the law comes to their assistance and sets apart miles of territory. At the present moment they hold no land; they are absolutely living at the mercy of the so-called higher castes, and also, let me say, at the mercy of the State. They can be removed from one quarter to another without complaint and without being able to seek the assistance of law. Well, the first act of the Legislature will then be to see that in order somewhat to equalise conditions, these people are given grants freely.
>
> From whose pockets are these grants to come? Not from the pockets of Heaven. Heaven is not going to drop money for the sake of the State. They will naturally come from the monied classes, including the Europeans. Will they say that this is discrimination? They will be able to see that this is no discrimination against them because they are Europeans; it will be discrimination against them because they have got money and the others have got no money. It will be, therefore, a battle between the haves and the have-nots.

Mr. President : I do not want to interfere with the Honourable speaker. But I do not see the force of this long quotation that he is reading out. What relevance has it got to the article we are considering now?

Prof. Shibban Lal Saksena : I will just finish the sentence. Then show its relevance.

Mr. President : You need not have read the whole of the speech, but only that particular sentence.

Prof. Shibban Lal Saksena : No, Sir. It was also necessary.

> "It will be therefore, a battle between the haves and the have-nots; and if that is what is feared, I am afraid the National Government will not be able to come into being if all the classes hold the pistol at the heads of these dump millions and say : 'You shall not have a Government of your own unless you guarantee our possessions and our rights'."

The relevancy of this quotation is this, that the Father of the Nation has said that in order to lift these untouchables and the downtrodden, and the fallen, from the mire, India would be engaged in passing legislation to equalise conditions. He said that the first burden of the National Government should be to equalise conditions. But this amendment of Pandit Jawaharlal Nehru makes all this impossible. There is no possibility of equalising conditions,

because we cannot take away any property for public purposes without full compensation. The Father of the Nation provided one formula for it. He said :

> "I have got another formula also, hurriedly drafted because I drafted it here as I was listening to Lord Reading and to Sir Tej Bahadur Sapru. It is in connection with existing rights :
>
> 'No existing interest legitimately acquired, and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interests'."

He was fighting on our behalf in the Round Table Conference that every title to property should be examined, whether it is legitimate or not. He was fighting to see that whatever property has been acquired was acquired legitimately and that it was not in conflict with the interests of the nation. That was the view of the Father of the Nation. In fact, he said :

> "If they have obtained concessions which have been obtained because they did some service to the officials of the day and got some miles of land, well, if I had the possession of the Government I would quickly dispossess them. I would not consider them because they are Indians and I would as readily dispossess Sir Hubert Carr or Mr. Benthall, however admirable they are and however friendly they are to me. The law will be more patron of persons what never

He was for dispossessing them if he found that they had acquired property without legitimate right. In fact, my amendment, which I shall move later on, suggests that all properties confiscated from patriots, because they took part in the war of independence, shall be restored to them and those who had got property merely because they did service to officials shall be deprived of them. With your permission, I would like to quote what Mahatma Gandhi said further. He said :

> "Then you have 'not being in conflict with the best interests of the nation'. I have in mind certain monopolies legitimately acquired undoubtedly, but which have been brought into being in conflict with the best interests of the nation. Let me give you an illustration which will ensure that [illegible] natural ground. Take this white elephant which is called New Delhi. Crores have been spent on it. Suppose that the future Government arrives at the conclusion that seeing that we have got this white elephant it ought to be turned to some use. Imagine that in Old Delhi there is a plague or [illegible] on....."

Mr. President : Mr. Saksena, I do not tink you are justified in quoting all that. I have not followed what you are saying. Are you speaking about your own amendment or are you opposing the amendment which has been moved or are you supporting something else ?

Prof. Shibban Lal Saksena : I am quoting this to show that Mahatma Gandhi had said that he would be willing to expropriate property if it had not been acquired in a legitimate manner.

Mr. President : Your amendment does not say anything of that sort.

Prof. Shibban Lal Saksena : I have said in my amendment that the Parliament is the ultimate authority to determine whether compensation should be paid or not instead of the Supreme Court. That is the only difference between my amendment and that of the Prime Minister. The law is final. Parliament shall be the final arbiter according to my amendment. If you will permit me, I should like to quote a few lines more.

Mr. President : I think you should think of the time also. At this rate we cannot go on. I have given you more time than I would have allowed to anybody else. You had better leave out the quotations. You may make out your point.

Prof. Shibban Lal Saksena : If you will permit me, I shall just read a couple of lines. Mahatma Gandhi had said :

> "If the National Government comes to the conclusion that that place is necessary, no matter what interests are concerned they will be dispossessed and they will be dispossessed. I may tell you, without any compensation, because, if you

[Prof. Shibban Lal Saksena]

> want this Government to pay compensation it will have to rob Peter to pay Paul, and that would be impossible."

This is what the Father of the Nation said about compensation being paid.

I stand for these Congress principles. Socialists have come and attacked this article that it is not democratic. I oppose this amendment because this is a negation of all I have stood for in my life and of all that the Father of the Nation and the Congress stood for throughout all these years. I missed in the speech of the Prime Minister the fervour which usually is present in his speeches. It is clear that he is torn within himself and he has moved an amendment which he does not believe in and I wish to say that his amendment should not be accepted. I commend my amendment for the acceptance of the House.

Mr. President: Mr. Brajeshwar Prasad—385.

(Mr. Brajeshwar Prasad was cheered as he walked up to the rostrum.)

An Honourable Member: The cheers are an invitation to the Honourable Member to make his speech short!

Mr. President: The cheers are to cheer you out.

Shri Brajeshwar Prasad (Bihar: General): Mr. President, Sir, I move:

"That for amendment No. 720 of the List of Amendments, the following be substituted:—

'That for article 24, the following be substituted:—

24. (1) All private property in the means of production may be acquired by the Government of India.

(2) The President shall determine in each case, to what extent, if any, the owner whether a private individual, a State, a local self-governing institution or a company, shall be compensated.

(3) That within four years from the date of the commencement of this Constitution, the Union Government shall become the owner of all private property in land which is being used or capable of being used for agricultural purposes . . .

With your permission, I want to delete.

(4) .....

"....(4) The provisions of this article may be amended if ratified by the people signified by 51 per cent. of the total number of voters on the electoral list framed on the basis of adult franchise."

May I move the other amendments also—387, 390, 391.

Mr. President: I do not think you can move 391 because that is not consistent with 385. I think you had better content yourself with one amendment and be consistent.

Shri B. Das: Mr. President, I submit the amendment is out of order because it negatives all existing laws and negatives the resolution moved by the Prime Minister.

Mr. President: These are all amendments for substituting an article as it was originally moved just as the Prime Minister's is for substituting the article as originally framed.

Shri Brajeshwar Prasad: Moreover, Sir, I would like to place before you that the procedure we have adopted today is not in conformity with the procedure that we have followed up till now, because it was Dr. Ambedkar who ought to have moved article 24 or some other article in an amended form. No Member of the House has got a right to move an amendment before an article has been moved on behalf of the Drafting Committee.

Sir, I am thankful to the honourable Members of the House for their cheers. It is in no spirit of out-Herodding Herod that I have moved this amendment or this substitute article. I am a man of simple ideas and I know one thing, that this question of how property should be regulated has been determined by members of the Congress High Command and it shall always be determined by them and them alone and Parliament will have no power to come to any decision on this question. As long as there is poverty and illiteracy in this country no Parliament will be able to play any vital part in Indian politics. It is in that light that I have deleted the word 'Parliament' and substituted the word 'President'. When I say 'President' I do not mean one man the President. I mean the President in consultation with the Cabinet, the members of the Congress High Command which consists of men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel and others.

My whole intention in moving this article is to by-pass the controversy that has arisen on the question of compensation and justiciability. I am quite clear in my own mind that if we incorporate these principles in our constitution the result will be social injustice. The result will be that the whole country will hasten towards chaos, anarchy and civil war. With a view to avert that calamity I have moved this article. I am quite clear that no government in India as long as this Constitution is in operation, no democratic government—much less the Congress Government—will embark upon a course of expropriation of property without payment of compensation. But I feel that in the event of a crisis, when the country is confronted with dangers of insurrection and bloodshed, power must vest in the hands of the Government of India to change the very basis of society, so that the foundations of the state may be strengthened. At this moment the question of compensation and justiciability should not be allowed to thwart the greatest good of the greatest number. It is therefore with that view that I have moved this substituted article.

I hold the view that at the present moment there is a group of persons at the helm of affairs in Delhi who are in a position, by virtue of their high intellectual ability and attainments, by virtue of their nobility and character to take a long-range and disinterested view on the question of the regulation of the institution of private property. The argument may be urged that if we do not give compensation and concede justiciability there will be no industrial development in the country. Industrial development is very dear to my heart, but the sufferings of the millions, the starving masses in India, cannot be ignored. Therefore I give preference to the masses. I do not care whether those investors, foreign or Indian, lose their profits or opportunities because in no case, under no circumstances, the interests of the millions can be sacrificed at the altar of a handful of persons.

Sir, I will enter into two or three arguments before I conclude. I am opposed to vesting power into the hands of Parliament, because I feel that a parliament elected on the basis of adult franchise in a country where millions of people are illiterate and poor will not be able to discharge its functions as far as the question of the regulation of private property is concerned.

There is also the apprehension in our minds that most of the members of the future parliament of India will come from the ranks of peasant proprietors who will each have their own property and therefore it would be very difficult for those who have got their own private property to rise to the height of the occasion and take a detached view of things. I hold the view that the system of peasant proprietorship is the greatest hindrance in the way of socialism and progress. There is much truth in the Marxist theory that the state is an instrument of exploitation in the hands of the dominant group in society.

[Shri Brajeshwar Prasad]

Therefore I say that this power should be taken away from the hands of Parliament and vested in the hands of our philosopher-kings.

I know that this Constitution is not going to be a permanent constitution of this country. The question may therefore be asked, why are you laying down such provisions in this Constitution which ought to incorporate only general principles of internal value? I think that this Constitution will not last more than ten years. With this feeling in view I want that all the powers should be vested in the hands of our leaders.

I have placed this question outside the purview of the provincial legislatures because I feel that it is very necessary for the sake of uniformity that no power should vest in the hands of the provincial governments. It is too vital a power to be placed in the hands of the provincial legislatures. I am not speaking against the intellectual merits of provincial ministers but the provincial Ministers are accustomed to deal only with provincial problems and they cannot therefore take an all-India view of things. Hence I am in favour that this power should not be vested in the hands of any provincial government.

Lastly, I am of opinion that people expect more justice from the hands of the Central Government than from the hands of the provincial governments. So it will allay the apprehension of the minorities and the apprehension of all those people who have got some private property if exclusive power is vested into the hands of the Central Government. Hence I want that this power should be vested in the hands of the Central Government. A Kher here and a Pant there cannot basically alter the fact that provincial governments do not enjoy the confidence of the people.

One word more and I have done. I do not say that what I have said should be achieved within the twinkling of an eye. I do not want that private property should be liquidated on the 26th January 1950. I say that the power must be vested in the hands of the Government of India and the measure of advance in this direction must be left to be determined by the President and the Government of India. I strongly commend this amendment of mine to the earnest consideration of the House. It is in no spirit of bravado that I have moved this amendment. I sincerely hold the view expressed in the amendment and people are quite free to agree or disagree with it.

Mr. President: There are two other amendments which seek to replace the whole amended article. I would like them to be moved first.

Shri Kishorimohan Tripathi (C.P. & Berar States): Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted:—

Private property. 24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable, or immovable including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired under any law unless the law provides for compensation for the property taken possession of or acquired.

Provided that where an entire category of property, movable or immovable, is taken possession of or acquired under any law passed by Parliament or the legislature of a State for the distinct purpose and object of gradually and peacefully establishing a classless society in India the principles of law authorising the taking possession of or acquisition shall in no case be called in question in any court:

Provided further that it shall be the natural right of every citizen whose property is taken possession of or acquired to get rectified in a proper court of law any wrong done to him in the process of execution of the law providing for compensation.'"

Sir, with all due deference to the observations and views expressed by the honourable Pandit Jawaharlal Nehru, I do not agree with the draft article which he has moved. My reasons are these: firstly, that the title of the article is not proper. We are discussing Fundamental Rights, and in this particular article we are going to describe the extent of private property which a citizen shall have. It is not a subject of compulsory acquisition of property and therefore the title should be changed into "Right of Private Property" or 'Private Property".

Then, although apparently the article as moved by the honourable Pandit Jawaharlal Nehru does not discriminate between property and property, as facts stand I feel that it discriminates between industrial property and landed estates. Such a discrimination between property and property as contained in this article is, I strongly feel, very dangerous and may create a very unhealthy atmosphere in the country which is already full of discontent. I seek in my amendment to place the whole article in such a way that while in the very serious circumstances of the country we are not in a position to socialise property, industries and other things at present, we make the article sufficiently elastic so that in future whenever occasion arises it shall be possible for Parliament to take steps to socialise any property, whether industrial or landed. In the article as presented to us by Panditji there is provision for socialisation of landed property in such provinces as have either passed necessary Acts or as would pass Acts or introduce Bills by the 26th January, 1950, when we hope to enforce this Constitution

But in the case of other provinces which may not be in a position to move a Bill or pass an Act for the abolition of zamindari to which we are pledged within the said time limit, the article as proposed makes no provision. This is a very vital part of the Constitution and it has been rightly observed that this article represents the soul of the Constitution, and therefore we must have a proper background to appreciate the importance of the article.

The Congress today as the largest single organisation representing the aspirations of our people has accepted as its objective the establishment of cooperative commonwealth in this land, and this co-operative commonwealth is nothing but another name for the establishment of a class-less society in India. This article therefore must give us a proper lead towards that direction. But I feel, as it is proposed, it does not give that lead We must also remember that the future pattern of our national economy in India will revolve round article 24, and therefore if we make any mistake in defining private property, I feel that we shall be doing something which will be very strongly hindering our progress on the path of establishing a class-less society in India. I have, therefore, amended the article in such a way as would enable the future Parliament of India, representing the wisdom of the people, to be in a position to give proper lead for the establishment of a class-less society.

At the same time I have made provision in my amendment that where in the process of execution of the principles as laid down by Parliament, or by a State Legislature, there is any mistake committed and any wrong is done to any individual, then it shall be open to the individual to seek redress in a court of law. Let us remember that that great man, the Father of the Nation, of whom it has rightly been said that he moulded us into men out of dust, held before our people the view and the picture of Ram Rajya which to the common man never meant merely political emancipation but freedom from economic want We must, therefore, in all earnestness see that in our Constitution this freedom from economic want is guaranteed to the common man.

If you look to the various other provisions of the different articles under the Chapter relating to "Fundamental Rights" you will notice that each

[Shri Kishorimohan Tripathi]

fundamental right is conditioned by certain terms. And each of these conditions, as laid down for example in the matter of Freedom of Speech, Freedom of Association, Personal Liberty, indicates a duty on the part of the citizen. So also there should be some condition in the matter of private property. And that condition should be that private property is merely a public trust and at the instance of the community or at the instance of the government it should come to the use of the community.

Some people have argued that this right should be made justiciable. While being a layman, I do not fully appreciate the implications of juticiability, I do not know how a section of our people fears that a Parliament elected under adult franchise, representing the solid will of the people and the wisdom of our leaders shall do anything but justice in paying compensation for any property that is taken possession of or that is acquired for the common good of the people. I will draw your attention to article 26 in the Yugoslavian Constitution relating to property which says:

> "It shall be the right and duty of the State acting in the interests of the community and upon the basis of the law to intervene in economic relations between citizens in a spirit of justice and with a view to averting social conflict"

In the same Constitution article 37 lays down:

> "Private property shall be guaranteed. The obligation imposed by the private ownership of property shall be recognised. The use of property must not be injurious to the interests of the community. The scope, extent and limits of private ownership shall be regulated by law."

So also in the Irish Constitution there are limitations which have been placed upon the right to private property. In all these cases whenever necessary, at the instance of the community and at the instance of the Government representing the community, property is made available for the social good.

It is argued by a section that in drafting this article the members of the great Congress organisation have departed from the pledges given to the people. The pledges were that whenever private property is taken possession of or acquired, we shall equitably and fairly compensate the owner. We do not deny them compensation. But it must be remembered that we have also held out promises to another greater section of the people, the common men, to the effect that we will strive hard to give them higher and higher standards of living. We have to achieve that objective also. Therefore the criticism levelled against us that we are denying something to a certain section of the people is utterly wrong. We have to adjust the promises given to the different sections and in this connection it has to be remembered that a dynamic nation has to shape and reshape its means for the achievement of objective according to the need and demand of time.

I have another point to make. During the last two years, since 15th August 1947, it has been our sad experience that the hand of co-operation that we extended to the vested interests in this country has not been greeted by them. Capital has been shy and industries and manufacturers have not played their part, their proper part in the matter of nation building. It is high time therefore that we now divert our attention and seek strength from the common man. We should change our policy suitably.

With these few words I commend my motion to the House for its acceptance.

Shri H. V. Kamath: Mr. President, it is with considerable trepidation that I rise to move the various amendments that stand in my name, amendments to article 24 which has a vital bearing on the socio-economic structure of our State.

Sir, the Prime Minister has told the House that the draft before the House represents the fruit of the ceaseless cerebral activity of many eminent lawyers. Therefore I asked myself whether, in the face of this draft produced by so many experts, I should say anything at all But it struck me that lawyers, however eminent they may be, are likely to have their vision clouded by legalistic formulae and are sometimes apt to miss the wood for the trees I move therefore amendments Nos. 396, 395, 403, 410, 418 and 431 :—

That in amendment No. 396 of List VII (Seventh Week), in clause (1) of the proposed article 24 after the word property the words except in the national interest shall be inserted"

That in amendment No. 395 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the words taken possession of or for the first, where they occur for the second time the words to be taken possession of or acquired be substituted"

That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words to be determined a comma and the words provided that such principles or such manner of determination of compensation shall not be called in question in any Court be added"

"That in amendment No. 369 of List VII (Seventh Week) clause (3) of the proposed article 24 be deleted"

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed article 24, the following be substituted :—

'(4) Any Bill pending before the Legislature of a State at the commencement of this Constitution shall not after its subsequent enactment be called into question in any Court on the ground that it contravenes the provisions of clause (2) of this article.'"

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, the words may within three months from such commencement be submitted by the Governor of the State to the President for his certification, and thereupon if the President by public notification so certifies it" be deleted

While commending these various amendments for the consideration of the House, may I, Sir, make a few observations ? The Prime Minister has told the House, firstly, that the policy of the State is that there should be no expropriation without compensation, and secondly, that the right of he individual can in no case over-ride the right or interests of the general community. He went on to say that notwithstanding these fundamental policies, the individual has got to be protected. He remarked that of course there are a few who can protect themselves. I was wondering whether this doctrine of protection of the few, should be the foundation of our State. To me, it seems that the few are entitled to justice, but that those who are to be protected and cherished by the State are vast many. The few can in no case, in no event, under no circumstances, be pampered or be treated in a manner which is detrimental to the interests of the larger whole. If this is not accepted, that the few can get only justice but it is the many who are to be protected, if this is not accepted, then, Sir, I feel that in this country of ours weighed down by centuries of poverty and misery, poets, prophets and leaders will arise who will tell the people, as did the poet of revolution in England in the last century. That poet exhorted the British people, saying :

Men of England, wherefore plough for the lords who lay you low ?

Wherefore weave with toil and care the rich robes your tyrants wear ?

Rise like lions after slumber in unconquerable number,

Shake your chains to earth like dew, ye are many, they are few !

Therefore, Sir, I would suggest in all humility that the foundation of our State should be that the many should be protected and the few should be justly dealt with Of course, nobody should be denied justice.

[Shri H. V. Kamath]

The Prime Minister went on to trace the evolution of the institution of property. I think that ideas about property have ranged from the divine right to property, in other words, the sanctity of private property, to the almost whilst dictum of M. Proudhon that "property is theft". The movements for and against property have been based on this whole gamut of conceptions relating to property. On the one hand, on the one extreme we have the divine right of property, the sanctity of private property; but that to my mind is now exploded. It is dead as the dodo, it has gone the way of the Divine Right of Kings. If at all there is right to property, I can only say that it is not the divine right of the individual to property, but it is the right of God himself to all property, and so for *all* His children on earth. All this trouble about property could have been obviated, could have been got over if only men had clearly understood what the divine right meant, that it meant that the property should be utilised justly and wisely in the interests of the whole of mankind.

It was on this basis that Mahatma Gandhi preached and lived his doctrine of "Aparigraha" that property holders should be mere trustees of that property for the good of the community. If this had been accepted in letter and spirit by the property holders in our country and in the world at large, then so much of misery could have been prevented; but man in his foolishness has not heeded the advice of the Mahatma and other prophets that have preceded him in the history of mankind. If the great ideal of the Ishopanished—

तेन त्यक्तेन भुँजीथा

"Renounce that you may enjoy

Enjoy by renouncing."

had been followed by property holders, then all these conflicts, all these disputes about property would not have arisen. But, Sir, that unfortunately has not been the lot of humanity. The history of humanity, as had been stated by a great historian, is strewn with the crimes, follies and stupidities of mankind.

Mr. President: Let us not talk of the follies and stupidities of mankind. Let us confine ourselves to the article under consideration.

Shri H. V. Kamath: I was only developing my argument about the evolution of the idea of property, as the Prime Minister has in his speech referred to the matter.

Now, Sir, about my amendments. No. 386 is a very obvious amendment wherein I have sought to provide that no property shall be acquired save in the national interests. The Prime Minister has stated that the few must be protected. I agree that the few must get justice; and so if we specifically provide that property shall be acquired only in the national interest, we guarantee that the few who own property will be justly dealt with, because according to the Prime Minister, on his own showing, the few cannot override the interests of the people, of the nation as a whole. In the national interest any property can be and must be acquired. That is with regard to my first amendment.

My second amendment No. 395 is merely a verbal amendment and I leave it to the wisdom of the Drafting Committee to be dealt with at the appropriate stage.

Amendment No. 403 is a vital amendment and I therefore crave your indulgence to offer a few remarks thereon. In this amendment, I seek to provide that the principles of giving compensation, offering compensation or

fixing compensation and the manner of determination shall not be called in question in any court. The clause, as it stands, is somewhat ambiguous though the Prime Minister did remark that Parliament and legislatures will be ultimately sovereign. But I feel that no loop-hole should be left for any of those few who might take it into their heads to fight against the interests of the community. It is with this purpose in view that I want this clause to be made clear on this point that neither the principle nor the manner of compensation shall be called in question in any court. What is justiciable, what can be called into question is merely the application of these principles. If an aggrieved party feels that the principles have been wrongly applied or have been unjustly applied, then it is open to him to go to a Court of law and question the application of the principles in that court of law, but not the Parliament or the legislature lays down the principles or the basis of the calculation of compensation and also prescribes the manner, for instance, spread over a period in cash bonds and all that, all these things shall not be called in question in any court. The amount of compensation fixed on this basis and the application of these principles may be made justiciable. The Irish Constitution to be framed in Europe, that is, the Bonn Constitution, West German Constitution has a clause similar to this. The justiciable part of that clause with regard to property is only this, that "with regard to the extent of compensation an appeal may be made to the ordinary courts in case of dispute". I seek through my amendment No. 403 that the principles and the manner of compensation shall not be justiciable, but only the amount of compensation or the application of those principles can be called in question in a Court.

Amendment No. 410 relates to clause (3) of the article which vests power in the President to assent to or withhold his assent from any Bill passed by a State Legislature. I feel that so far as that property is concerned which is within the purview of the State Legislature, so far as property listed in list II of Schedule Seven is concerned, if the State intends to acquire that property under this article, there should be no hurdles or obstruction placed in final acquisition of that property by the State. If clause (3) is adopted as it is, I am afraid it might result in unpleasant consequences for the State and the Union as a whole. Supposing for instance, one of the constituent units of the Union has passed a law acquiring property under this article, but some interests which are involved try to pull the strings at the Centre and the President, if unfortunately he, too, is not favourably inclined towards this measure, for various reasons into which we need not go, if the President withholds his assent from this Bill passed by the Legislature, then there is bound to arise a serious conflict between the State and the Union Government and once the seeds of discord have been sown between the State and the Union Government, I cannot say how far this discord will go, this conflict will be waged between the State and the Union. To obviate this contingency I want to make the State Legislature sovereign in respect of such property as is within the purview of the State and want to provide that the President's assent to the legislation is not necessary before it becomes operative. Then I come to amendment No. 418.

Mr. President: It is more or less a verbal amendment, I think.

Shri H. V. Kamath: My amendment No. 418 follows as a consequential amendment to the previous amendment to clause (3), wherein I have sought to delete the necessity for the President's assent to a Bill of the State legislature before it becomes operative; and so here also in amendment No. 418 I want to recast clause (4) on the same lines, to the effect that the President's assent is not necessary for it to become operative; when it is enacted in the usual course, it should take effect, and the rest of the clause is all right.

[Shri H. V. Kamath]

Then I come to amendment No. 431. Clauses (4) and (6) are similar except that clause (4) refers to pending Bills and clause (6) refers to Bills already enacted by the State and therefore the amendment which I have moved to clause (3) seeking to delete the provision with regard to the assent of the President to State legislation applies both to clauses (4) and (6) and wherever the President has stepped in into these clauses, I have moved amendments to delete the provision for the assent of the President before the law of the State becomes operative. That is with regard to my amendent No. 431.

Before I close, I would like to urge only one consideration and that is this. We have provided in our fundamental rights, article 9, that there shall be no discrimination as between man and man. As regards women and children only there is a proviso to that article on non-discrimination. I feel that it would have been in the fitness of things if we had provided for no discrimination of whatever kind between landed property and industrial property (*hear, hear*), that if we wanted to lay down that the acquisition of landed property should be non-justiciable, I would have welcomed that the acquisition of industrial property and commercial capital, ought also to be non-justiciable.

Another consideration in that regard is article 13, sub-clause (f) of clause (1) which confers the right to acquire, hold and dispose of property. There is, of course, a proviso to that, proviso No. (5); "Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public, etc., etc.". Bearing these two articles in mind, I have suggested this amendment to clause (2) of the proposed draft article 24. That is to say, I want to provide specifically that even in the case of industrial property including any interest in or in any company owning any commercial or industrial undertaking, the principles and the manner of payment of compensation shall not be justiciable. That would approximate to the principle of non-discrimination as between industrial property, and landed property with regard to which certain provinces have already taken action. I have provided for only the amount of compensation being made justiciable, because the Prime Minister stated in his speech today that the few have also to be protected, and therefore I feel that the only safeguard that they can have is as regards the amount of compensation. On no other ground can they go to the court and question the principles or the manner of payment of compensation.

Lastly, I would refer to the Government of India Act mentioned in clause (6) of the proposed draft article 24. Section 299 of the Government of India Act lays down in sub-section (3) that Bills passed by the legislature of a State need not be submitted to the Governor-General for his assent. I fear that the power conferred on the President to give or withhold his assent might lead to serious complications in future and the only way to obviate any conflict between the States and the Union is to confer sovereign powers upon the legislature to acquire any property which is within the purview of the State.

Sir, I commend my various amendments to the House for its serious and mature consideration.

Mr. President: Mr. Brajeshwar Prasad, you have several amendments in your name; but it does not appear how they will fit in with the present discussion and the present amendments. Some of them are with reference to the present amendment which has been moved by the Prime Minister. Others refer

to the previous amendments which have not been moved Those which refer to the previous amendments, I rule out. There is thus one amendment No. 387 where you want to substitute "President" for the word "law". You have already spoken upon this subject at length and I take it as moved.

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the word 'law', the words 'the President' be substituted."

Prof. K. T. Shah (Bihar: General): Mr. President, I have also got several amendments May I give you a list of the numbers?

Mr. President: I have got a list

Prof. K. T. Shah: These amendments are taking the place of those which I have submitted to the original article and therefore, those are not to be moved.

My first amendment is number 388:

"That in amendment No. 369 of List VII Seventh Week at the end of clause (2) of the proposed article 24 the following proviso be added:

'Provided that no rights of absolute property shall be allowed to or recognised in any individual, partnership firm or joint stock company in any form of natural wealth such as land forests mines and water [illegible] of the coasts of the Union, and that all private ownership in these forms of natural wealth shall always be deemed to vest in and belong to the people of India collectively; and that they shall be owned, worked, managed or developed by collective enterprise, thus eliminating whether the profit motive from all such enterprise.'"

The next one is amendment No. 394.

"That in amendment No 369 of List VII (Seventh Week), in clause (2) of the proposed article 24,—

(i) for the words 'No property' the words 'Any property' be substituted;

(ii) for the words 'shall be taken' the words 'may be taken' be substituted;

(iii) for the words 'unless the law provides for compensation' the words 'subject to such compensation, if any' be substituted;

(iv) for the words 'acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined', the words 'acquired as may be determined by the principles laid down in the law for calculating the compensation be substituted,'

If you will permit me, Sir, I may read the amended clause which would be clear instead of in this disjointed manner. The amended clause will read thus:

"Any property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, may be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition subject to such compensation, if any, for the property taken possession of or acquired as may be determined by the principles laid down in the law for calculating the compensation."

Then, Sir,

"(v) the following be added at the end:

'Provided that no compensation whatsoever shall be payable in respect of:

(a) any public utility, social service, or civic amenity which has been owned, worked, managed or controlled, by any individual partnership firm, or joint stock, company for more than 20 years continuously immediately before the day this Constitution comes into force;'"

I have added the word "immediately". I have an amendment No. 490 in this respect. That means, not at any time, but immediately before.

[Prof. K. T. Shah]

Then, Sir,

"(b) any agricultural land forming part of the proprietary of any land-owner, howsoever described, which has remained uncultivated or undeveloped continuously for ten years or more immediately before the day this Constitution comes into force;

"(c) any urban land, forming part of the proprietary of any individual partnership firm or joint stock company, which has remained unbuilt upon or undeveloped in any way for fifteen years or more continuously immediately before the day this Constitution comes into effect;

"(d) any agricultural land forming part of the proprietary of any landowner, howsoever described, which has remained in the ownership or possession of the same individual or his family for more than 25 years continuously immediately before the day when this Constitution comes into operation;

"(e) any mine, forest or mining or forest concession which has remained in the ownership or possession of the same individual, partnership firm, or joint stock company for at least twenty years immediately before the day this Constitution comes into operation;

"(f) any share, stock, bond, debenture or mortgage on any joint stock company, owning, working, managing or controlling any industrial or commercial undertaking which has been owned, worked, controlled or managed by the same joint stock company, or any combination or amalgamation of it with any other company for more than thirty years continuously immediately before the day this Constitution comes into operation.

or

which has paid in the course of its operations and existence in the aggregate, in the shape of dividend or interests, a sum equal to or exceeding twice the paid-up value of its shares, stock, bonds or debentures;

or

whose total assets (not including goodwill) at the time of the acquisition by the State of any such undertaking are less in value than its total liabilities."

The next is No. 410 which has already been moved by Mr. Kamath and I do not wish to take the time of the House over that. Next is No. 419. I move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24,—

(i) for the words 'If any' the word 'Any' be substituted;

(ii) for the words 'has, after it has been' the words 'may be' be substituted;

(iii) the words 'received the assent of the President,' be deleted; and

(iv) for the words 'assented to' the word 'passed' be substituted."

Sir, I move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'not more than one year' the words 'at any time' be substituted."

I also move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words beginning with 'may within three months' and ending with 'Government of India Act, 1935', the following be substituted :

'shall not be called in question in any court on the ground that it contravenes any provision of this article'."

Sir, I now speak to all the amendments, which, taken together, make a constructive proposition, and an alternative to the policy laid down in the amendment moved by the Honourable the Prime Minister. The Prime Minister has advanced the proposition that under this Constitution, there shall be no expropriation without compensation. I am afraid I am unable to share this view, if

it is to apply to *all* property indiscriminately and without modification. For not all property is such that the present holder or owner of it can claim, in justice, in ethics, any right to be compensated since the origin of property is not always unquestionable.

A great French thinker asked the question 'What is property' and he answered it by saying 'it is theft'. I am afraid 'theft' perhaps is very often too mild a word because much of the property has been acquired—if you go into the origins of this—by force, fraud and violence which under any system of ethics can hardly be justified. If you are going to seek to compensate those who have acquired property, no matter how long since, by such means as force or fraud or violence or theft, I am afraid you would not be acting up to the ethical standards which are supposed to animate this Constitution.

Mention has been made by one of the previous speakers in the course of this debate, of slavery,—the right to own human beings prevailing in the Southern States of the United States which was abolished at the end of a civil war. That form of property had to be abolished, and to the best of my recollection, without any compensation. True, compensation was given for the slave-holding owners in the British West Indies Colonies by the British Government when they decided without any violence to abolish slavery. But the ethical proposition does not become objectionable because in the case of the United States, and many other countries instances can be quoted—where nefarious forms of property have not been compensated for by those who expropriated the owners of such properties.

In this case I suggest that there is a certain divergence between the sense of economics and of ethics. Property is not an ethical institution, I venture to submit. It is an economic institution with close connection with ethics. I may say the economics has suffered because of this divergence from ethics, and holding property sacrosanct and demanding compensation even if the property is acquired by force or fraud or is used or abused or even unused.

At a later stage I shall come to that part of the argument which seeks to give compensation without any condition, or according to my amendment, which restricts compensation by certain conditions. But at this stage I am concerned to point out that there are public utilities, social services and civic amenities which under the existing system are under private enterprise. They are owned by individuals who derive considerable profit. By their nature they are monopoly or they have become monopoly; and whether operated by individuals, partnership firms or joint stock companies, they tend to rob, in my opinion, the community of that which belongs and ought to belong only to the community.

For such, therefore, I venture to submit there should be no compensation. The amendment I have suggested says that whatever may have been the case hitherto, hereafter, under this Constitution, no absolute right of property shall be allowed or recognised, whether in any individual, in partnership firm or in joint stock company, which concerns the working, controlling managing or operating of any public utility, social services or civic amenity; and that these shall be in future operated entirely for the public benefit by public enterprise in which there shall not be any private profit in the least.

I trust the actual wording of my Amendment in that regard will be carefully scrutinised by those who may not take the same view as myself. I have been very moderate in laying down the conditions. I repeat I refer only to the future, without regard therefore to what has happened in the past, in regard even to these utility services and amenities. I consider, even in regard to that future, the absolute right of ownership should not be recognised under the Constitution in any

[Prof. K. T. Shah]

private concern whether individual or firm or company. But hereafter they must be operated by collective enterprise for the common benefit without any profit motive. I trust the essential modesty of this demand will be accepted and recognised and the Prime Minister would agree to accept this amendment.

Passing on to clause (2), I have suggested that there should be a positive clause. Instead of opening the clause in a negative manner, which somehow seems to suggest that the primary right and overriding right is that of the individual. I would lay down rather positively the right of the State or of the community to acquire any property if for any purpose it deems it necessary to do so. It has been limited by the words 'for public purposes'. In 'public purposes' I include, not merely the non-remunerative and common civic amenities *e.g.*, when you want to clear the slum of a big city and acquire the ground held by tenements, you may keep up that ground for public purposes in the shape of parks or open spaces—I think that would be a very legitimate category of "public purpose". But there may be public purposes which are not only of that character—not only for building open spaces, parks or gardens; not only for building schools, hospitals or asylums, but even for building those lands on a more economic and more profitable scale—I mean profitable to the community and not to any single individual

Acquisition of lands for public purposes, acquisition of any form of property, movable or immovable, for any public purpose, including the working of that enterprise for the benefit of the public, is, I think, an inherent right of the sovereign community which should not be subject to any exception of the type implied if not so much laid down in the wording of this clause (2). I have therefore suggested that any such property to be acquired can be acquired for public purposes without defining what is exactly meant by 'public purposes' subject to such compensation if any. I would like to sound a distinct note of warning in connection with the calculation of compensation—in fact on the very basis of compensation. Not all property is deserving of compensation nor should the Constitution recognise categorically without qualification or modification the right to compensation as appears to me to be the case in the clause under discussion and hence the amendment I have suggested to it. I would certainly leave the margin of doubt whether any compensation is ever due and must be paid in every case without question. Doubt having thus been expressed by the term "if any" I would also go further and say one thing more : *viz.*, that property having been acquired, movable or immovable, the law should lay down the general principles according to which the compensation will be calculated and the law should not try to lay down the exact detailed amount for each case.

I would now give you my reasons for objecting to the laying down of the amount in law, and preferring to lay down the principles according to which compensation should be calculated. The amount, if laid down by the Legislature, which presumably will be dominated by parties, is liable to be fixed more, perhaps for party reasons than because of the inherent or intrinsic justice of each claim, apart from the fact that the Legislature would be involved in endless series of individual recognitions. I think it would be ethically wrong for the legislature to go into the details of each valuation, let us say of each estate, each share or stock or debenture as the case may be. Now, it would be the best course for the Legislature to lay down only broad principles according to which, in any case where it is decided to give compensation, that compensation will be calculated, and the calculation should be made by tribunals which tribunals, as I have always been insisting, should be free from any influence or contact with any othe

organ of the Government, whether executive or legislative You will be doing the right thing if you entrust the administration of the principles that you lay down in your sovereign legislature to the judiciary

Having said this, I next lay down certain categories of property in which, according to my judgment, no compensation should be due or be payable, and that I contend, is inherent both in the economics and ethics of the case I am trying to advance. That is to say, any agricultural property which may form part of any proprietary, which is utterly unused for a number of years, neglected for a number of years, may be taken over without payment of any compensation The land has remained utterly unutilised, or the zamindari has become unsocial, and therefore or in unsocial fact, for [illegible] at incompetence or indifference the community is not bound to compensate the owner I, therefore suggest that in the case of any property which is capable of being properly used, which is capable of doing [illegible] and yet on account of the incompetence negligence or otherwise of the owner is not so utilised, the owner does not deserve to be compensated and the community would be wrong if it gives any compensation in respect of such items of property.

I say the same thing with regard to public utility and social services which may have been hitherto operated by private individuals, corporations or firms, and which according to general principles, should not have been left in their hands. But since they have been there, let us compensate them, provided that these have not been held for a period exceeding the one I have suggested or some such period. Again, the basic principle of my argument is the same. They have gained from this kind of monopoly, from this kind of public service, a profit and a surplus far in excess of what should be legitimate, to the exclusion of the public benefit, and therefore, they have no right to demand compensation for such services. If the period for which they have held it is in excess of the one I have mentioned, the presumption is that they have already had more than enough, they have compensated themselves more than enough Therefore no compensation is, in law or ethics or economics, due to them and should be paid to them.

Similarly too with regard to urban lands which very often is held merely in the hope that by development of population, by the growth of population, the development of social services and of public utilities the value of the land will be increased. People simply do not want to invest any more capital and just wait, until purely by the conjunction of and by the operation of social forces, the value of the land is increased. They simply allow the forces of nature to play upon such lands, and therefore no compensation should be paid to them I think they are social offenders and the community would be well within its rights to deal with them as social offenders for having taken potential sources of production and not utilised and developed by them Therefore, they are not entitled to demand any compensation for this kind of unsocial or even anti-social behaviour.

I pass on now to other forms of natural wealth such as mines, forests and mining concessions which are also in the nature of monopolies They are gifts of nature belonging to the community, but have been alienated from the community to private individuals—I will not use a harsher term If these have fallen into hands of individuals because of our helplessness or by reason of the foreign rule, we see no reason why we should go on recognising this injustice, this robbery of the people's right. Therefore, I do not think that for these mines or mining concessions, forests or forest concessions, any compensation is due. If operated for the given number of years I have stated, the holders have in all conscience received more than enough and therefore, they

[Prof. K. T. Shah]

cannot demand any more compensation, whether they be coal-miners, or iron miners, or gold miners. Compensation for them would be utterly unjust and must not be allowed.

Apart from these forms of natural wealth, I pass on to the next, industrial and commercial undertakings which is their own way, are no less offensive than perhaps the primary sources of production like land, mines or forests. These too have got into private hands, because of the prevailing economy of those days, and it is now too late to complain. But they have been operating, and those of them which have been operating for a number of years, have been earning sizeable profits from this operation, these should not be entitled to demand compensation, as they have already received enough, in my opinion, and more, enough and to spare, for times to come.

The three categories I have laid down are, first, those who have been paid in the aggregate more than twice the amount of their share capital or debentures or stock or whatever it may be, so that in a period of so many years they have already re-imbursed themselves, and consequently therefore it is necessary, it is but just and proper that the community should be called upon to take over their enterprise and conduct it in the way that it deserves to be conducted in a properly co-ordinated and planned economy for the nation. Those again, who have held it for the entire period, say for thirty years, whether with or without profit, have proved themselves either too incompetent or unprofitable and therefore they do not deserve to continue holding the property. Therefore they should be expropriated. The others have already received sufficient and more than sufficient to reimburse themselves for any investments they may have made, and therefore they are not entitled to any further compensation. I do not wish to offer examples of mining concerns and concerns connected with basic industries like iron and steel, banking and insurance which have in the last generation or more, particularly since the Swadeshi movement, tried and earned very fat dividends, very large surpluses, which should be taken to have more than re-imbursed them; and now in these cases, particularly those which are of basic necessity for the country's development, to pay compensation on anything like the artificial value which is given to them is, I submit, utterly unfair and ought not to be permitted. I have therefore suggested by this amendment that no compensation shall be payable to categories of property of this kind.

Lastly, in the case of the industrial and commercial undertakings, in the case of those whose liabilities and assets do not tally, whose assets are much below their liabilities and therefore it being always a losing concern, for compensation to be given to such concerns would be putting a premium on wastefulness and extravagance and uneconomic working and therefore ought not to be allowed. Time and again, the State has taken over in the past enterprises which were in the previous two, three or four years so wasting their resources as to make themselves a white elephant. I am particularly speaking of some of the railways which had to be taken over by the State and which under the terms of the agreement worked in such a manner that the assets received were much below any real value of the liabilities that they will put upon us. In any such case, therefore, I submit it is unfair, it is unwise, uneconomic, unethical, to offer any compensation merely because it is a losing concern or that the owners have proved themselves utterly incompetent and undeserving of any compensation merely because of their own negligence they have failed to make both ends meet.

The other amendments which I have tabled are of a procedural character and as such I will not take too much time of the House on them. I do not think it is desirable that any room should be left for an avoidable conflict between,

for example, the head of the State and the legislature. Therefore clause (3) which suggests that every Bill of this kind may be reserved for the assent of the President and make it an item of importance is in my opinion unwise and therefore ought to be avoided. I have therefore suggested that that clause be deleted.

Similarly, in the case of pending Bills or Bills which have been passed one year before or at any time before this Constitution comes into force, there should be no need, in my opinion, for any reservation, for the approval or the assent of the supreme executive authority in the land and create a kind of tension between the Central authority, the national authority and the local or State authority as the case may be. I trust these points that I have advanced so briefly would meet with the approval of the House and the amendments work be accepted

Shri Jadubans Sahay (Bihar : General) : Mr President, Sir, I beg to move :

"That in amendment No. 369 of List VII (Seventh Week), clauses (2) (3), (4), (5) and (6) of the proposed article 24 be deleted."

My justification for moving this amendment must have been very clear to the Members by this time. The draft article as it stands before us is, I venture to submit, one of the most wonderful examples of chaos and confusion of ideas Nowhere possibly you will find such a conglomeration of things such a confusion of ideas, on such an important and vital issue as this concerning the property of the country. As an august body, we are going to lay down the foundation of property for future legislatures and for the posterity of this country, but I venture to submit that we have utterly failed in this task. It must be apparent to the members of this House that the more the two differing schools of thought have tried to compromise their view-points the more confounded has this entire draft become You know that the question of property has been engaging the attention not only of this country but of other countries as well. Agrarian and industrial reforms have set at naught centuries-old definition of property in many countries. It was expected of us that at least on a matter affecting the teeming millions, on a matter affecting the future economic structure of the country, we should come out with a clear-cut economic formulation of policy regarding property. But what we find is that the draft has not been able to inspire confidence in any class.

Take the industrialists and capitalists They are not satisfied with it Take the landed magnates. They are not satisfied with it. So far as the teeming millions are concerned, they would not be satisfied with it, had they the voice to lay before you their feelings regarding this Draft Constitution They in whose name we have come here and for whose sake no doubt all of us possibly are making this Constitution,—what are we giving to them ? I will not enter into the controversy as to whether compensation as provided in this article can root out the growth of capitalism that is taking place in this country so rapidly and which is bound to affect the future political economic and other growths of the country.

Suffice it to say that the conception of property has been changing. The world has been changing. From the Divine Right of the sovereign we have come to the sovereignty of the people But our minds have not been changing so far as the concrete realities of the question of property are concerned. Are we going to hold out hopes for the future that industry in this country will be nationalised or socialised in the interests of the masses of the people ? No. This Constitution does not hold out any hope; rather it binds down the future generation, the future legislatures, to pay full compensation to any industry which they may want to nationalise.

[Shri Jadubans Sahay]

This article has not created any enthusiasm in the mind of anyone. So far as Bills, are concerned, what do we find? There is confusion reigning there because in one province we find that a Bill which is pending is given recognition here. Is it the duty of the constitution-makers to deal with Bills which are pending, which have not gone to the Select Committee. So far as the amendment is concerned, I am seeing that chaos and confusion reigns everywhere. What would be the effect on other provinces? Leave the case of the U.P., Madras and Bihar. What policy are you going to lay down for the guidance of Assam, Bengal and also C.P., where zamindaries may be abolished in the future. Would they be asked to pay compensation or would they get protection under clauses (4) and (6)?

I would beg to you to consider that this article is the most important in the whole Constitution and it is an acid test of the Members of this House. We have failed because like what we are on every other thing we have become victims of confusion. When problems face us we shirk them or we try to interpret them in two different ways. There are two schools of thought and one of them should have found place here—it is either compensation or no compensation. It is quite a different thing to say that we should not, in the present state of our country, in the present crisis in the country, proceed in a way that such a legislation might overawe our industrial magnates and make capital shy. I think the State legislatures and Parliament will certainly take note of the crisis in the country. But it is quite a different thing that for all generations to come you are going to bind the hands of the future by such provisions. It is because of this possibly that we have not enunciated clear economic policy to the country.

My forebodings may not be correct, but I fear that upon this Constitution, possibly the whole labour we have put in in this House for the last two years, might be thrown away, because it is bound to be one of the most controversial things, for we are taking a line which is neither to the left, nor to the right nor in the centre. There is conflict and confusion in our minds. Therefore I have in view that only the first clause should remain and all others should be deleted. Let it be left to the State legislatures or Parliament or to our leaders who run the government to give direction to the country, to say how laws should be formulated regarding property in any province. But for God's sake do not burden this Constitution with all such things which you do not find in any other constitution of the world.

Mr. President: Amendments Nos. 390, 391, 392 and 393 are ruled out. Amendment No. 396 is verbal and need not be moved. I call upon Mr. B. Das to move his amendment No. 397.

Shri B. Das: Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed new article 24, for the words 'unless the law provides for compensation' the words 'unless the law provides for fair and equitable compensation' be substituted."

With your permission, Sir, I would also move amendment No. 427:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'not more than one year before the commencement of this Constitution' the words and figures 'after August 15, 1947' be substituted."

Sir, I support the motion moved by the Honourable Pandit Nehru. I think if my two amendments are accepted by the House it will just clarify the situation so that we do not fall into the traps of which we just now heard form our honourable Friend Prof. K. T. Shah, who is going to be the leader of the Opposition in the Parliament a few days hence.

On the 9th August 1942 all our leaders were incarcerated for giving the nation the battle slogan "Quit India" and they came out determined, and determined to achieve our FREEDOM. In 1945-46 our leaders issued the Congress election manifesto to the nation in which referring to the reform of the land system and acquisition of property, they declared

> "The reform of the land system which is urgently needed involves the removal of intermediaries between the tiller of the soil and the State. The profits of such intermediaries should therefore be acquired by the State on equitable compensation."

It has been recognised by a majority of Congress leaders outside and some of them inside that equitable compensation should be paid for properties acquired. Somehow there has been a big controversy both inside and outside the House that nationalisation and expropriation should prevail and not fair and equitable compensation. Unfortunately when Congressmen came into power in 1947 some of the young generation of the party began to talk of nationalisation and expropriation. Today some of them are Members of this House and even of the Congress Government and they are silent over the word 'expropriation' which has been denunciated so definitely by the democratic socialist leader, my old friend Prof. Shah.

We Congressmen have an onerous duty to the country. Are we to fall into the trap of the Socialists and take shelter under the law and pay no compensation in the name of the law or are we to stand by the Congress Parliamentary manifesto that equitable compensation should be paid? That is why I want the exact words of the manifesto to be introduced in the amendment of Pandit Jawaharlal Nehru.

As regards the second amendment where it has been said "any law that has been passed one year before the commencement of the Constitution," I find that others too have tabled amendments to the effect that it should be one and a half years. Why mince matters? We attained our freedom and independence —though that independence is today qualified by our kowtowing to the Commonwealth countries. Why not say "any law that has been passed after the 15th August, 1947"? This does not alter materially the amendment which Panditji has moved but it fixes a date which is well known and it is no use talking of one year before the commencement of this Constitution.

Coming to the motion moved by Pandit Nehru, whether my amendments are accepted by the House or not, I have to accept it, because there has been no fairer proposition that has been tabled or moved by any other member of the House. In accepting that we must admit that we recede from our original ideals. We go back on the election manifesto that gave to the country high hopes and high ideologies, for the last four years—the election manifesto of 1945-46. Perhaps as we exercised power, power-politics have upset the leaders of the nation and the leaders of the Congress Party feel that idealism is not the right thing and that there must be compromise in life.

But I am not one who will be cowed down by the Socialists. If the Socialists want to succeed the Congress in the country, let them plan out what they will do. Except making a few criticisms of Congress leaders in the press and on the platform the Socialists have not evolved or done any constructive work in the country whereby they show their fitness to succeed the great Congress Party in the country in the control of the administration of the nation. I was amused to read a little note in the "Statesman" this morning where the writer has mentioned that the Socialists have formed themselves into the Social Democratic Party in the Parliament to oppose the Congress Government. He says that besides irresponsible talks—irrelevant garrulity inside the Assembly and little action outside, they have not so far produced any planned programme by which they can establish better Government in the country, or rather a Government to usher in a peaceful era of constructive Socialism. If I am to

[Shri B. Das]

understand the Socialist programme as my Friend Professor K. T. Shah enunciated a few minutes ago, they want expropriation of all properties. I interjected "Why does not my Friend Professor K. T. Shah want to expropriate all movable properties of the citizens of India?" That will give him and the Socialist Party a certain amount of property and wealth by which they can carry on their so called programme, as the Pakistan Government is carrying on by confiscating properties worth Rs. 4,000 crores of displaced Hindus and Sikhs who have migrated to India. That is not the right solution. Expropriation is not the right solution to produce better wealth. Expropriation will not work the industries that Professor K. T. Shah and perhaps the Socialists want to work in the country for greater production and larger prosperity and well-being of the people. No industry can survive if it is expropriated. If expropriation will make the Socialist labour workers to do better work to produce more, I think they are thinking on wrong lines. Unless there is adequate production on man-hour basis, whether industries are private-owned or State-owned, such industries must produce enough to maintain the national credit of India. If my Friend Professor K. T. Shah, who was the Secretary of the National Planning Committee, after writing those beautiful and studied volumes has come to the conclusion that national credit cannot be maintained unless you expropriate all property, be it landed property or be it public utility concerns or other concerns, if that is the sort of dreams that Socialism has, then I pity the Socialists and they will never be at the helm of the Government of India in the near future.

In supporting Pandit Jawaharlal Nehru's motion I accept the compromise. It does not satisfy my soul, but it satisfies the present exigencies and on that ground I support it.

Mr. President: Amendment 398 is to the same effect as 397. Also 399 the first part of it—is to the same effect. Therefore these need not be moved.

Shri Jaspat Roy Kapoor: May I submit that part (a) is something different from amendment 397 or 398?

Mr. President: You may move clauses (b) and (c) of your amendment.

Mr. Naziruddin Ahmad: (b) and (c) have also been covered already—by amendment 389.

Mr. President: Yes, that has been moved by Mr. Jadubans Sahay. Therefore all these amendments need not be separately moved.

Shri S. Nagappa (Madras: General): Mr. President, Sir, I move:

That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words "for compensation for" the words "compensation not more than 5 per cent. of the market value of" be substituted.

When these words are substituted the clause will read thus:

"No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides compensation not more than 5 per cent. of the market value of the property taken possession of or acquired" etc.

We have made this article non-justiciable. When we do so, there must be some principle. What is the maximum that we can pay as compensation? We are not going to pay justiciable compensation. Whatever we give is supposed to be just and equitable. All these days the State has given protection to the zamindars or capitalists to acquire the properties. Now we are requiring the properties for the State, for the good of the State, for the betterment of the common people in order to maintain the national economy of the

country. So we must also take into consideration how these capitalists and zamindars have been responsible for the fall of national economy by not utilising the property in a proper manner, that is to say, by not producing the required amount of value out of the capital that has been in their possession. As a result of that they have been responsible for the fall of production. Let us for example take a zamindar who owns thousands of acres of land. At times because he may not find enough manual labour he may not cultivate the whole land and most of the land goes fallow. Or even if he does it he may not do it with all the intensity that is required and necessary, and he may not produce the quantity that can be produced from that land. So he has been responsible for the fall in the national wealth. He therefore deserves not compensation but something else. He must be taken to task for having deprived the nation of the national wealth.

Now we are glad that the country has realised that we should not allow properties to be owned by either individuals or corporations, but that all property should be at the disposal of the country as a whole. We have been abolishing the zamindari system. It has already been commenced in two provinces. Now, to whom does this land go? It should not go into the hands of petty zamindars. It must go to the State We should not create innumerable petty zamindars in the place of a few. That is not abolition of zamindaries. Now if you give more compensation, it will mean purchasing the zamindaries and not abolishing them. When you acquire properties for State purposes, the State should have control over them. After all the person who is in possession is there only to make use of the land. He need not own it. A pattadar today is not the owner of the land he is using. Government is the owner because the Government has conquered it inch by inch and should therefore be the owner. The pattadar has only the right of using the land. He canont say that the land belongs to him. Even the zamindars were there having the custody of the land on behalf of the people, that is all. They were collecting also rent from the people. Now you are taking away the right to collect rent and giving the land to the people who have been under the thumb of the zamindars cultivating it. You are not taking the land to the State. You are taking away the land from the zamindars and creating a number of chota zamindars, more numerous than the former. That way you cannot solve the land problem. The solution of the problem lies in nationalising or socialising the land. The people of the locality must be the owners of the lands; the tillers of the soil must be the owners. Then only you can say that you have acquired the land for State purposes. Until and unless this is done you cannot say that you have solved your problem.

We decided in the beginning that our aim is to establish a co-operative commonwealth. Unless you socialise the land you cannot have that commonwealth. The lands acquired from the zamindars must be plotted out on a co-operative basis and given to well-trained cultivators with instructions that they grow more and more food. Now what I propose is that while you acquire land for this purpose it is just and proper that you pay 5 per cent. or less. With these few words I commend my motion for the acceptance of the House.

Mr. President: Amendment No. 401 of Mr. Naziruddin Ahmad is covered by the amendments already moved.

Mr. Naziruddin Ahmad: No, Sir.

Mr. President: All these expressions 'fair compensation', 'full compensation', etc., mean the same thing.

Mr. Naziruddin Ahmad: There is a shade of difference between them.

Mr. President: Well, shades of differences are matters for drafting. Amendment No. 402 is also covered.

Pandit Thakur Das Bhargava (East Punjab : General) : This item (iii) of 402 is entirely different. This is not covered.

Mr. President : Only item (iii) in amendment 402 which seeks to introduce "appropriate" before the word "principles" is new. You may move it.

Pandit Thakur Das Bhargava : I beg to move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24—before the word 'principles' the word 'appropriate' be inserted."

Then, Sir, I move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24, after the word 'Constitution' the word 'and designed to execute a scheme of agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors for such compensation as the Legislature of the State considers fair', be inserted."

Mr. President : Your amendment No. 479 cannot be moved. It is covered by previous amendments. You may move amendment No. 487.

Pandit Thakur Das Bhargava : Then I move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'or specifies the' the word 'proper' *or alternatively*, 'fair' be inserted."

Next I move, Sir,

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'having been' the word 'is' be substituted."

Mr. President : Your amendment No. 503 is covered by amendment No. 389. Amendment No. 512 also cannot be moved.

Pandit Thakur Das Bhargava : Then with your permission I move :

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added :—

'(7) If any State passes a law designed to execute a scheme of agrarian reform in the State by abolition of Zamindari conferring rights of ownership on peasant proprietors or at least rights of occupancy for such compensation as the State Legislature considers fair on the lines of the law referred to in clause (4) of this article, such law shall be submitted by the Governor or the Ruler as the case may be, to the President for his certification. If the President by public notification certifies the law, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article'."

In regard to the amendments, I beg to submit that the present principle of acquisition of property for public purposes is sought to be saved by clause (5) of the proposed article. The existing law is contained in Act 1 of 1894, according to which, before property is acquired or requisitioned, compensation is to be paid. The compensation which is laid down by the law to be paid is the market value of the property at the time of the acquisition plus 15 per cent. for disturbance. I understand that clause (5) of article 24 saves that law, so that before any other provision is made by the legislature subsequently, this law will hold the field, and if any land is acquired, it will be acquired according to this law. Under the present law, an executive officer determines the compensation but his determination is not final. A person aggrieved from this order can go to a civil court or a District Judge and there get the order revised, if he is not satisfied by the order of the executive officer or the revenue officer or whoever the officer determining the compensation may be. After that, it becomes a civil suit and the civil court will find out what the market value is and add 15 per cent. to it. This is the present law. According to amendment No. 369, if any law is passed by the legislature subsequently, then that law will be on the lines given in article 24.

Now, this article 24, as it is, seeks to delude any person who reads it that he has got a justiciable right. We have been told times without number not in this House, but in other places, that this right is justiciable. Exception was taken on the core that it should not be justiciable so far as zamindars are concerned. The whole dispute centred round this question whether the right given by article 24 of the Draft Constitution was justiciable or not. From the very start I have been of the opinion that there is little of justiciability in article 24 of the Draft Constitution because after the legislature has laid down the principles, those principles become unalterable. These principles cannot be questioned in any court of law. Nobody can agitate before a court that the principles which have been approved by the legislature fail to give adequate compensation. The word "compensation" itself means a good *quid pro quo*. In the word "compensation" itself the adequacy and fullness of the consideration is implicit, though doubts have also been thrown on this connotation of the word "compensation". I do not know whether this word compensation has got this meaning or not, but as I understand this article 24, I am absolutely clear in my mind that if clause (2) remains as it is on the Statute Book, then the legislature and not the courts shall become the final arbiters of the compensation.

It would follow that if the principles are given in a piece of legislation, those principles will ultimately decide what the compensation has to be. Of course, if practically no compensation is given, a man can go to a court of law; otherwise he cannot go to a court of law. Thus if the compensation paid is a fraud upon this section, then in that case the matter can be taken to courts. It means that if instead of 100 rupees one rupee is paid, then it will be complete destruction of the word "compensation". If out of one hundred rupees one rupee is paid, it will be a fraud; if ninety-eight rupees are given or five rupees are given, it would not be a fraud. I think Sir, that this clause (2) is at present a fraud on us because I understand that it is not justiciable. It is made to appear to be justiciable to convince the general public. My submission is that it can only be justiciable in one way and that is what I have submitted for your consideration in my amendment No. 402 that the word "appropriate" be added before the word "principles". If the House accepts this it will mean that the principles must be appropriate, must be fair, and the application of these appropriate principles must result in one thing *viz.*, that full compensation, or fair compensation will be given My submission, Sir, is that if the word "principles" remains here without any adjective, I am sure the clause is not justiciable. Therefore if the House accepts my amendment, then we can make this right justiciable, as it is evidently the intention of the framers of the Constitution that it should be so. And so my submission is that the House will be well-advised to accept my amendment.

I have heard the arguments of my Socialist friends who are of the view that if the legislature fixes some compensation, or the principles, then the courts should not have any power, should not have the final say in the matter. I do not quarrel with them because it is only a point of view, but to those of us who believe that the courts in this country, as in all other countries, are the final arbiters of civil rights, to them it is very clear that this article 24 goes against the very principal of justiciability and the rights of property, even as recognised and guaranteed under article 13.

Now, Sir, the Honourable Prime Minister, when he moved this amendment, told us that the rights of the individual as opposed to the rights of the community should also be considered. I quite agree. In the Objectives of our Constitution, we have already laid down that we want to ensure justice, economic and social. I want that the dignity of the individual and the

[Pandit Thakur Das Bhargava]

unity of the nation must be there. I think, Sir, that we should arrive at a happy blend between the rights of the individual and the rights of the community, and in this regard the Congress and the whole country is committed to the abolition of the zamindari. We shall not be in the right if we go back and say that there will be no abolition of zamindari. I do not want that the whole thing should be resolved in this manner. Every person in this country should understand and accept the principles, the broad principles of legislation in this respect.

With regard to clause (4) I have seen the legislation of the U.P. and I am satisfied with the principles which govern this legislation. The whole idea of that legislation is that the peasants should become owners of the property, that every person must be made the owner of his land, so that he may take full interest in the land and develop it as much as he can. I accept the principle that if for the purposes of agrarian reform by virtue of which the peasants or the tenants are made proprietors and the zamindari is abolished, then in that case such compensation may be given as is equitable and in that case the State Legislature may be the final arbiter and the best judge of it. Therefore, I have put in an amendment No. 514 which seeks to have another clause, namely clause (7) wherein I say that if such an occasion arises when any State in future also wants to have a law like this, it can have the benefit of the law under clause (4).

In regard to clause (6) I have given an amendment that it should be deleted. I am not satisfied with the Bihar law at all. I went through the Bihar law and when I read its provisions, I was simply startled. Its provision says that from a certain date when the public notification is there, all rights of property will be confiscated and those persons who were owning properties today will become only occupancy tenants if they possess, Sir, lands. So far as this law is concerned, the Bihar Government is not affected at all because if they want to have a law on this new basis, if they abolish zamindari and then create instead peasant proprietors with full rights of ownership, I am one with them. There is another amendment sought to be moved by Messrs. Munshi and Alladi Krishnaswami Ayyar and that amendment says that if such law goes to the President, the President shall have the power to require any specified amendments to be made in such law.

Moreover I cannot understand why Madras, U.P. and Bihar Governments should have such laws passed in this manner and other States should be denied the liberty of having the Zamindari dissolved. I think we ought to be fair and equitable. If the basis of the U.P. legislation is accepted by law, we should see that that principle is applied to all the other cases. These words "that there must be an agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors" are there in my amendment and these principles are sound. They have been sanctified by experience of ages. Of course there are the people who have owned those properties for a long time and on account of their absence from their places the exercise of rights by those people cannot be so useful to the community as in the case of others. Unless this exception is made and this is made applicable to all the provinces, this will not be fair.

I have put in amendment No. 496 which seeks to substitute the word "is" for the words "having been". If my amendment is accepted it would mean that the Provincial Government will thereby be compelled to hold it for the assent of the President and then the President will give the assent because today, supposing a Provincial Government does not hold the Bill back for the assent of the President, then a difficulty would arise as it may not be allowed to go to the President at all.

In regard to all these, I have to submit that these fundamental rights we have been told are justiciable, times out of number. Now I see that attempts are being made to see that the rights which are guaranteed to the citizens of India are being taken away one by one. Two or three days back, I had occasion to say that article 16 was sought to be taken away and it will be taken away and article 13 is also I see being burdened with such reservations and being subjected to such modifications that it is also being taken away. The accursed article 15 is neither fundamental nor justiciable.

If we really mean to have a Constitution of this nature for which we have been boasting all over the country, we should not enact a provision like article 24 because it is the very negation of the rule of courts in this country. In our country where we have got this freedom without going through any bloody revolution, it is necessary that we should see that discipline and democratic ideals are installed in our hearts and that the law of the land becomes the law by which every person is governed. Unless and until the courts are empowered, and the courts are the final arbiter of the civil rights and of the liberties of the people, I feel that if the legislatures alone are given the power we are coming to a point where fiats of executive officers will deny us our rights and this would be very wrong. I feel in the activities of the Government a tendency that everywhere we seek to destroy the powers of the courts and substitute therefor the power of the legislature or the executive.

What is an executive officer? Supposing an executive officer has to decide my fate; he is the person who is interested in getting my property and giving me a very small compensation. That is not fair. He should not be a person who should represent the Government's interest in all the stages. The courts will also be appointed by the Government. Let those courts decide our civil rights so that people may have confidence; and moreover, Sir, in regard to ordinary properties excepting the Zamindari, etc., I am not fully satisfied as to how the principle of superiority of the rights of the community has precedence over the rights of the individual. After all where is the law that you should usurp the rights of the individual with a view to benefit the rest of the society excepting that individual? The salutary rule which we have accepted for the last sixty years and more is that the present market value is the proper basis for fixing the amount of compensation and this should not be departed from, unless for scheme of agrarian reforms involving millions of people and multiplicity of litigious suits. I understand that my socialist friends come here. Some of them are very rich themselves and do not practise what they preach and are engaged in amassing as much property as they can lay their hands upon. I just want to submit for the consideration of the House the views of the common man. The common man does not recognize your doctrines of "Property is theft". He believes in the sanctity of property. Supposing any land or house is taken away for the purpose of a railway line or some undertaking of the Government, no doubt for a public purpose, will any one be satisfied if he is not given full compensation, and is there any valid reason why he should not be fully compensated? As a matter of fact no one will feel confident if you enact laws as you propose to enact that not the courts, but the executive officers should be the final arbiters of the civil rights of the people, and it is not politic to undermine the confidence of the people.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. President, Sir, I move :—

"That in amendment No. 369 of List II (Seventh Week), in clause (2) of the proposed article 24, after the words 'is to be determined' the words 'and paid' be added."

Sir, I have also given notice of another amendment which is No. 434, I do not propose to move the first portion by which I sought to add 24A, but I would

[Dr. P. S. Deshmukh]

beg leave to move the last portion, Sir, which is styled here as 24B and if it is accepted it will have to be numbered as 24A.

Sir, I move :—

"That with reference to amendment No. 369 of List VII (Seventh Week) after the proposed article 24, the following new article be added :—

'24A. Nothing in this Constitution shall prevent the Parliament from exercising jurisdiction over, and the State Legislature from acquiring any properties movable or immovable belonging to any public charitable trust without compensation and for the purpose of better utilization and management of the trust property.' "

Sir, this is undoubtedly a very important provision in the Constitution and it is not therefore surprising that we have been deliberating with regard to these provisions for a very long time. In spite of our efforts, it has not been possible to evolve a formula which is acceptable to everybody. Sir, the claims to property or our outlook towards property is next only to individual liberty the very essence of all political thought and constitutions. More and more as time advanced, the outlook towards private property has been undergoing very great changes. On the one hand there has been a system of excessive capitalism; on the other we have the instance of Russia where all private property was confiscated. India has come into its own as one of the greatest nations of the world and on this one thing as to how we regard private property is going to depend the state of politics if not the governance and fate of this country.

The formula that has been presented here in the shape of this article, in my opinion, is a half-hearted one. It neither protects private property, nor does it confiscate it. If it is necessary to respond to the cry of the people who are more and more being dominated by proletarian ideas that all land, all mines and all things belong to the people as such and there can be no preserved or separate right of any individual with respect to it. If we wanted to give effect to this or to respect the wishes of the people or act in consonance with this demand of the people, which, in spite of all our efforts to keep communism away, is getting more and more popular with our people, if we do not want to go back on the of-proclaimed promises held out under different conditions and circumstances, it would be necessary for us to go much further than we have been able to go in this particular formula. But, Sir, I wish to advise a cautious attitude. I believe, sooner or later, there will be no private property in India. We are fast approaching that ideal, that goal, or that catastrophe if you like to describe it in that way. But, for the present, I would have liked to keep the thing in a somewhat fluid, undefined and elastic condition by accepting the amendment that has been moved by my honourable Friend, Mr. Sahaya.

I think, Sir, as I have advocated on many occasions, that we should not try to commit or fetter the powers of Parliament in such a matter and at this stage any way. This is a matter which requires very careful and thorough consideration and I feel at the present moment it is impossible for us to spare for it the time that is needed. In my opinion we have hardly had time to collect all the relevant information and if I may say so, the worthiest amongst us has not been able to decide upon a definite policy with regard to property as a whole in the whole of India. It is clear from the nature of the amendments that have been given notice of and put forward in this House that very few people including my friends the Socialists have a clear conception as to how exactly we are going to deal with these rights to private properties, whether we are going to preserve them or whether we are going to abrogate them so far as all private property is concerned. Of course it is noteworthy that even Socialists have not advocated expropriation.

That being so, it is not at all easy to determine, where the limit may be set or where the line should be drawn. Especially when we are making a constitution, we have no time to investigate the various circumstances of this whole sub-continent, where the conditions vary from district to district and vary still more immensely from province to province. Each one of us has different ideas and there are every where different tenures of land, Jagirs. Zamindaris, Izardaris, Malgujaris. etc., and it is not possible for us to deal with them all in one way or to evolve a formula which would be not only acceptable to everybody, but of which we shall be able to say for certain that it is going to achieve the salvation of India, and that no other solution would be better fitted to meet the circumstances of the case.

From that point of view, I would have much rather liked that all that we say and provide is the first clause which is of course the same as in the Government of India Act: "No person shall be deprived of his property save by authority of law." If we had done this, then all the various things that we have included in the article as it has been placed before the House by the Honourable the Prime Minister would have been unnecessary. The article has perforce to be an involved one, there have got to be 'save' and 'except'; there have got to be "notwithstanding" this and that; "nothing in this will apply to that" and "subject to what is stated" etc. I do not think we are in a position to judge of the future so quickly and in such definite terms as to lay down a certain formula which will be, without doubt, of benefit to the whole country. I would therefore urge that all that we should say is that Parliament may by law determine property rights from time to time.

There have been two interesting speeches delivered by my honourable Friends, Mr. Kamath and Professor Shah. They have described property by quoting certain definitions. Mr. Kamath said that some one had defined property as theft. My honourable Friend, Prof. Shah has gone further and quoted that it was described as "robbery, dacoity, deceit" and what not. I shudder to think what will happen to the fine sherwani which Prof. Shah is wearing or the silken upper garment that Mr. Kamath puts on on his shoulders if we were to accept any of these definitions and give effect to the purpose behind the definitions. But, we are unable to fly so high or accept the ethical and spiritual heights to which our spiritual friends, if I may be permitted to say so, have flown. We cannot in this important matter commit our future successors to any policy which will fetter their discretion, and which will probably create innumerable difficulties in their way. We are also in the midst of a financial crisis; it is not a crisis of this country alone; it is a crisis which the whole world has to face.

Under these circumstances also, even if we do not like it, we have got to curry favour with capitalists and those who have got large properties and in view of the results that may accrue, we cannot wholly disregard them. On the other hand, there is the demand by the people that they want to own, and to re-distribute the whole land. In the province of Berar, more than two-thirds of the land, I think, is owned by money-lenders. It is natural when the whole nation is thinking and becoming conscious, that they should not like any individual proprietors to monopolise such extensive properties. Therefore, the pressure is going to be more and more that there shall be a re-distribution of property especially landed property. If we wish to resist this demand, then we will have to make up our mind solidly and plainly say that private property rights which are existing at the present moment shall continue to exist. But we cannot have a half-hearted, half-way house like the one which has been presented here, which neither takes us nearer those whom we wish to please, nor shall we be consistent with what we have declared from time to time. Under these circumstances, Sir, I think it would be better to leave the more detailed description of the rights to property to the future Parliament.

[Dr. P. S. Deshmukh]

Sir, the second amendment that I have moved refers especially to religious trusts. I know, Sir, that most people are aware of the way in which these religious trusts are managed and I think it is necessary that the question of compensation cannot arise in this case. The sooner we utilise these vast properties for the benefit of the nation, the better it would be. This is something that is extremely desirable, and I hope, Sir, that this addition that I have proposed to article 24 would also be accepted.

Mr. President: Amendment No. 405: that is covered by the amendment which has just been moved by Dr. P. S. Deshmukh. Amendment No. 406 Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: It is already one o'clock, Sir.

Mr. President: We shall then meet at four o'clock.

Shri H. V. Kamath: May I suggest, Sir, that we might meet at nine o'clock in the night, if that be convenient to you?

Mr. President: I think it suits Members more to meet at four o'clock rather than at nine o'clock. The House stands adjourned to four o'clock.

The Assembly then adjourned till Four of the Clock in the afternoon.

The Constituent Assembly re-assembled after Lunch at Four of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: Mr Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in amendment No 369 of List VII (Seventh Week) after clause (2) of the proposed article 24, the following proviso be added

'Provided that where any such law provides for the acquisition by any State of the interests of the Zamindars of various degrees and other intermediaries for the purpose of abolishing the Zamindari system, it shall be sufficient if the law provides for the payment of compensation amounting to not less than twelve times the estimated average net income of the Zamindar of any degree or any intermediaries whose interests are to be acquired.'"

My amendment No. 417 is already covered.

I move:

"That in amendment No. 369 of List VI (Seventh Week) for clause (5) of the proposed article 24, the following be substituted:—

'(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect the provisions of any existing law or of any law which the State may hereafter make which imposes or levies any tax or penalty which seeks to promote public health or to prevent danger to life and property.'"

I also move No. 425.

"That in amendment 369 of List VII (Seventh Week) in clause (5) and in clause (6) of the proposed article 24, the words 'Save as provided in the next succeeding clause" be deleted."

I also move:

"That in amendment No. 369, of List VII (Seventh Week) in clause (6) of the proposed article 24, the words, figure and brackets 'clause (2) of this article' be deleted"

I do not move No. 439.

The proposed new article 24, to say the least in effect though not in appearance, a most revolutionary provision. It indicates a serious departure in the policy of the Government. The article is simple-looking, but as I have already indicated in effect it is extremely dangerous.

The crux of the whole problem before the House, so far as this article is concerned and which affects the various, amendments, centres round one important principle *viz.*, the principle of compensation. Should you or should you not pay compensation for lands and properties acquired for public purposes? Compensation, before this new article 24 was ushered into this House, had a definite meaning. Compensation meant that sufficient, fair, legal or equitable compensation must be given. Whatever be the description you must pay for what you take. That was the idea in India before article 24 was introduced and that is still the idea in all civilized countries. That was the idea in India before this article came into the scene. Sir, the payment of fair compensation seems to me to be so just, so fair and so reasonable that it would not have required any arguments to support the idea. There is the provision for payment of compensation in

[Mr. Naziruddin Ahmad]

the new article. But in view of the context, and in view of cetrain pronouncements and in view of certain subtle provisions lying concealed within its meshes, one should proceed rather cautiously and warily in dealing with this subjects.

The situation has become much more difficult on account of certain pronouncements in this House by our honoured Prime Minister. Sir, I have the highest respect and affection—my humble respect and affection for him—but the legal proposition which he has enunciated requires respectfully to be dissented from. He has in effect said that property belongs to the public, to the people. I do not quote him verbatim, but this seems to be the effect of what he said, that "property belongs to the people, and the people want it, and therefore they must take it; compensation or adequacy of compensation does not enter into the picture". But as I was submitting, the adequacy of compensation or its fairness and the like is the most vital thing. So, far as the entire civilized world is concerned, the law is that whenever you take property for public purposes, you pay fair and adequate compensation.

It is only in Russia that property is taken without compensation or only with mere nominal compensation. We are today going to imitate the example of Russia, a singular example in the civilized world in this respect. That is the example which we are going to follow. In fact, so far as this matter is concerned, there is no difference between the authors and the supporters of this article, and the Communists today, except in the manner of their approach, except in the method of the execution of their policy. Sir, I believe the Communists, the Socialists and the supporters of this article would kill and extirpate the middle classes and the upper classes altogether. These three groups of persons agree amongst themselves in their ideal, they differ only in their methods of approach and in the practical way of attaining it. Whilst the Communists would kill them by use of force, and violence, while the Socialists would kill them—as apparently Prof. K. T. Shah would do by arguments and speeches and theories, the sponsors of the present article would kill them by legal means. There is essentially no difference in the ultimate effect or desire. The question now is this. We are in the middle of a road and the road bifurcates. Which way to proceed is the question, to proceed as the Communists have done or to proceed along the road that the entire civilized world has followed ?

Sir, I shall briefly state before you the law of compensation in all the civilised parts of the world. The whole subject has been dealt with very elaborately in the Encyclopaedia Britannica, subject—Compensation, Vol. VI, pages 177 to 179. I do not want to go through all of it, but only mention certain points. Compensation, according to that great authority is "reparation or satisfaction made to the owner of the property which is taken away by the State for State purposes. The right of individual ownership is challenged in Russia which has abolished the right to private property and has expropriated it for alleged public purposes without compensation. But to a large extent, however, the U.S.S.R. has been compelled to reverse its policy. They are now influenced by communism and these States, in the name of agrarian reform have expropriated private property either with inadequate compensation or without any compensation."

Sir, I go to other parts of the world, the entire civilised world. There individual ownership is recognised not only in the civil law of the entire civilised world, but also in the international laws, both in times of peace and of war. It is stated in that authoritative work that even in peace treaties following World War one principle that was respected by the Nations was the inviolability of private property. So far as the civil law is concerned, the French Civil Code says that "no one can be deprived of his property except for purposes of public

utility and for adequate compensation.' The Belgium law is to the same effect. The Italian Code says that in order to acquire property by the State, "previous payment of just indemnity" is necessary. The Spanish Code is to the same effect, namely, that compensation must be paid on a "just valuation". The law in the South American States is similar. The German Code in article 153 says that "adequate compensation" must be given. The law of the United Kingdom is that "full compensation" must be given. The U.S.A. law says that "just compensation" shall be given.

An Honourable Member: You are repeating.

Mr. Naziruddin Ahmad: I am quoting from a very recognised authority and from a recent edition, and saying that this is the law in the whole civilized world. Should we follow the law which the civilised world is following or should we follow the Russian method of expropriation? That is the question. So far as the present article is concerned, I wanted to insert certain words, such as "fair compensation" or "full compensation" or "just compensation". But an Honourable Member has already moved a similar amendment and so I did not move mine as mine suggested merely verbal variations. The substantial question is whether we should provide in our Constitution that whenever there is a law for acquisition of property by the State for public purposes, we should provide therein that the law must also provide for "fair and equitable" compensation. As I said just now, up to yesterday, the law was thus, and the point would not have required any clarification. But in view of certain declarations in the House and the language of certain clauses and sub-clauses, I think this clarification is very necessary. In fact if we really want to expropriate private property for public purposes without compensation or with a nominal compensation, that should be stated fairly, fully and openly. Instead of that there is the provision for payment of compensation. It leaves the Provincial Governments free to expropriate land on a nominal compensation. The article provides a loophole, a linguistic loophole, though its meaning in civilised countries all along has been the same.

I submit that compensation should be full, fair, just or adequate. If we do not state it, there will be serious mischief committed against private property. If we do not respect private property all talk of fundamental or constitutional rights will come to naught. We have already passed article 13 where in sub-clause (f) of clause (1) it is said "All citizens shall have the right to acquire, hold and dispose of property." If we allow right to acquire, hold or dispose of property it follows that if anybody took it full price should be given.

We hear of nationalisation. If nationalisation is to be effected free of cost, it would degenerate to a kind of cheap nationalism. It would be just adding to the practical ruination of our credit structure which we have already succeeded in achieving. If we go to the public for subscription to large limited companies for industrialisation there is no credit and no money. Our capitalists are gone. Now we have been driven to go to the foreign markets not only for loans of very big sums but also to induce them to open commercial undertakings in our country. There are the glaring examples of some clauses in the article which stare us in the face to which I shall draw the attention of the House. Will any foreigners, who are to be credited with a little shrewdness and business acumen, think of investing their money in industrialising our country whereby they stand to lose in two ways? They will stand to lose or partly lose through expropriation their capital and capital appreciation, if their business is successful, and then by helping India to be industrialised they lose their own business at home. In such circumstances there is a double check upon flow of foreign business in India.

[Mr. Naziruddin Ahmad]

Then there is clause (5) of article 13 which limits to a certain extent by prescribing certain restrictions. The only restriction mentioned is "reasonable restriction on the exercise of any of those rights for the general public." The only condition is that I must not "exercise" my rights over property to the detriment of the public. Rights to property are never contemplated in article 13. I submit that article 24 will go directly against article 13 in this respect. However, as I said in the course of the debate earlier, in connection with a point of order, we have a right to be inconsistent. The point of order raised was no real one. It was only a glaring piece of injustice to which the honourable Member put his finger in raising the point of order. If we adopt clause (4) of the article then serious injustice will be perpetuated. Hence I opposed the honourable Member who raised the point of order. But I fully sympathise and agree with him and lend my feeble support to his view that this clause is a most pernicious one which will perpetuate injustice on a large scale.

Coming to the vital matter which lies concealed behind these amendments is the question of the abolition of the zamindari. Somehow or other some persons think that zamindari property is no property at all and they should be expropriated without any mercy or compensation on the absurd ground that it would be for the benefit of the public, as if the zamindars do not form part of the public at large. I might state here frankly that I am not a zamindar and I have no interest in zamindars at all.

Mr. B. Das: I think you are zamindar.

Mr. Naziruddin Ahmad: Mr. Das says that he thought that I was a zamindar . . .

An Honourable Member: He might wish you the pleasure of the thought.

Mr. Naziruddin Ahmad: Mr. Das thinks of many things which are unreal. I was a very petty zamindar but I sold away my interests 5 or 6 years ago, for I saw what was coming. Today I am independent, free and disapassionate, a man having absolutely no interest in that question. I am safe and happy. But those poor zamindars who believe in the stability of the law of the land are today sadder, though wiser. In this business we should proceed upon constitutional principles of rights of property and so on. If it is necessary that zamindaries should be acquired, of which there is no doubt, all that I claim is that proper compensation should be paid. When the Bank of England was nationalised full compensation was given to the shareholders. In India when we nationalised the Reserve Bank the full market price was given, though at a time of depression. The question is, does zamindari property differ from other properties so as to receive this step-motherly treatment? The zamindars are small in number and are scattered. They have tenants to contend with and the Government find themselves in the happy position that they can kill them without anyone weeping for them. If we destroy civil rights the effect of it would be that it will recoil on us in no distant time.

With regard to zamindari property we should know what it means. There was nothing like a zamindar during the period of the Hindu kings. During the Muslim period they were unconsciously created as a matter of administrative necessity. On account of the exigencies of the situation military governors were despatched to distant corners of India to maintain law and order, to maintain military outposts and to maintain themselves out of the revenues of the local areas.

Shri Biswanath Das: We all know the history.

Mr. President: The honourable Member should remember that we have to finish the discussion of this article tonight. All this discussion may be interesting but let us confine ourselves to the article.

Mr. Naziruddin Ahmad: All that I am emphasising before the House is that zamindari property is like any other property. Zamindars were unconsciously created by the Moghul emperors in order to make it easy for them to realise rents to maintain themselves out of them and many people volunteered to collect rents. From these beginnings the zamindaries were formed. Zamindaries were transferable like any other properties and for the speedy realisation of revenue the early British administrators provided for the sale of the zamindaries for arrears. Zamindari is like an ordinary property. The present body of zamindars have paid for them with hard money. Therefore, if we can confiscate zamindari property without sufficient compensation, we would also confiscate any business concern or limited company on the alleged ground that they will be for the 'benefit of the public.' There are many properties or business concerns which come to people like windfalls. If they have acquired any right even by a windfall, should that be any reason for confiscating such property for the benefit of the public without paying compensation? I submit not. Then why is it that in the case of zamindari property this distinction is being made? I have in amendment No. 406 put a limit to the payment of compensation. I have put it at 12 times the estimated net annual income of the zamindar. In fact, the ordinary rule of valuation of such properties is twenty times on a 5 per cent. income basis. But I would put it at 12 times the annual net profit. That would be a via media between utter confiscation and . . . .

Shri Biswanath Das: On a point of order, Sir. We are not discussing the question of compensation; we are discussing amended article 24 wherein authority is being provided for legislation to be undertaken. There is therefore, no need for all this.

Mr. President: The honourable Member wants to limit the discretion of future legislation with regard to compensation by laying down a certain figure and I think he is perfectly in order in doing that.

Mr. Naziruddin Ahmad: I am grateful to you, Sir, for this clarification. Mr. Biswanath Das has not followed the amendment or my speech. I want to limit the payment of a minimum compensation to 12 times. For instance, in the U.P. they desire to pay 8 times. I want to make it 12 times. The U.P. legislation has another loophole. Out of the income, the estimated agricultural income-tax is to be deducted. The estimated agricultural income-tax has been introduced recently. It comes to half or even more than half in the higher regions of income in the case of big zamindars. In that case, 8 times the annual income would actually mean something like 4 times the annual income. This 8 times is an exaggerated and illusory figure. In reality it is much less. So I wish to put a limit by means of proviso to clause (2).

The other point to which I wish to draw attention is the deletion of clause (4). If we keep it, the effect will be that any law which has been passed and receives the assent of the President will be regularised, but any law which has not been passed or may be passed hereafter will not stand in this advantageous position. So the Provinces which have passed the law before will be in a more advantageous position. They will not need to pay compensation as required in clause (2). Why should this distinction be made between Provinces who were first in the run and those who were late? The principle of compensation is binding on all. There should be no discrimination between one Province and another on the mere ground that it has come earlier.

[Mr. Naziruddin Ahmad]

With regard to another amendment,—to clause (5)—it amounts to certain verbal alterations to give effect to the principle I have chosen to submit.

Then there is an amendment to clause (6) which will also seriously affect the compensation question. This clause says that laws which have been passed within one year would be valid notwithstanding clause (2) of this article, *i.e.* notwithstanding it provides for even no compensation at all. These matters centre round the payment of adequate compensation. If we really do not pay adequate compensation, it will be injustice committed on a large scale and clauses (6) and (4) are so worded as not to give obvious and necessary information. One has to guess the object of these discriminatory provisions. The real purpose has been left concealed. If the principle of compensation is binding on one Province, it should be binding on all. If any Province has made any law which would contravene this principle, to that extent it should be ultra vires and void. We are inserting article 24 in the Fundamental Rights Chapter and in clause (2) we have provided that whenever any law is passed which contravenes wholly or partly the fundamental principles of these articles, the law would to that extent be void. Why should therefore there be any exception in the case of Provinces which have disregarded the principles of clause (2)? These principles are immutable and must be respected in all cases, and if there has been any violation it has been a deliberate violation of a sound principle and should not be excused. I submit that the law of compensation should apply to all equally. I regret very much that I have taken a little more time than I might have, but I believe that the case goes without much attention in the House and that is my excuse for speaking at length.

Mr. President: Amendment 409—Mr. Bharathi.

Shri L. Krishnaswami Bharathi (Madras: General): Not moving.

Mr. President: Amendments Nos. 416, 417 and 421 are covered by amendments which have been moved already. 423.

Shrimati Purnima Banerji (United Provinces: General): Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in sub-clause (b) of clause (5) of the proposed article 24, after the word 'property' the words 'or for ensuring full employment to all and securing a just and equitable economic and social order' be added."

Sir, the object with which I move this amendment is to give effect to some of the principles and clauses which we have already passed when laying down the Directive Principles of State Policy. There we have stated that the State shall endeavour to secure a society in which justice, economic, political and social, shall inform all the institutions of the State. We have already said that an adequate means of livelihood to men and women shall be provided and the economic resources of the country shall be so handled as to avoid concentration in the hands of a few and to avoid its working to the detriment of the common people. At that time when these clauses were under consideration we also felt —and some of us felt very strongly—that in the Fundamental Rights the right of livelihood, the right of earning honourable bread, should be guaranteed to all people. But at that moment we realised that in order to do that a new order of society will have to come into being which possibly will take some time and therefore the right of livelihood was included in these Directive Principles of State Policy. We consider these Principles to be absolutely essential and in fact our guiding star in the future. For that reason, if provisions are not made in this article dealing with Property Rights and the economic policy of the future State is in any way fettered and made rigid, we feel that we shall not be able to succeed in these articles which we have already passed.

Mention has been made of the U.P. legislation, the Abolition of the Zamindari Bill. Perhaps some of us recall that at that moment we had also passed a resolution saying that the U.P. Assembly stands committed to the principle of abolition of capitalism. If that resolution has to have an effective meaning and if we are to see that the country does develop upon such lines as will harness the resources of the State for the common benefit, it is most essential that when public good should so demand we should be able to do so. Provision should be made that compensation should be paid, as it has been proved that we are all anxious to pay compensation, but if we are not able to do so, the clause should provide the taking of property without it. We are all anxious to see that a peaceful transference of society takes place and therefore there is no fear of our expropriating anyone. As you see, the U.P. Abolition of Zamindari Bill not only gives the zamindar compensation but also gives rehabilitation grant. So it proves that it is not in a vindictive spirit that the House in the future may or will function or the new order that is to be created will be pursued in any arbitrary way. If in keeping with this spirit an occasion should arise, as it may arise, when the capitalist system prevalent in the country should be taken in hand for the common good, a provision should be here so that this Constitution may provide for all future development and thus command proper respect from the people and may have in it the seeds of that future development upon which the welfare of our country depends.

With these words I move.

Mr. President: Amendment No. 424 is already included in some amendment. No. 428.

Shri Kala Venkata Rao (Madras: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'one year' the words 'eighteen months' be substituted."

I will give my reasons in the end after speaking about another matter which is connected with this clause. I think it was Machiavelli who said that one will excuse the murderer of his own father but not the person who will take away his property. Perhaps that is the reason why there is so much discussion about this subject here and elsewhere. Property is not of a single species; property is of various species. I may particularly point out to you Sir, and the honourable Members, that clauses (4) and (6) of this amendment refer to a particular species of property, namely zamindari property. I really feel that the word "property" should not be applied to this particular species at all, because when the *sanad* was granted in 1802, or earlier than that in Bengal when the Permanent Settlement was introduced, the *sanad milkiyat intimrari,* gave the right to the zamindars to collect the rent only. They were only mere agents to collect the rent and were asked to pay a portion of it as *peshkash* to the Government. Therefore the belief that the zamindars have got a right of property in this business is far from the truth. It is a well-known maxim that nobody can confer on someone what he does not himself possess. From time immemorial the tradition and the law of this country has been that the tiller of the soil, or the society of which he has been a member, is the owner of the village or the particular holding. Therefore, when only the right to collect the rent was conferred on the zamindar it can never be said that a kind of property was conferred upon these gentlemen because the grantee himself had no proprietory right in that land.

Secondly, even this right to collect rent was restricted even from the beginning. Regulation No. 25 of 1802 in Madras granted the *sanad Milkiyat Istimrari* on the 13th of July 1802. On the same day four other Regulations were issued. Regulation No. 30, called the Patta Regulation, definitely said that the rent that was to be collected from the individual pattadar should be

[Shri Kala Venkata Rao]

the same as it existed on that date and should not be altered. The word "unalterable" was used in the Regulation No. 30 of 1802. These Regulations having been promulgated on the same day and by the same government, we have to draw the conclusion that while the sanad granted him the right to collect the rent, another Regulation of the same day stated that the rent to be paid by the particular pattadar should not be increased by the zamindar. This was made clear after a long struggle, by Regulation No. 5 of 1802 which definitely said . . . .

Shri Alladi Krishnaswami Ayyar (Madras : General): On a point of order, Sir, are we just now interested in going into the whole history of zamindari with reference to a consideration of clauses (4) and (6) of the draft article ?

Shri Kala Venkata Rao : The question has been asked on the floor of this House as to why there should be any discrimination as is shown in clauses (4) and (6) regarding zamindari property. My submission is that 'zamindari' is not a property at all and therefore it should be discriminated from the other types of property. From our knowledge of history and the zamindari legislation I assert that it was never deemed to be real property, as we know it to be in some other categories.

I will illustrate this. And I am telling you what His Excellency our present Governor-General said when he took part in the discussion on the Estate Lands Committee report in the Madras Legislative Assembly in 1939. Say that I have a house in a village near Delhi. I passed, say B.L., and was coming to Delhi for starting my practice. I gave that house on rent to Mr. Munshi saying "you please pay me Rs. 8 as rent every month". But as I was just leaving I met Mr. Krishnaswami Ayyar and I said to him "please collect Rs. 8 from Mr. Munshi every month and send me Rs. 6 and for the trouble you take please take Rs. 2 as commission". After ten years I returned to my place and found that there were few tiles on the roof or no cement at all on the flooring. Then I asked Mr. Munshi "How is it you have kept my house in bad repair though I gave it to you for a small rent of Rs. 8 ?" Mr. Munshi said to me "I was paying Rs. 24 as rent for this house all along and Mr. Krishnaswami Ayyar has all along been collecting it". This increase of rent from Rs. 8 to 24 was unauthorised and has been pocketted all along by the gentleman whom I requested just to collect the rent. The result was that neither the owner of the house nor the tenant thereof got any benefit out of the increase. The gentleman who was mere rent collector has been pocketing this difference of Rs. 16. If Shri Krishnaswami Ayyar gets what is called property in this transaction the zamindars also have property.

In Madras, in the year 1802 the total rental of all estates was Rs. 72 lakhs of which 48 lakhs were paid to the Government as *peshkash*. Now the zamindars of Madras are collecting Rs. 219 lakhs as rent, but pay the same 48 lakhs as *peshkash* even today. I therefore say this is no real property as we ordinarily know it and so should be treated on a different footing.

Then I have to mention in this connection that the zamindar did not also always discharge his obligations as were fixed in the *sanad*. It has been laid down that he must maintain irrigation works, etc. He never did anything of the kind. All the irrigation works are in disrepair and everywhere rent was increased nonetheless without any benefit coming to the ryots. Mr. Veblan defined what a 'vested interest' in property means as "a marketable right to get something for nothing". We could have terminated this authorisation to collect rent by issuing a notice but we are giving compensation and therefore be ought to thank us. Many of the zamindaries were created at the time of the decline of the Moghul rule when jungle law prevailed. We want today to

compensate them under the rule of law. Bihar has to pay 130 crores; United Provinces has to pay an equally big sum and Madras has to pay about 15½ crores. All these sums will go to the zamindars just because they possess some sanads. We are not treating those sanads as mere scraps of paper. As a matter of fact we are treating them as scrips. We are paying for these scrips a value related to their history and based on equity. Therefore I maintain that from every point of view we have to treat this species of property called the zamindari right as one different from the ordinary type of property, which we come across ordinarily.

Section 299 of the adapted Government of India Act has practically been redrafted as the present article with only a few alterations. The only main change is the dropping of the word 'payment'. It has been held by an eminent jurist that as long the word 'payment' is there, we have to pay compensation only in the legal tender of the country and therefore in cash. Therefore many of the provincial legislatures have to suffer. Now under this clause the amount can be paid in bonds. So, the provincial Governments can reconsider the question of paying the first instalment of compensation at an early stage. As a matter of fact, it will benefit the provincial governments to pay like this in bonds, particularly in Madras where section 50 makes liberal provision for interim payments. If there is an estate with an income of 6 lakhs, the sum of one lakh will be the basic annual sum. We have to pay this one lakh till we pay the total compensation without counting these payments as part of it. If we pay in money or bonds now we will gain much in the shape of interest.

Mr. President: I would remind the honourable Member that we are not discussing the Madras Bill here.

Shri Kala Venkata Rao: I am only illustrating Sir.

Mr. President: I know that he was Revenue Minister there and knows more about that Bill than anybody here. But he need not give the benefit of that knowledge to this House. He may confine himself to the article.

Shri Kala Venkata Rao: I will just conclude Sir. Instead of paying at the rate of one lakh of rupees as interim payment for some years we will be paying Rs. 30,000 only as interest on bonds.

I would like to say one thing more. The right of Parliament to fix compensation or the principles of compensation must be kept sacrosanct. Only when a fraud is committed on the Statute the courts can interfere in the matter.

Sir, as you pointed out, I am not justified in going into all these details. I was only trying to point out that the zamindari property is a different kind of property and therefore it has been rightly treated so in clauses (4) and (6) of this article.

I want in this connection to tell my friends what Mr. Fosdick said "History's current is sweeping us into the future and the illusion that securtiy is dependent upon the absence of change is perhaps the most dangerous form of imbalance which plagues the mind of men". With these few words I request the honourable Mover to accept my amendment to substitute 'eighteen months' for 'one year' in clause (6), for the simple reason that if the Constitution does not come into force on 26th January 1950, there may be some difficulty for the Madras Bill which received assent in March 1949. If the mover accepts my amendment that anticipated difficulty can be removed. Mine is only a formal amendment and I request the honourable Mover to accept it.

Thank you, Sir.

The Honourable Shri Krishna Ballabh Sahay (Bihar : General): Sir, I do not move my amendment. My purpose will be served if the honourable Mover will see his way to accept the amendment moved by Shri Kala Venkata Rao.

Shri Jaspat Roy Kapoor (United Provinces : General): Sir, I move :

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added :—

'(7) The provisions of clause (2) of this article shall not apply to any property belonging to evacuees to the territory now included in Pakistan and declared as evacuee property by any law promulgated to deal with such property in the event of failure of any agreement being arrived at between India and Pakistan on the subject of property belonging to evacuees to both the countries.'"

The word 'communities' is a mistake for 'countries'.

Sir, on the same subject there is another amendment which I have tabled, No. 510. It reads thus :

That in amendment No. 369 of List VII (Seventh Week), after sub-clause (b) of clause (5) of the proposed article 24, the following new sub-clause be added :—

'(c) the provision of any law already enacted or which may be enacted for the administration or disposal of any property which may under or for the purpose of the law be regarded as evacuee property.'"

Sir, I had occasion to discuss both these amendments with the Honourable Shri Gopalaswami Ayyangar and as a result of that discussion, we have come to the conclusion that the purpose of these amendments will be well served if amendment No. 510 is slightly amended and I therefore seek your permission, to move this redraft.

Mr. President : Read out the amendment.

Shri Jaspat Roy Kapoor : I move :

"That in sub-clause (b) of clause (5) of the proposed article 24 the word 'or' be added at the end."

This is only a formal thing. The substantive thing follows—

"That after sub-clause (b) of clause (5) of the proposed article 24, the following sub-clause be added :—

'(c) the provisions of any existing law made or of any law that the State may hereafter make in pursuance of any agreement arrived at with a foreign State or otherwise with respect to property declared by law to be evacuee property.'"

Mr. President : Yes, you can move it.

Shri Jaspat Roy Kapoor : Thank you, Sir. The other amendment that stands in my name is amendment No. 488.

Mr. President : What about 511 ?

Shri Jaspat Roy Kapoor : I do not propose to move it. The amendment that I have just now moved with your permission will take the place of 510 and 433. Amendment No. 488 which stands in my name reads thus :—

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the word 'determined' the words 'and given' be added."

Mr. President : This is already covered.

Shri Jaspat Roy Kapoor : I am sorry, Sir. The other amendment which stands in my name is No. 495. Sir, I move—unless it is already covered by any amendment previously moved—

Mr. President : I do not remember. You may move it formally.

Shri Jaspat Roy Kapoor:

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'unless such law having been reserved for the consideration of the President has received his assent the words 'has received the assent of the President' be substituted."

Then there is another amendment, No. 508. Sir, I move—

"That in amendment No. 369 of List VII (Seventh Week), sub-clause (a) of clause (5) of the proposed article 24 be deleted."

I must confess, Sir, that I am feeling very unhappy, and I believe I am expressing the view of many other Members of this House because I am sure they also feel unhappy, at the manner in which this question of compensation is being dealt with and the long debate that it has necessarily given rise to. This subject of compensation has not been placed before us as a new subject. It has been engaging the attention of the country for the last so many years. It has been discussed thoroughly in the country by various political parties, in the press and on the platform, it has been discussed here in the Constituent Assembly, while we were discussing the report of the Fundamental Rights Committee, and we have—all the poltical parties in their own way, the government of the day, the Prime Minister and the Constituent Assembly—all have reached definite decisions on the subject, and all that remained for us or for the Drafting Committee was to draw up an article in consonance with those definitely accepted principles and commitments.

But unfortunately we find that in the article now presented to us, all those things, to a very large extent, the whole question has been thrown open again for discussion and final decision. A point of order was raised by my Friend, Mr. Syamanandan Sahaya but that was disallowed by you, Sir; but apart from that being a point of order, there was very great substance in his submission that a good portion of this article includes things which run contrary to the decisions arrived at even by the Constituent Assembly.

Let us see, Sir, what are those various things that have been discussed in the country and by the Constituent Assembly also and on which final decisions have already been arrived at. So far as the Congress is concerned, the government is concerned, the Honourable the Prime Minister is concerned and this House is concerned, these three things have already been decided: No. 1, that the zamindari system shall be abolished; No. 2, that just and equitable compensation shall be paid to those from whom these zamindari rights are acquired; and No. 3, with regard to any other property that we acquire, just and fair compensation shall be paid. These are the three things that have been decided, to which the Congress is committed. This was what we put down in our election manifesto. This is what was also incorporated in the resolution of the government as announced from the floor of this House on the 6th April 1948. This again is the thing which was declared by the Honourable the Prime Minister on the floor of the Parliament on the 6th April 1949. Not only this, during the course of the statement made by the Honourable the Prime Minister on the 6th April 1949, he went further to assure the foreign investors that not only would they be given just and fair compensation for any industrial concern of theirs that shall be acquired but that necessary facilities would also be given to them for the transmission of their money to their own country. These are the commitments of ours, of the Constituent Assembly, of the Government and of the Honourable the Prime Minister.

Now, Sir, it does appear to me and I am sure it must appear to all other Members here that it is not fair, not proper, neither desirable, to go behind either wholly or even partially what we have already stated and promised in

[Shri Jaspat Roy Kapoor]

the past. Let us see, Sir, whether this article is in conformity with what we have decided or whether there is any departure from those commitments of ours. If there is any departure from these commitments of ours, surely this should not be accepted by us.

In clause (2) while it is conceded that no property shall be acquired without compensation therefor being determined, it does not say that the compensation shall be fair, just and equitable, the three essential words which we have always been using in our election manifesto, in the decision arrived at here and in the Honourable Prime Minister's statement and the Government's statement on industrial policy. These are essential words, Sir, and I see no reason why they should not be incorporated here. If it is contended that they are redundant and unnecessary, I do not think it is correct because these words have been deleted after due deliberation and discussion and with a definite purpose. I submit, Sir, that it should not be so. It was, in one of the amendments that stood in my name, which, of course, is now barred by another amendment which is moved by another honourable Member and I desire that at least the word "equitable" should be inserted before the word "compensation". I was agreeable to delete the words "just and fair" even, because it appeared that feelings are running very high on this and in order that it may not appear very irksome to some of our friends to incorporate them here. Of these three words, I thought if we have only the word "equitable" it may be acceptable to them and it may improve the draft at least to some extent. I do not see any reason, Sir, why at least the word "equitable" should not be placed before the word "compensation". After all, what is the intention of the framers of this resolution or of the honourable the Mover of this article? Is it not his intention that an equitable compensation is paid? If it is his intention, then let the word be there; and if it is not, it is going behind our professions, assurances and commitments. It is said that if we insert the word "equitable" here it would become justiciable. Why should we be afraid of anything being justiciable? The Honourable the Prime Minister had said with very great enthusiasm and very loudly that "we are determined to stand cent per cent"—that was the expression used by him—"by all our commitments". I want no more than this and no less than this. If you make a statement with a good deal of enthusiasm, it does not convert anything into a fact, if really it is not. What were our commitments? That we shall abolish the Zamindari. Well and good. That we must reserve to ourselves the right of acquiring the industrial property. Well and good. But what about the third of the commitments which is given the go-bye, that we shall pay "fair, just and equitable compensation"? It is only 66 per cent. at best of the commitments that we have made: Out of these three, only two are accepted now. The third is thrown to the winds. I submit, Sir, it is not correct to say that we are prepared to abide by our commitments cent per cent.

Now, Sir, I was submitting, why is it that we are afraid of making these justiciable? I have faith in our legislatures; I have faith in our Parliament and I am sure that at no stage any State Legislature or our Parliament will enact any law whereby any property would be taken away for public purposes without provision being made for an equitable compensation being given. Well, if we really mean to give equitable compensation, why should we think that the judgment of a court will go against what we shall be providing in the law? Surely we should not think so. The word "equitable" is a very flexible one. What is equitable today may not be equitable tomorrow. "Equitable" as I understand, is something which is equitable in accordance with the existing political theories, the existing accepted economic principles of the society, and surely our judges and our courts of whom we have very satisfactory experience would never fail us. Have we not seen that the interpretation of the same

law has been different by different judges from time to time in accordance with the accepted political and economic principles of the day? Take, for instance, the case of the law of sedition. The particular section of this law is the same now as it was ever before. But then in the year 1906 in the days of Lokamanya Tilak the interpretation of the law of sedition was something entirely different from what the interpretation of it is today. What was sedition then is now merely a criticism of the Government and even a fair criticism and is not only tolerated, but even encouraged not only by the courts but even by us here. My submission is that our judges have always interpreted laws in accordance with the needs of the society and in accordance with the accepted political, economic and social theories of the day. To take one more illustration, judgments in and interpretation of Hindu law have been changing with the changing views and needs of the society. I need not dilate further upon it now. Sir, I submit that there is no reason why we should be afraid of making all these provisions justiciable.

Then I submit, Sir, taking the worst into consideration, if a particular Bill, a particular Act is taken to a court of law by any person to test its legality, what will happen? If we provide in an Act that we shall pay Rs. 100 for the acquisition of a certain property and if the court of law declares that Rs. 100 is not equitable and it adjudicates that it should be Rs. 125 or Rs. 150, we do lose nothing, because the framers of this aritcle have taken jolly good care to provide clause (b) to clause (5) wherein they say: "Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect—

> (b) the provi ions of any law which the State may hereafter make for the purpose of imposing o levying *any tax* or penalty or for the promotion of public health or the prevention of danger to life or property."

I draw your attention particularly to the words "for the purpose of imposing or levying any tax". Now this is a very big right which you are reserving to yourself. If in the place of Rs. 100 the court adjudicates that you must pay Rs. 150, why not say "Thank you, my Lord, we shall pay Rs. 150" and then come back and enact a law under clause 5(b) saying "thirty-three per cent. of that shall be taxable" and realize that Rs. 50 by way of taxes. I, therefore, submit with these powers reserved to us under clause 5(b), it is absolutely unnecessary for us to be afraid of making the whole thing justiciable. It is what we say: "Gunah belazzat". Why have the odium of all this? Why expose yourself to the charge that you are afraid of making your law justiciable? We have nothing to gain thereby and everything to lose. I would, therefore, submit that the word "equitable" at least must be added before the word "compensation" and certain consequential amendments in clause (2) may also be made, notice of which I have already given, but the consequential amendments are a minor matter.

Coming now, Sir, to clauses (4) and (6) which are sought to be incorporated in this article, what do we find? The first impression of a man who reads these two clauses is that they are something which are difficult to understand. Of course, we who know what really is behind these clauses can understand the reason and the motive behind them. But, if a foreigner were to read these two clauses, he would simply rub his eyes in wonder and enquire what is the logic behind these, what is the reason behind these? He may even say, what after all is the sense behind these?; for what purpose they have been incorporated? Clause (4) says: "If any Bill pending before the Legislature of a State at the commencement of this Constitution etc. Why should there be a particular sanctity attached to a Bill which is merely pending in a legislature on the date on which this Constitution comes into force? There is no logic behind it; there is no reason behind it. It is merely an arbitrary thing.

[Shri Jaspat Roy Kapoor]

Then, Sir, clause (4) makes a distinction between one State and another. It makes a distinction between a State which has a legislature and a State which has no legislature. We know that we have several States which have no legislature. If a Bill is pending in the legislature of a State, it will have the benefit of clause (4). But, if there is a State which unfortunately has no legislature, it cannot have the advantage of the provisions of clause (4). To make a distinction between one State and another certainly appears to me to be something ridiculous. Not only that, Clause (6) makes a distinction between a State which has a Governor and a State which has no Governor. Clause (6) says, "Any law of a State enacted not more than one year before the commencement of this Constitution, may within three months from such commencement be submitted by the Governor, of the State to the President" so on and so forth, and thereafter, if the President certifies that Act, it becomes very good law and the whole of the provisions of clause (2) may be nullified thereby. But if a State has, unfortunately or—I do not know—fortunately, a Ruler and not a Governor, that State even though it may have enacted a law heretofore or may enact a law, tempted by these provisions, between now and January 26, 1950 on which date this Constitution is to come into force, that State cannot take advantage of the provisions of clause (6). Why this distinction. Is it our intention to encourage a revolution in those States? Is it our intention to ask the citizens to somehow stage a show-down and get a Governor so as to be able to take advantage of the provisions of clause (6)? Several honourable Members who are representatives of the States are very sore on this count and rightly, because they say "we also want to abolish Zamindaries in our States; we also want to abolish jagirdaris in our States; but we have neither a legislature, some of us; nor have a Governor." While a State having a legislature and a Governor can appropriate Zamindaries and industrial property by merely enacting a law between now and 26th of January 1950 without making the slightest provision for compensation,—for that after all is the implication of clauses (4) and (6), your intention is a different thing—the States which have neither a legislature nor a Governor have no right to do that. Why this invidious distinction? Not that I want that they too should have the same right; but I am only submitting how absurd is the insertion of clauses (4) and (6) in their present form. (An honourable Member: Question).

There is one more defect in clauses (4) and (6), as I have already submitted, the intention of the framers in clause (4) is to safeguard the U.P. Zamindari Bill and the intention of clause (6) is to safeguard the Madras and Bihar Acts. If you had put it down specifically there, it would have been an evil only to that extent. You do not say that specifically; but you make this provision in a general way which means that any other State or even the States of U.P., Madras and Bihar may enact any law whereby they can take to themselves the right of appropriating the Zamindaries or any property whatsoever without making provision for the payment of one single cowrie. After all, that is the implication of these clauses. It is a different thing that in your fairness you may not go to that extent; but the law must be clear and definite on that subject.

One impression that we create on everybody's mind by having this article in this way, particularly by having clauses (4) and (6), would be that the period between now and the commencement of the Constitution is going to be one of the darkest periods in the history of India. Is the pre-republic period in this country being made so dark that the subsequent period after the republic comes into being must appear to be very bright? That period will indeed be bright in itself. It is no use making the pre-republic period, a period of five months or so, appear so dark and gloomy and arbitrary. I submit therefore that it looks very ridiculous to have particularly these clauses (4) and (6) in the Fundamental Rights. These do not give any fundamental rights; in fact,

they are a negation of the fundamental rights, which we have already adopted while adopting the Fundamental Rights Committee's report. With your permission, Sir, I would like to read the resolution adopted along with the report of Fundamental Rights Committee.

Mr. President: I would ask the honourable Member to finish.

Shri Jaspat Roy Kapoor: I am finishing, Sir; I will not take more than a couple of minutes.

I shall not even read; that honourable Members know that only too well. I will proceed immediately to my next amendment which seeks the deletion of sub-clause (a) of clause (5). Sub-clause (a) of clause (5) says: "Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect: (a) the provisions of any existing law." May I ask, what is the necessity for this sub-clause? What are the existing laws which are in contemplation? I know of one law, and that is the law relating to the acquisition of landed property, the Land Acquisition Act. So far as that Act is concerned, it is certainly in consonance with the provisions of clause (2), because, that Act specifically lays down the basis on which property must be acquired. That Act needs no safeguarding by this clause. Which other Acts are intended, I do not know. I certainly would wish that it must be made clear as to what other laws there are in force today in this country which are intended to be safeguarded by this clause. Is there any other law the provisions of which are not in consonance with the provisions of clause (2)? I am not aware of any; though I cannot venture to hazard an opinion on that subject being no expert on legal matters, I want to seek enlightenment on this subject from the honourable the Mover of this article as to what are those particular laws which he has in view and which he wants to safeguard. Even if there be one, the provisions of which are not in consonance with the provisions of clause (2), why should that Act be safeguarded? The object of this article 24 is to make provision for Fundamental Rights. They are to be safeguarded and not any law which strikes at the root of a fundamental right.

I, therefore, submit that these clauses must go. Otherwise, it will encourage States to rush in for laws to appropriate property without any fair compensation during this intervening period, for all these laws will be considered to be existing laws on the date on which this Constitution comes into force and will be beyond the scrutiny of a court of law.

Lastly, I come to my amendment relating to evacuee property which, in fact, is the most important of all the amendments. Though it is the most important of the amendments, I would not dilate upon it, firstly because it is rather a very delicate subject, and secondly because I am glad it is going to be accepted by the honourable the Mover. One word only about it, I will say. Our refugee brethren who have come over from Western Pakistan have left their property worth about 1,500 crores and the evacuee property in this country is worth about 500 crores or so. Delicate negotiations are going on between this country and Pakistan and they are being carried on by no less able a negotiator than the Honourable N. Gopalaswamy Ayyangar. So far, he has failed to bring about any settlement on this issue in spite of his accommodating nature, in spite of his reasonable attitude, in spite of all the greatness he has in him. So far, he has to persuade Pakistan to come to a settlement on this question. Perhaps a settlement may be found or it may not be found In either case it is necessary that any law that we may be under the necessity of enacting hereafter and all the existing laws and Ordinances on this subject must be beyond the pale of the provisions of clause (2), because if it is not so, when unfortunately at a subsequent stage in the event of no agreement being arrived at, we have to appropriate evacuee property, not only then we shall be losing all the property of the refugees to the extent of 1,500 crores but we shall

[Shri Jaspat Roy Kapoor]

be compelled under clause (2) to pay compensation to evacuees also. Therefore I submit it is necessary, and since it is going to be accepted I need say nothing further on this subject. With these words and with my amendment I beg to support the article which has been moved.

Mr. President: No. 474—Mr. Ibrahim. I would remind honourable Members that we have to finish this article tonight whatever the time taken and I would request them to cut short their remarks as far as possible.

Mr. K. T. M. Ahmed Ibrahim (Madras: Muslim): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, the following be added at the end :—

'and except on payment of fair and equitable compensation based on the market value of the property.' "

I also move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'provides for compensation' the words 'provides for fair and equitable compensation based on market value' be substituted."

Article 24 lays down a vital fundamental right and I think I am not going too far in stating that the entire economy of the country depends upon the proper enforcement of this Fundamental Right. Clause (1) provides that no person shall be deprived of his property save by authority of law. That is a fundamental right which is sought to be created by this article. But the succeeding clause, viz., clause (2), in effect deprives the citizen of the Fundamental Right that is sought to be secured by clause (1) because it gives to the Legislature power to determine the entire value of the right that is secured to him by claues (1). The value of any property depends upon the price it would fetch in the open market but clause (2) says that the value can be fixed by the Legislature according to its sweet will and pleasure. Then what would be the value of the property in the open market? On account of clause (2) there is bound to be uncertainty about the value of property and a sense of insecurity in the land. What would be the effect of such a sense of insecurity and uncertainty of the value of property in the economy of this country? That is the question that arises. I would say that on account of this, clause (2) takes away almost completely what is sought to be secured to the citizen by clause (1).

Even now under the existing law we find that compensation is to be awarded to properties according to the market value of similar lands adjacent to the land sought to be acquired. That is the well-known principle of law that is being administered in this country but what would be the effect of this clause on that principle. That would be completely annulled. The Legislature can fix any amount of compensation. The scale of compensation depends upon the Legislature and the principle for awarding compensation also depends upon the Legislature. Such being the case there cannot be certainty about the value. There will be no incentive for peopel to invest money in lands or commercial undertakings or industries. It is very comprehensive and all sorts of properties are included in this clause with the result that there will be no incentive for people to invest in commercial undertakings or lands. That is the problem which arises out of this clause (2).

I would request the House to consider this impartially and without any passion and prejudice. This is a matter affecting the economy of the land. Will this clause ensure the confidence in the minds of people which is needed most for the success of any commercial undertaking or for the success of any agricultural undertaking? Surely not, because the whole thing is nebulous and nobody knows what value the Legislature will attach to any kind of property at any time. It is only from that point of view I request the House to look at this clause and my amendment is based only with this perspective in view.

I do not think that in any part of the world compensation is awarded for any kind of property at the pleasure of the Legislature. Probably the framers of this article have ben obsessed with the present question of the abolition of the Zamindari system. If you want that the Zamindari system should be abolished even without any compensation, you may frame some other article for that purpose. Let that question be not confused with the general idea of property and the general Fundamental right of property.

My Friend the Honourable Mr. Kala Venkata Rao said something about Zamindars. He proceeded on the assumption that the whole class of Zamindars comprises of only farmers of revenue; but I would remind him that that is not a proposition which can be accepted without any qualification. There are zamindars who have been or who are descendants of Rulers and Princes and there are Zamindars who are descendants of persons who have paid full value for the lands which they originally bought from the East India Company; there are also zamindars who have paid full value to the descendants of the persons who were originally appointed as tax-gatherers. They have paid full value to them with the knowledge and with the full consent of successive Governments. Successive Governments have allowed even these farmers of revenue to treat their property as their own property and have allowed them to alienate, lease and mortgage them. Therefore are they not ostensible owners of these properties? Have you not allowed them to sell these to others? Have they not paid their hard-earned money for these? That also has to be taken into account while you assess the compensation for these Zamindars.

Sir, I think nothing more need be said regarding the importance of my amendment. It is only intended to ensure confidence in the people and to enable them to feel that property will have full value in the eye of the administration of the country, and that properties will not be valued according to the whims and fancies of legislatures. So that there can be development of industry, development of agriculture and development of commerce. Sir, with these words, I commend my amendment to the House.

Mr. President: Amendment No. 475—Shri Phool Singh.

Shri Phool Singh (United Provinces: General): Mr. President, Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), for clause (2) of the proposed article 24, the following be substituted:—

'(2) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the toiling masses.

(2a) In the case of acquisition or taking possession of any property movable or immovable including any interest in or in any company owning any commercial or industrial undertaking such property shall be acquired or taken possession of only in accordance with law which shall determine the cases in which compensation is to be allowed as also the amount of compensation to be allowed and the manner in which the compensation is to be given.

(3) No such law shall be called in question in a court of law on the points stated in clause (2a) above.'"

Sir, the only points that arise for consideration in this connection are, whether in case of acquisition, any compensation should be allowed, and if so, what should be the amount of compensation, and what should be the manner of its payment. The other point is, whether this right should be justiciable. This takes us to the question of private property, whether it should be an absolute right or whether it should be a right so far as it is consistent with the interests of the toiling masses. To hold that there should be no acquisition without compensation is to mortgage the future or to tie future generations so long as this law stands. Cases are quite conceivable when it may not only

[Shri Phool Singh]

be just, but it may be necessary to acquire property without compensation. Under these circumstances, it will be best to leave it to the future Parliaments to decide as to whether compensation should be allowed in the different cases that will come before Parliament from time to time.

Similarly, he amount of compensation cannot be decided only with reference to the value of the property. There have been speakers who have even supported full compensation. I wonder why they hesitated to put in the word "market price". What is full compensation? Market price would have been the proper word. But I think it full compensation is conceded, then it is better to say that there should be no acquisition, because the few legislations that are before the different States, they alone show that if full compensation were to be allowed, there would be no acquisition.

When fixing the amount of compensation, it is not the value of the property alone but there are many other considerations that have to be taken into account. The capacity of the State to pay the compensation, the profit that the owner of the property has already derived and the purpose for which the property is to be acquired, these are only a few of the considerations that should be taken into account when making a decision as to what should be the amount of compensation. Similarly the question whether the compensation should be paid in cash or whether it should be paid at the time of acquisition or at a later date, also cannot be decided once and for all.

All these questions have to be decided when the particular case arises according to the circumstances of each case. Sir, to decide all these points once and for all is to lose faith in the national commonsense. I think those who will come afterwards and who will legislate and decide these points will take all the relevant factors into consideration, and I think it will be better not to fetter their judgment. It is for this reason that I neither take the view that compensation should always be allowed, nor support the view that there should be no compensation whatsoever. I think the best and the proper course will be to leave it to the Parliament to decide as each case arises.

The next point is about the justiciability of this right. The amendment that was moved this morning by the Honourable the Prime Minister states that only under two conditions the law passed will not be called in question by a court of law, and they are, either where legislation is pending when this Constitution is enforced, or when legislation is passed within one year of the date of coming into force of this Constitution. When this clause is applied to the facts, the position is this, that only in three cases, the cases of the U.P., Bihar and Madras, the courts will not be permitted to question the legality or otherwise of the legislation. But it does not take into consideration all the numerous States that have merged into our Union and where there are no legislatures, and consequently where it is not at all possible to introduce any legislation before the new Constitution is brought into force. It will not be out of place to say that it is probably those very States which most need such a provision as this. I therefore, suggest that it will be better to protect all such legislations, whether they be pending when the Constitution comes into force or they are introduced at a later date,—all such legislations should be protected from interference by courts of law.

I do not want to waste the time by repeating my previous argument. I think when the representatives of the nation sit, they will take care to pass a legislation which will be fair and just and if the representatives of the whole nation go wrong, I doubt if any court of law will be able to correct it. To allow a court of law to go into this question is to nullify the very purpose of introducing such law.

With these words, I commend my amendment to the acceptance of the House.

Shri Guptanath Singh (Bihar : General): Sir, I beg to move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24—

(i) for the words 'No property' the words 'all property' be substituted; and

(ii) for the words 'unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' the words 'with or without compensation as determined by law' be substituted."

If you trace the history of private property, you will be pained to find that it is a tale of awful woes, a story full of fraud, felony, exploitation, expropriation, inhumanity, injustice, treachery, torture, tyranny and tears. So, Sir, private property can briefly be described. In the words of a French writer, in a single sentence "all property is theft." Certainly it looks very odd, but the fact is that property is theft. It has been declared and confirmed by Lord Christ, by Maharshi Vyas and Mahatma Gandhi. Sir, if you go through the Mahabharat, Shanti Parva, Adhyaya 15, Shloka 2 you will find that the Rishi has described property beautifully, plainly and frankly. He says :

ना छित्वा परमर्माणि, ना कृत्वा कर्म दुष्करम ।
ना हत्वा मत्स्यवातायं प्राप्नोति महतीं श्रियम ।।

महाभारत, शांतिपर्व, अध्याय, १५, श्लोक २ ।

Colossal money, big capital, cannot be amassed unless and until you scratch the hearts of others, commit heinous acts and kill others by entrapping the people just as the fishermen butcher fishes by entrapping them. When I first came across this Shloka and the verdict of the French writer, I could not believe or agree to it, but gradually and gradually when I began to see the tendencies and forces working in the society, I came to the conclusion that these thoughts were quite correct. People claim compensation for their private property. If you will permit me to use Vedic phraseology, I will ask my capitalist friends and zamindar brothers :—

"कस्यस्विद्धनम ।"

Whose property is this ? Our capitalist friends and zamindar brothers will come forward with red eyes, clenched fists and frenzied emotions and say, "Well, chap, Do not you know that the whole world dances on the tip of my finger ?"

"भामयन्सर्वभूतानि यन्त्रारूढ़ानि मायया"

What is why, they will say, they are claiming compensation. But I tell you that what they claim as their private property is the property which belongs to the nation. In Vedic parlance it may be said :

"ईशा वास्य मिदं सर्वम ।"

All this property belongs to 'ईश' (Isha) and 'ईश' (Isha) is represented by the nation and nation is represented by the society and society is represented by cultivators and labourers who represent the teeming millions. Thus all property belongs to the society and not to a particular individual.

[Shri Guptanath Singh]

So, all the massive big buildings, mansions, and all the factories belong to the nation and the society and not to a particular individual. People say that they have purchased some factories, built some buildings, and bought some lands. But I ask them where did they get the money from and how did they earn it and who erected the buildings and factories. They were erected by the teeming millions; they were cultivated by the farmers and labourers and not by those factory owners and land-lord zamindars. Therefore, these people do not deserve and cannot claim compensation for their property as a matter of right. On the merits, they have no claim, but if you examine the income of property owners, zamindars and capitalists, you will find that they have expropriated, they have consumed, they have enjoyed, several times more than the capital they invested. They have acquired and consumed lakhs of rupees. They have purchased jewelleries worth crores of rupees. They have created numerous sources of incomes.

According to Manu, the land belongs to the cultivators.

"स्थाणुच्छेदस्य केदारम्"

The land belongs to the man who cultivates it, not to the big zamindar friend. Therefore, the claim of compensation made by our zamindar friends is not right. I ask them one single question. Will compensation for Red Fort and other things be allowed to the descendants of Moghul Emperors? Sometime ago, I came across a news in some paper in U.P. that the descendants of Moghul Emperors had requested Pandit Jawaharlal Nehru that compensation should be given to them for their ancestral property. Is it not a fantastic thing? Have Britishers given any compensation to descendants of Moghul Emperors for the Red Fort and other massive mansions and buildings? Numerous buildings were constructed by Britishers though the money belonged to us, but have we given anything to them when they quitted? These people cannot claim compensation for their property. They should not be given any compensation at all. They cannot claim it as a right but it is due to our generosity that we are allowing something to them. We have allowed compensation in Bihar, 20 times to 3 times. In Madras also the Government have allowed and in U.P. the Government are going to allow something; but as a matter of right Zamindars cannot claim any compensation.

There is one thing which does not seem to me to be good. There is some discrimination made as between abolition of capitalism and zamindaries, between nationalisation of factories and other means of production and the abolition of zamindaries. Lands and factories both belong to the same category and both must be nationalised or socialised in the course. Some provision must be made in the Constitution to abolish both these things when time is ripe for it.

Panditji has moved an amendment and made a speech. If you give the speech of Pandit Nehru to a person without telling him whose speech it is, as also the amendment moved by him, the man will say that the speech has been made by some revolutionary and the amendment has been moved by someone other than a revolutionary. Pandit Nehru has certainly a revolutionary mind but the article in its present form seems to be framed by brains controlled by some unseen forces.

On merit, people do not deserve compensation, but some provision must be made in the law that compensation should be given to those who deserve and for those properties for which compensation should be paid. The forces that are working in the country and the world are concentrating towards the elimination of capitalism, and the House and the country must realise this and act accordingly. Therefore I appeal to the House to accept my amendment.

(Amendment No. 481 was not moved.)

Shri Prabhu Dayal Himatsingka (West Bengal: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week) in clause (2) of the proposed article 24, the words 'and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' be deleted."

This amendment was one of several other amendments given notice of by me, but which have been moved by others. By my amendment I want to make it specific that the compensation to be paid should be fair and equitable for the property acquired. So far as the fixing of the price and the manner in which compensation is to be determined are concerned, we have already laid down in Concurrent List item 35 of the 7th Schedule that both the Centre and the States will have the right. The Prime Minister in his speech today has stated that the compensation to be paid will be equitable and fair. That has also been the considered statement of the Government in their declaration on their Industrial Policy on the 6th April 1948. The same principle was repeated in the Honourable Prime Minister's statement on the 6th April 1949 in which foreign capital was invited.

Therefore there is no reason why the compensation should not be clearly stated to be equitable, fair or just, whatever word is acceptable to the framers of the article, so that there will be no doubt that the compensation intended to be paid will be fair and equitable if property is acquired. It is a question of creating confidence in the minds of investors and if we want the country to be more and more industrialised and that people should be encouraged to put in their money in industrial undertakings, there should be some sort of guarantee that if and when such properties or undertakings are acquired by the State a fair and equitable compensation will be paid. That will be a definite encouragement to the people, and, industrial development, also will be given an impetus. It is a psychological factor, and might act as a damper. Economic conditions are already bad and if the clause acts as a damper it will further aggravate the economic condition. Without economic improvement it will be very difficult to carry out any of the nation-building activities or other improvements we are anxiously aspiring for. My amendment is aimed at defining compensation payable for acquisition of property and I hope the drafting committee will accept it.

(Amendment No. 485 was not moved.)

Shri B. P. Jhunjhunwala (Bihar: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, the words 'either fixes the amount of the compensation, or' be deleted; and the following provisions be added at the end of the clause :—

'Provided that in applying such principles, due regard shall be paid to the consideration whether the property in question is being utilised by the owner or holder so as to make a definite contribution to the sum total of the country's wealth :

Provided further that this proviso shall apply also in the case of all laws which have been passed wihin one year before the commencement of this Constitution and to all Bills pending at the time of the commencement of this Constitution.'"

Before speaking on my amendment I wish to make a few remarks on the proposed article moved by our respected Prime Minister, the Honourable Pandit Jawaharlal Nehru. There are two questions involved in this article. One is acquisition of property by the State and the other is the payment of compensation for the same.

The main principle enunciated by our respected Prime Minister, is that the interest of the individual is subordinate to the interest of the community or of the state, and no patriotic Indian should deny this principle. In other words if the interest of the state or community demands, the individual should ungrudgingly give. The whole question while acquiring the property is whether

[Shri B. P. Jhunjhunwala]

it is acquired in the interest of the State or not. Secondly, when the property is acquired, whether due compensation is paid to the property owner or not.

What are the circumstances under which property should be acquired by the State? If the principle as enunciated by our Honourable Prime Minister is applied; certainly I presume that the State should acquire the property of any individual only when it is in the interest of the State but not by merely saying "we want to nationalise a particular industry, and therefore we want to acquire it." Nationalisation of a particular industry may not be in the interest of the State at all. I shall just give an instance in respect of England which is such an advanced country where recently the transport was nationalised. And the report is (it appeared in day before yesterday's papers) that Britain's nationalised transport—road services, docks and waterways—ended its first year 1948 of State ownership with a loss of £4,733,000, and the report was summed up as unsatisfactory and prophesied that a further marked deterioration of the working result was "inevitable" in 1949.

As I have said, there are two principles which have to be taken into consideration in connection with this article. One is the acquirement of the property. My amendment relates particularly to this first principle. If any property or industry is to be acquired proper attention should be paid as to whether such principle is applied, and the State Legislature or the Parliament while fixing the principle for compensation as mentioned in clause (2) of the article should state whether and what if any advantage will accrue to the State—be it a zamindari property or an industrial concern,—and further in laying down the principle, it should be taken into consideration—as I have said here —"whether the property in question is being utilised by the owner or holder so as to make a definite contribution to the sum total of the country's wealth" or whether the owner was wasting the property along with his energy in anti-social and anti-national activities. If we find that the owners of the private-owned properties or private-owned industries are making good progress in increasing the wealth of the country and have not in the past and are not indulging in anti-social activities, in that case there should not be any occasion for the State to acquire that property, and if it is to be acquired full compensation should be given. That point has been made clear in our Industrial Policy enunciated in the Legislative Assembly where it is said that at least for ten years there are certain industries which shall not be nationalised and after ten years stock will be taken of the position as to whether there is any justification for acquirement of any industry or not and then that industry will be acquired.

If this principle is accepted, as has been accepted in the Legislative Assembly and as has been so many times made clear by our respected Prime Minister, I do not see any reason why there is so much stir among the industrialists or among the public and why the capital is becoming shy and is not coming forward for investment in industry.

The second question which is engaging the attention of the people is, if our industry will be acquired at all, whether they shall be given proper compensation or not. On this point also our Prime Minister has said that there is no question of expropriation if any property will be required by the State. People are watching as to what this Constituent Assembly does regarding this article 24. So in moving this article our Prime Minister has made it explicitly clear that no property will be expropriated and that if any property is acquired it will be acquired by giving compensation.

The only question which remains is what sort of compensation it will be, whether it will be equitable and fair compensation or any compensation which

Parliament will decide, and whether the decision and the principles which will be decided by Parliament will be justiciable or not. That is the only point which is engaging the attention of the public outside. There are differences of opinion on this point and I am not competent to say one way or the other. But if it is made clear that it will be justiciable, then there is no reason for any apprehension or any encroachment upon the fundamental right, as had been said by my honourable Friend Pandit Thakur Das Bhargava that this article is a sort of encroachment upon our fundamental right.

As I have said, when giving compensation the most important point which has to be taken into consideration is whether the person to whom compensation is given was utilising the property for improvement and in increasing the wealth of the country or not. That point should be included in the principle which the law lays down. If the industrialists or the zamindars have utilised and are utilising their wealth more in anti-social or anti-national work, and have outlived their utility that in my opinion should be a point which the Parliament should take into account while fixing the principle or amount, for compensation. If these points are covered by the article there is no necessity for any stir in the market.

There is a view that compensation should also depend upon the purpose for which it is acquired, *i.e.*, if it is acquired for philanthropic purpose for the benefit of the people or under any scheme, the compensation may be less. In this connection I have to say that if that point is contemplated in this clause—I do not know if it is there—a person of small means who happens to own a property which may be necessary for a benevolent purpose or under a scheme, these persons, should be fully compensated.

With these few words I support the article.

Shri Lakshminarayan Sahu (Orissa : General): *[Mr. President, my amendment reads as follows :—

"That in amendment No. 369 of List VII (Seventh Week), at the end of the clause (2) of the proposed article 24, the following proviso be added :—

'Provided that no compensation shall be payable to any owner or holder of any movable or immovable property, who, having owned or held such property for thirty years continuously immediately before the coming into force of this Constitution, has either not habitually resided within the State where such property is situated, or has not done anything to develop such property.'"

Mr. President, we have stated earlier in our Constitution that we would provide social, economic and political equality to everybody. In view of this declaration that we so emphatically made to the whole world, it is our duty to consider how we can secure it and what provisions we should make for it. It is in view of that that many Members have stated that the question of property is the most important in the scheme of the Constitution. This should be decided after proper consideration.

We should first of all decide as to what would be the shape of the free India. When we go on saying that we would abolish the class distinctions, we would not run our country on the basis of religion and that we would make it a secular State, we should think over the ways of securing these objectives. In the Directive Principles also we have stated that it shall be our duty to see that the operation of the 'economic system does not result in the concentration of wealth and means of production to the common detriment'. When many a man accumulates vast wealth, we would scarcely be able to shape India in our way. We cannot do so. Thus we should give very deep consideration to the question. Take a few instances. Today there are big industries.

*[ ] Translation of Hindustani Speech.

[Shri Lakshminarayan Sahu]

In an industry, one person accumulates so much wealth; after ten or twenty years, he grows so rich that he does not regard anybody else as a man. The fact is that he begins to live in a dreamland, thinking very highly of himself and looking down upon others as petty men. This system will have therefore to be abolished. I belong to a poor family, I never put on a shirt since my childhood till my matriculation. I know what hunger is. When I was a student in the Engineering College, I had nothing to eat, so I left the College, and was on the verge of committing suicide.

I therefore wish that this matter should be decided properly. One man earns Rs. 600, or 800, or 1,000 in a day, but the average income of a person in this country is merely 6 annas daily. How then can we make the people of free India happy? People say that my province, Orissa, is a very poor province, and a very small province. Why is this so? This is the matter that needs consideration. When I talk of Orissa it may well be that some people may insinuate that it is the spirit of provincialism that makes me do so. It is not provincialism that makes me to talk of my province. It is out of sheer necessity of self-existence; I desire to live. But in order to do so I must also see as to how the people around me keep healthy and how they can live happily. I wish to tell you that all the land in Orissa has passed into the hands of the absentee landlords. They do not live in Orissa but live outside, and come there only to recover their dues. Now, if you look into the matter you would find that these people have not got their lands by spending much money. The people of Orissa lost their land through the operation of the Sunset Law. At that time the High Court was at Calcutta and not at Cuttack. Many people therefore lost their rights in land. In this way two-thirds of the land in Orissa passed into the hands of absentee landlords. How can Orissa progress in such circumstances?

I therefore wish that there should be such a provision as would ensure that the persons who have vast lands, who cannot improve them, and who have enjoyed them for 30 years should not get any compensation. We want to shape the world in a new fashion, and want to abolish capitalism at once. Even our ideal was this :—

अर्थमनर्थं भावय नित्यम्,
नास्ति ततः सुखलेशः सत्यम्
पुत्रादपि धनभाजां भीतिः
सर्वत्रैषा कथिता नीतिः ॥

[Always take wealth as a source of great evil. Surely, it cannot impart even little of pleasure. The maxim "Those who are after riches are even afraid of their own progeny" has been proclaimed everywhere.]

This is from Shankaracharya. We used to prepare the people of this country for this ideal. Later on, however, new ideas began to pour into our country from the West, and the most powerful of this was the spirit of free competition; we had to adapt ourselves to their values. But the consequence of all this was that the poor man was ruined while the man with the means became almost like a conqueror, knowing not moral law. Might became right and the powerful acquired domination over the people and the country.

I therefore submit that keeping in view our goal of building up India, on new principles, it is our duty to keep before us the outlines of the new system, and we should think out how these ideas can be realised in the various provinces. I have suggested this proviso from the view-point of my province. I believe that you would be taking a correct decision in this matter but if you fail to do so, it will not be in the interests of my country; I have therefore suggested this proviso. I wish that you consider it thoroughly.

Among the aboriginals, a system obtains that all the land is distributed equally among the people and in case somebody accumulates more land the position is readjusted after every 10 or 12 years. Our society is static. It has been standing still like the Himalayas since long, has been unmoving; it does not move. Those who joined the western new-comers began to perpetrate cruelty on their people and lowered their status. For this reason we should have a provision like this while we are constructing a new India. I want to say only this much.]

Mr. President: Mr. Mahboob Ali Baig, No. 493.

Mr. Mahboob Ali Baig (Madras: Muslim): I have 482 also.

Mr. President: You can move that also.

Mr. Mahboob Ali Baig: Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' the words 'unless due compensation is paid for', *or, alternatively,* 'unless the law provides for due compensation' be substituted."

I also move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, the following be substituted:—

'(3) No such law as is referred to in clause (2) of this article made by the Legislature of the State shall have effect, unless such law receives the assent of the President.'"

Sir, the other amendments have been covered already and therefore I do not propose to move them, but I will offer my comments on them. Sir, my amendments have a two-old purpose. The first is that they seek to declare the right of a person to property as fundamental in character, independent of the legislature or any other authority. Secondly, my amendment seeks to declare this right justiciable beyond any shadow of doubt. While the Government must have the unquestioned right to acquire property owned by individuals for public purposes, it cannot compel the owners thereof to part with them for any value less than their proper value, and the right of the person whose property is acquired to have the value determined by a court of law cannot be taken away. Our State has not yet abolished private property; at any rate this Constitution does not abolish and is not abolishing it. I refer to article 13, clause (1) sub-clause (f), that is, "subject to the other provision of this article, all citizens shall have the right to acquire, hold and dispose of property" and the sub-clause which controls this right is sub-clause (5) and there it is stated "Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses.....". Even this sub-clause (5) which modifies the fundamental right says you can impose only restrictions on the exercise of any of these rights.

Therefore, Sir, it is clear that our Constitution does not propose to abolish private property, as the U.S.S.R. has done in its Constitution. The U.S.S.R. has clearly abolished private property. Our society is still based on what is technically called capitalistic system of economy, meaning thereby that property is held by individuals and not by the entire people. Our system is similar to the system prevailing in the U.K. and U.S.A. and in the Constitution for the U.S.A. it is clearly laid down that the State cannot deprive a man of his life, liberty or property without due process of law. So is the case in the U.K. To illustrate, when the present socialistic Government of England

[Mr. Mahboob Ali Baig]

acquired mining rights from private owners, it awarded compensation which was found to be in excess of what the courts themselves determined the value of the mines to be.

Thus, Sir, their society is based on the recognition of private property and is based on the capitalistic system of economy. The persons whose property is acquired must be paid the proper price and the machinery to determine what the proper price is, is the court. So, Sir, two important and inevitable concomitants of the nature of property as private property are these two, that the rights are fundamental and the rights are justiciable beyond any shadow of doubt, but it is open to us to abolish private property altogether, which we have not done till now. It would be a different matter if private property is abolished altogether and people are assured free medical aid, free education and they are assured of employment. The structure of the society has not changed.

What I am seeking today now is, while we recognize private property under article 13 and also by implication under clause (1) of this article itself, what we are trying to do under clause (2) is that we are giving power to the legislature to grant any compensation it pleases or retain principles for assessing the value of the properties. Now, Sir, whether it is permissible under any Constitution which frames fundamental rights, whether the legislature of the country should be given the power, the jurisdiction to deal with those fundamental rights, tinker with them and abridge them, is the question before us. My submission is this, that this article finds a place in the chapter which deals with fundamental rights. Fundamental rights are those which are beyond the jurisdiction of a legislature, especially of party legislature in parliamentary democracy. As soon as they are subject to the jurisdiction of the legislature, they cease to be fundamental. What is the fundamental right that you are giving to the people under article 24 as sought to be amended by the Prime Minister? There is nothing at all. Therefore, it would be better not to have mentioned these rights at all under the chapter dealing with fundamental rights. The only thing that I could understand from the speech of the Prime Minister is "Your rights are recognised" yes and "when they are going to be acquired, compensation will be given to you", "What is the amount of compensation that will be given to you will not be determined by a court of law". In fact he would have nothing to do with courts and law. He would vest this power, to determine what the compensation will be, in the legislature. He calls the legislature 'sovereign'. It would be more correct to say that the Constitution is "sovereign". The legislature, the executive and the judiciary and all of us are governed by the Constitution. A legislature cannot have overriding powers over the provisions of a Constitution. It is the Constitution that is binding until it has been amended by the will of the people.

Therefore, Sir, the legislature is sovereign in the sense that the people are sovereign and if the people elect members with a particular purpose of changing the Constitution, then it is correct to say that that body which is elected by the people for the purpose of changing the Constitution, that is sovereign, This question of a legislature being sovereign overriding fundamental rights is not correct at all. Either you declare under article 24 fundamental rights or not at all. It would have been better if article 24 had not been enacted at all and not been proposed at all; I could understand that. It will be open to the legislature provided that is liable under law to grant compensation in any way it pleases. Therefore, Sir, my submission is that it is a misnomer to say, it is incorrect, it is misleading to say that we are under article 24 declaring rights in property.

Mr. President: The honourable Member has made that point formerly.

Mr. Mahboob Ali Baig: Therefore, the amendment which I have moved, No. 482, proposes that in the matter of granting compensation, the fixation of the amount of the laying down of the principles on which compensation should be determined be entirely taken away from the jurisdiction of the legislature. If it is necessary that a certain land should be acquired for a public purpose, it would then pass an enactment saying that this property shall be acquired giving compensation. What the compensation should be must be determined by a court of law.

Now, Sir, one word with regard to clause (3). I have stated that the law that may be passed by a State legislature or the Union legislature must receive the consent of the President. In the clause as proposed, it is stated "such law having been reserved for the consideration of the President". I want that to be categorically stated that all such laws whereby property is sought to be acquired must necessarily receive the assent of the President.

Sir, one word with regard to clause (4) I have to offer and it is this. The Prime Minister said in the morning that under clause (1), unless the legislature has abused its powers, the court's jurisdiction is ousted. What he meant perhaps is that if the legislature granted compensation which is a pittance or merely illusory, then, the courts can interfere. Now, Sir, my point is this. Why not you give that benefit at least to cases that come under clause (4)? Is it fair, I ask, that even that chance of a person who is deprived of his property to contend that the compensation that has been given to him is a pittance or merely illusory, or is a fraud on the statute should be taken away? Why should we deprive a person who is aggrieved in that way of his right to have the matter agitated in a court, and ask it to decide whether the compensation is merely illusory, whether it is a fraud on the statute, while it grants this right under the circumstances in clause (2)? Therefore, it is very unreasonable and as my honourable Friends Pandit Thakur Das Bhargava and Mr. Jaspat Roy Kapoor have said clearly, such a thing is unknown to law, unjust and unfair and discriminatory. Therefore, clause (4) must go.

My comment with regard to clause (6) is this. When some Acts were passed by some local legislatures, the law prevailing was the Government of India Act of 1935, section 299. Laws were enacted for the abolition of Zamindaris and that was the law applicable. Is it fair, I ask that you should prevent those persons from going to court and asking the court to determine whether the enactments were *ultra vires* or *intra vires*. Even in this case, as I have said, whatever chance a man may have under clause (2) to show in a court that the compensation is merely illusory is taken away. I have not come across any such constitution where rights which accrued previously and which were enacted under certain laws, were purposely taken away. As I said, Sir, in this case also, it is very unjust, unfair and discriminatory.

One word more before I sit down, that is, with regard to certain remarks made by my honourable Friend Mr. Kala Venkata Rao. I agreed with him in the legislature of the province of which he was the Revenue Member that these Zamindaris should be abolished. Even earlier than he thought of it, in 1938, as a member of the Zamindari Abolition Committee I have clearly advocated that these Zamindaris must be abolished because they were anachronisms and they have ceased to serve their purpose. I also held that owner of the property must be the tenant and not the Zamindar. I agreed with him so far. But, I found that from 1802, rightly or wrongly, according to me wrongly. Sir, the Permanent Settlement Regulation XXV vested the proprietory rights in the Zamindar.

Mr. President: It is not necessary to go into that.

Mr. Mahboob Ali Baig: I am just pointing out. My Friend Mr. Kala Venkata Rao is wrong in saying that that Regulation did not vest the proprietary rights in the Zamindar. The very expression "Sanad Milkiyat Istimrari" when translated, means, Sanad of Permanent Settlement of proprietorship in the land. Not only by enactment, but the highest courts have held that the Zamindar is the owner, as I said, on the basis of legislation which according to me was passed wrongly. On this basis several transactions have taken place: sales, mortgages and all sorts of things. Over a period of 150 years these Zamindars and their transferees have acquired substantive legal rights.

I differ from my honourable Friend on the question of compensation. I said that compensation must be given. I am not going to refer to the several inaccuracies in the statement of law and facts made by them. Therefore, the question whether the compensation that these Zamindari abolition enactments have given is just, fair or equitable, or is merely illusory, must be left to the court to determine. As I have said, till we change the structure of society from a capitalistic system of society, to a socialistic society, where it is not the individual, that owns the property but it is the entire people or the State or the co-operative agency, till then, we cannot get away from the fact that due, proper compensation should be given.

I am compelled to remark, Sir, that in this matter, we are not very definite and bold enough. If we think that this society must be changed, we must take courage in both the hands and act. This sort of dealing with property will land us in difficulties.

Mr. President. The honourable Member is repeating himself.

Mr. Mahboob Ali Baig: As Mr. Naziruddin Ahmad asked, what is the impression that is going to be created on the public, especially on persons who are asked by us, who are asked by the Government to invest money in factories and industrial ventures? Would they dare to do it? Would anybody come forward with his money to invest his money in any venture? He would read this and say.....

Mr. President: I think you have taken more than enough time. You may finish now.

Mr. Mahboob Ali Baig: Sir.....

Honourable Members: Order, Order.

Mr. President: No. 499.

Shri Ajit Prasad Jain (United Provinces: General): Sir I do not propose to move it.

Mr. President: No. 500.

Shrimati Renuka Ray (West Bengal: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed article 24, the following be substituted:—

'(4) No law making provision as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles and the manner of compensation specific are fraudulent or inequitious.'"

I am compelled to move this amendment even at this late hour because we are faced with a very genuine and a real difficulty. By clauses (4) and (6) of the draft that we are considering, we find that pending legislation or

legislation that has already been enacted in regard to compensation for property is to be treated on a different basis to compensation for all other types of property. If it becomes necessary to have an exemption clause for certain types of zamindari property—for, coming to brass tacks, it means the zamindari Bills of U.P. and those of Madras and Bihar are to be exempted—it necessarily follows that all other property including zamindari property in other areas must be justiciable. It means that the authority of the sovereign Parliament is to be challenged by Courts of law. I know that there is difference of opinion amongst some of the lawyers. Some hold that although other forms of property are included as justiciable, the Courts of Law will not challenge the authority of Parliament in laying down principles of compensation until and unless there is intent to fraud. Other lawyers again support the view of the Supreme Court of the United States that the word 'compensation' means equivalent value. I am not a lawyer and I have neither the merit nor the right to enter into the hair-splitting arguments that are the lawyers' paradise; but as a layman I would like to know that how it is that there has to be this differentiation. Is it then that the provision of the U.P. Zamindari Bill has shown an intent to defraud, or that no compensation to be paid under its provisions? Why is it that the special provisions have to be made for the Zamindari Bills of U.P., Madras and Bihar? If it were that the lawyers who hold the view that the justiciability would not be challenged unless there was intent to defraud, were correct then it would not be necessary to include clauses (4) and (6). Shorn of all legal technicalities, as we can see it, the position really comes down to this, that it is not the Sovereign Parliament that has the last word, but it is the Court of Law that will have the last word in case of other properties except those covered by clauses (4) and (6). I would like to ask what justice is there for this procedure? There are other fundamental justiciable rights, but even these rights are subject to the proviso that it is under the authority of law, e.g., the right of freedom of speech and expression, to assemble freely without arms, to form associations or unions—all have limitations, by which they come under the authority of Parliament. What is the justification in 1947 for us to place property on a very different basis? Pandit Nehru said in his speech this morning that the very conception of property is changing. The sacrosance attached to property it no longer there. Surely when we are deciding this issue today we must make it so that it is Parliament whose authority shall be supreme and that we shall not lay down a vested interest for all times.

It is quite true that Parliament sometimes does pass hasty legislations. Well we have the second chambers as Panditji pointed out this morning. Apart from that there is clause (3) of this article which gives the President, *i.e.*, the Central Government, final power as assent has to be given by the President before any such legislation comes in. I think the safeguards here are surely enough. It is not for us to include provisions whereby there can be various interpretations given by Courts of Law. If there can be various interpretations amongst a few lawyers, even now just think of the varying interpretations that we shall have with different courts deciding differently. As I said before it will indeed become a lawyers Paradise and litigation will become even more widespread.

Mr. President: You have made out that point.

Shrimati Renuka Ray: There is no question of expropriation of property. The question of nationalisation or socialisation really does not arise today. These are issues that have been raised to confuse the matter. The Government has laid down its economic policy. That policy does not include any nationalisation or socialisation except in the case of the abolition of Zamindari property.

Shrimati Durgabai (Madras : General): May I know from the speaker through you, Sir, whether it is her intention to oust the jurisdiction of the Court even when the compensation so fixed is fraudulent?

Shrimati Renuka Ray: I say, who is to decide what is fraudulent? Is the Zamindari Bill of U.P. and the compensation fixed in it today fraudulent, and if that is not so, then why have we to make provision for an exemption clause? Therefore, I say that it must be Parliament that must have the supreme voice in the matter, and it cannot be left to Courts of law to challenge the decisions of Parliament even on the excuse that it is fraudulent—A Court of Law may decide that even paying half the value is fradulent. There will be nothing to debar it unless this amendment is included.

Now, as I said, there has been confusion of issues. This question of expropriation of property has been brought up. There is no question of expropriation today, and even in the Parliament of tomorrow I do not think that so long as there is a constitutional authority and so long as there is responsible government there can ever be any question of expropriation of property, without paying compensation. Even those people who want a new economic structure and who believe in the gradual transformation of the present structure into a new economic structure where economic justice prevails, even they do not want that a new class of destitute or poor should be created. We do not want and the government of the future will not want to create a new liability for the State. Thus, neither the Parliament of today nor that of the future will expropriate property without compensation, because their object will be to bring about a reduction in the disparity of wealth and not to create a new class who will become the concern of the State.

Mr. President: I hope you have finished now?

Shrimati Renuka Ray: I have just one or two more points.

Mr. President: More points or more words?

Shrimati Renuka Ray: More points, Sir. Another point that has been raised in some of the speeches made today is that because of the economic difficulties of today it is essential for us to put this clause in the draft. Mr. Himatsingka asked the question as to how production could be increased if you do not satisfy the capitalists on this point. I say, we have been making concession after concession to capitalists, and still production has not gone up so far. The question of capital for nation and of increased production is an urgent one today. Even if capitalists do not conform, we have to find ways and means towards this end. We cannot be at their mercy altogether if they do not play the game. But I fail to see what this article has got to do with this. This is not a provision that is being incorporated in an Act of the Legislature, but something we are considering in a permanent Constitution for the future.

Sir, before I conclude, I just want to point out that if we do not allow constitutional remedies, if we bind and fetter the future, then a time will come when extra-constitutional remedies will be resorted to, and when this Constitution will be treated as a scrap of paper.

Sir, before I conclude I would appeal most particularly and most especially to Pandit Jawaharlal Nehru who, above all, believes in economic justice and social justice, to accept this amendment and substitute clause (4) by my amendment. I appeal to the Drafting Committee that if they have any differences of opinion, then this makes it quite clear. If they believe that the provision does not mean justiciability, then what objection can they have to my amendment?

Last of all, I appeal to this House and say, let us not accept something which posterity may point to and say that we were more interested, and concerned at all in entrenching vested interests in the Constitution, than all other rights. Let them not say that the right of propery was the only fundamental right in which we showed most concern as only to it we gave a double assurance by the incorporation of article 24 in this manner—let us not forget that no other economic right is incorporated in fundamental rights—all others are on directives as pious hopes for the future.

Mr. President: Shri Siddaveerappa, No. 502.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, may I invite your attention to the fact that it is quarter past seven now and we have been sitting for more than seven hours? There are still a large number of speakers who want to take part in this important subject. Therefore, may I request you, to adjourn the discussion after taking the consent of the House till Monday and resume it again on Monday?

Shri R. K. Sidhva (C.P. & Berar: General): No, Sir. Most of us want to finish this subject today.

Shri Mahavir Tyagi (United Provinces: General): Sir, even if they cannot have full compensation, let the zamindars have their full say!

Sardar Hukam Singh (East Punjab: Sikh): Yes, let them have their dying sobs and sighs.

Shri Deshbandhu Gupta (Delhi): Sir, may I suggest that the general discussion may be postponed to Monday and the discussion on amendments finished today?

Shri H. V. Kamath: I suggest, we may meet after dinner, say, at ten o'clock tonight.

Mr. President: My intention was to finish this article today and I expressed this intention to the House more than once, and I wanted the speakers also to take this into consideration while speaking. But unfortunately, it is not possible for me to stop speakers when they are dealing with their amendments and when they are to the point. Therefore, I have not been able to stop them and more time has been taken than I had anticipated. Now it has been suggested by some Members that we should adjourn till Monday next. I should like to know the view of the House.

(Cries of "Adjourn" and "Do not adjourn.")

The Assembly divided (by show of hands):

Ayes: 48

Noes: 47

Shri Syamanandan Sahaya: There has been some misunderstanding, Sir. I thought those who wanted to bring up this article on Monday should raise hands now.

Mr. President: The House is almost evenly divided, 48 being for adjournment and 47 against.

Pandit Hirday Nath Kunzru (United Provinces: General). Sir, if I may respectfully interpret this voting, it means that there is a very large section of this House desiring adjournment. We have discussed matters of much smaller importance for a much longer time. We are now holding two sessions. But we are trying to bring the discussion of a very important article to an end speedily, merely in order that the second reading may practically come

[Pandit Hirday Nath Kunzru]

to an end on the 17th September. Is this such an important purpose, that we should go any length to achieve it rather than allow more time for such a debate ?

Mr. President : The House stands adjourned till nine o'clock on Monday morning.

The Assembly then adjourned till Nine of the Clock, on Monday the 12th September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 12th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 24— (*Contd.*)

Mr. President: We shall now take up the remaining amendments.

Shri H. Siddaveerappa: (Mysore State) : Sir, I beg to move :

"That in amendment No. 369 of List VII (Seventh Week), at the end of clause (4) of the proposed article 24, the following explanation be added :—

'*Explanation.*—The provisions of this clause shall not refer to the system of land tenure called *Ryotwari* anywhere in the Union including the Indian States'."

I shall very briefly and succinctly explain the reasons that prompted me to move this amendment. I am not unaware of the fact that the legislative enactments dealing with the abolition of zamindari in Madras and Bihar do not refer to the system of *ryotwari* lands. In fact, the Bill pending before the United Provinces Legislature also does not in any way affect the *ryotwari* system.

As you are aware, Sir, under the *ryotwari* system the owner of the land is himself the cultivator : either he personally cultivates or he cultivates with the help of agricultural labour. There is no intermediary between him and the State; there is no man who gets an unearned income as under the zamindari system. If you refer to clause (4) you will find that it refers not only to the pending Bill of the United Provinces but any Bill that may be introduced in any legislature of a State before the commencement of this Constitution.

Sir, there are some people who believe and who have got their pet theories, namely, that all lands, irrespective of the nature of the tenure must be nationalised. I may in this connection refer to amendments No. 385 and 394 moved by two honourable Members of this House. It will be seen that under the *ryotwari* system the holdings are very small and under the present Mitakshara system of the law of inheritance the holdings are becoming smaller and smaller. As a matter of fact, a different set of land reform is required in the case of those holdings. If you are to take the line of these amendments that I just now referred, namely, 385 and 394, it may as well be possible for any over-zealous legislature of any State to legislate for these lands called *ryotwari* lands also, and it is as a matter of caution and prudence that I have moved this amendment.

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir, I may mention that amendment No. 504 is of a verbal nature and is related to amendment No. 505. If you will permit me I would like to move them together.

Sir, I move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (5) of the proposed article 24, the words 'Save as provided in the next succeeding clause' be omittd."

[Shri K. M. Munshi]

"That in amendment No. 369 of List VII (Seventh Week), for sub clause (a) of clause (5) of the proposed article 24, the following sub-clause be substituted :—

'(a) the provisions of any existing law other than a law to which the provisions of clause (6) of this article apply, or'."

If the House is pleased to turn to the original motion moved by the Honourable the Prime Minister it will find that in clause (5) the words were "save as provided in the next succeeding clause, nothing, etc., etc.". "Save as provided in the next succeeding clause" governs both sub-clause (a) and sub-clause (b). But it is not intended to govern sub-clause (b) and therefore it is necessary that that should be placed in sub-clause (a). The object of amendment No. 504 is to remove those words from the first line of clause (5) and to transfer that saving clause to sub-clause (a).

That is merely a verbal change and I do not think I need take up the time of the House by explaining it further.

I may also mention one matter which is a typing mistake, if I may so put it. It is this. In clause (1) after the words "the compensation is to be determined" the words "and given" are omitted. I hope in the Third Reading Stage or at a suitable time the words "and given' will be accepted.

Mr. President : There are amendments to that effect.

Shri K. M. Munshi : I do not wish to move No. 506.

Shri Krishna Chandra Sharma : (United Provinces : General) : Mr. President, Sir. I move :

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following clause be added :—

'(7) The Parliament may by law in case the social and economic conditions so necessitate, provides for the socialization of any class property on such terms and conditions as provided in the law'."

Sir, my amendment raises four questions. In the first place, there is no justiciability of the terms. Secondly, there is no mention of the compensation. My third point relates to the conditions prevailing—that is, economic and social conditions. The fourth is socialization. None of these things has been covered in the proposed draft of article 24 or in clause (6) thereof.

With regard to the first point, namely, justiciability, I beg to submit that despite the long list of Constitutional provisions cited by my Friend Mr. Nazimuddin Ahmad, those provisions came on the statute book at a time when the conception of property was different from what it is today. The classical conception of property, as the conception of many other things, was the conception of something existing, something static whereas the present conception of property is dynamic. What the classical jurisprudence gave to the world was a juristic static; what the modern world gives in juristic dynamics. As the Honourable the Prime Minister said, property today means credit, promissory notes, securities. It is not gold and silver so much; it is not the women and children.

The present day conception of property is a functional conception. It is its work, its movement. You cannot have property deposited in your house or hold it always in your possession without any regard to the question whether it serves any purpose, function or work whatsoever. The old conception of property today is an impossible one. So, two things arise. What is the function, work or place of the property as such in the social and economic structure of the society? Secondly, what does the man who claims the property do with the property? If the property does not help in the performance of any function or work and has no place whatsoever in the moving changes

and structure of society, then the property is nothing; it is a useless thing and nobody can make any claim to it as property. So, when it is said that these are dark days, that there is no light and that everything is being attacked, I would respectfully submit that there is light even in the night where in the nature there would be darkness, but you do not see the light because you shut your eyes to the things around you.

My respectful submission, therefore, is that Mr. Naziruddin's contention that compensation and justiciability find place in almost all Statutes has no force because the conception of property has changed, the situation has changed, the circumstances have changed and society from a static form—from a position of mere existence or place as it was—has passed on to one of dynamics, to one of changes and the old conceptions do not hold good in the present circumstances; so much so that the most property-conscious people of America who up till 1936 were sticking to certain conceptions, notions and old precedents of law changed them ever since 1936. For instance, measures like the Minimum Wages Bill, measures relating to the Hours of Work in the Factories, Welfare Acts and so many other measures which were once held to be invalid and as contravening the provisions of the constitutional law of America have after 1936 been held to be valid. And many other such measures will be so held because the judges interpreting them have changed and the whole conception has changed with the changes of time.

I will just give the provision from the 1919 Constitution of Germany. It is article 155. It says :

> "The distribution and use of land shall be supervised by the State in such a way as to prevent abuse and with a view to ensuring to every German a healthy dwelling and to all German families, particularly those with many children a dwelling and economic homestead suited to their needs. Special consideration shall be given in the framing of the Homestead Laws to persons who have taken part in the war.
>
> Landed property may be expropriated when required to meet the needs of housing, or for the purpose of land settlement, the bringing of land into cultivation of the improvement of husbandry. Testamentary trusts are to be terminated.
>
> The cultivation and full utilization of the land is a duty the landowner owes to the community. Increment in the value of landed property, not accruing from any expenditure of labour and capital upon the land, shall be devoted to the uses of the community."

That is the conception of property expounded by Proudhon in the latter half of the Eighteenth Century, that is, every citizen has a right—a fundamental right—to the material which is necessary for production of his needs for existence. I quote from a book on American Constitution you know this Constitution makes the property question justiciable and it says not that a law court has the final word, but that the whole question of compensation can be taken out of the jurisdiction of the court. It says: "When private property is taken for a public or a semi-public purpose, the constitutional requirement is that 'just compensation' must be paid to the owner. But how is that compensation determined? As a matter of practice the officers of Government first make their own valuation and offer the owner what they deem to be just. The owner, in most cases, rejects this offer and asks for more. Then by the usual process of bargaining, an agreement or some compromise figure might be reached. But if the owner cannot get what he believes to be fair compensation in this way he has an appeal to the courts." This is important. "*But it is allowable to have the decision made by an administrative tribunal, with no appeal to the regular courts on questions of fact, provided a fair administrative procedure is followed.*" You will note that there is no regular appeal to courts on questions of fact provided a fair administrative procedure is followed.

So, Sir, the sacred right asked for by Mr. Naziruddin Ahmad as indispensable to the citizen, *viz.*, the right to go to the courts for compensation no longer exists anywhere in the world in spite of the fact that it finds a prominent

[Shri Krishna Chandra Sharma]

place in the Statute Books. In practice it is no longer possible for one to stand up and say: "This is my land; I will not leave it. I will have it at all costs" though it is required for building a hospital for the needs of children who are suffering from tuberculosis. Such an attitude cannot be taken up by anyone in the present-day world.

As regards compensation, I beg to submit that property is a human institution. You cannot enjoy property unless society permits you to hold it, to enjoy it. The right to property is limited by social conditions. I may illustrate what I mean. Suppose you have a job. You cannot reach your place of work unless you have the transport service made available to you by the State. So even your job you cannot attend unless the social circumstances help you and the transport workers labour for you. You cannot produce anything on your property unless the social conditions permit you. You cannot even hold that property unless your neighbour permits you and you cannot enjoy it unless the society agrees to your enjoying it. So, the institution of property is a social institution conditioned by the social changes around you. Therefore you cannot dictate the terms of compensation when that property is required for some common purpose. Compensation means the will of the people as a whole. If society does not like you to hold that property, you cannot hold it. You cannot call this tyranny. Because, by its very nature property is a social institution and as such, even from the primitive times there has been such a thing as dominance of right in property by somebody else superior to you. In mediaeval times it was the King and in modern times it is held by the sovereignty of the people. So there is no such thing as property for you to claim as yours and dictate terms of compensation. Fair compensation depends on what use that property is put to and what function it is likely to perform.

Mr. President: May I remind the honourable Member that this point has been emphasised by several other speakers?

Shri Krishna Chandra Sharma: Sir, I have finished with fair compensation.

The third point I wish to mention is the social and economic condition. Sir, it is a new expression I have used. I have not found it anywhere in any of the amendments and I am in duty bound to explain the need for this expression.

Sir, with regard to the conception of property, I must point out that it should be regarded as the common need of man. No one should be able to stand up and say: 'I want to do this and not that', because social forces are so overwhelmingly great as to make him do what they want despite his will. The situation has arisen when an individual could not do what he wants to do. A man now is made to do a job contrary to his own inclinations and is taken to a place where he does not willingly want to go. Times are changing. Forces are operating upon individual will. Therefore the situation has arisen when nobody can dictate or do what he wants to do or refuse to do what he does not want to do. Even sections of society cannot stand in the way of mass movements of progress. That being so, no individual can dictate terms as regards the property that has to be acquired or as regards the uses to which it may be put. It is the cumulative effect of human forces and the social forces that will remove all difficulties in the way.

My emphasis is, therefore, upon the social and economic conditions of the country as a whole. A tiny section of society, be it a ruler or a legislature, cannot dictate terms in contravention of what the social and economic forces demand. So I beg to ask you not to close your eyes and say, you see darkness. Darkness you see because you have shut your eyes. These social forces are operating somewhere. Be alive to the realities of the situation. Nobody can envisage where he would be some time hence. You could not imagine that you would be here where you are.

Therefore we should move with the times. If we do not move with the times, it will mean stagnation and death and we will be inviting disaster. It is only people who do not move with the times who say that there is darkness around them, there is immorality around them, there is no sanctity around them. Throughout the centuries changes have come, upheavals have come, revolutions have taken place and those people who could not adjust themselves to the changed circumstances were swept away. Things change and change and those people who are crying hoarse about the sanctity of property, about the sacredness of property and so many other fine things, get swept away.

Mr. President: You are not only repeating the other speakers but yourself.

Shri Krishna Chandra Sharma: My contention is, Sir, that social and economic conditions change and that we should have to move with the times. One more point, Sir.

Mr. President: You have still some more points?

Shri Krishna Chandra Sharma: I only want to touch upon socialisation.

Mr. President: There have been so many speeches and so many amendments covering this point.

Shri Krishna Chandra Sharma: But socialisation has not been touched upon by any Member.

Mr. President: Then you ought to have spoken on this, instead of speaking on other matters which have already been touched upon.

Shri Krishna Chandra Sharma: I am sorry, Sir, but I would be very short. I beg to submit that ours being a democratic republic with sovereignty having been vested in the people, the people will have the right to do anything with property. In the beginning, property was a communal institution. Later on as things developed, and cultivation came into vogue, the land became an individual institution and became the property of individual who cleared away the bushes and made the land cultivable. Therefore he became the proprietor thereof. Now, the ways of cultivation and the ways of production having changed, it is good that in the interests of society and in the interests of the State, property should again become a communal institution. In the interests of social progress it is in the fitness of things that the institution of property, if circumstances so demand, should pass on from being the concern of the individual, from being the right of the individual, to being the concern and right of society as a whole. Sir, I move.

Mr. President: All the amendments which were on the Order Paper are finished. The proposition and the amendments are now open to discussion.

Mr. Naziruddin Ahmad (West Bengal: Muslim): May I point out, Sir, that amendment No. 504 which has been moved by Mr. K. M. Munshi has already been covered by my own amendment No. 425?

Mr. President: May be I made a mistake in asking him to move it. Now the proposition and the amendments are open to discussion.

Mr. Naziruddin Ahmad: Amendment No. 504 is exactly the same as 425.

Shri Kameshwar Singh of Darbhanga: (Bihar: General): Sir, I thank you for giving me this opportunity to have my say on this very important item of the Constitution. It embodies the principle and lays down the procedure according to which a private property has to be dealt with by the State when it is necessary to acquire it for public purposes.

It gave me a rude shock when I read the amendment proposed by no less a person than our Prime Minister and such legal luminaries and constitutional experts as the Honourable Shri N. Gopalaswami Avyangar, Shri Alladi Krishnaswami Ayyar, Shri K. M. Munshi and the Honourable the Premier of the United Provinces.

[Shri Kameshwar Singh of Darbhanga]

I fail to understand as to how such eminent men could subscribe to the proposition that if a confiscatory law is passed after the commencement of the Constitution it is justiciable; whereas if such a law is either pending or has been passed before the commencement of the Constitution it becomes non-justiciable. I ask the House and the mover himself to consider whether such a discrimination is fair or just.

By excluding these two classes of legislations from law courts, is it not admitted by the authors of this amendment that the provisions of these legislations are so unjust and improper that they cannot stand the scrutiny of the Law courts? In fact, clauses (4) and (6) of the amendment contravene the letter and spirit of the general principles enunciated in the article and negative the recommendations of the Fundamental Rights Committee already adopted by the House and incorporated in the Draft Constitution. They permit even confiscatory legislation approved by the executive authority to go unchallenged and deny to a section of the people the protection which the Constitution affords to others. Does it behove such an august Assembly as this to discard principles and disfigure the edifice which is sought to be built on the four pillars of Justice, Liberty, Equality and Fraternity, by introducing inequitous discrimination? We know that the Constitution guarantees certain Fundamental Rights to all citizens and creates a forum for the protection of those rights. Now does it not betray lack of confidence even in the highest judicial tribunal of this land which will be set up to uphold the rule of law? I feel constrained to submit that I never expected that the eminent persons who are associated with the amendment would adopt this attitude.

Only the other day, H. E. the Governor General of India made a significant observation regarding the role of the judiciary in the democratic set-up of the country. He said:—

> "It is by impartial interpretation of law and independent dispenstaion of justice between man and man and between State and subject that the judiciary holds aloft the banner of democracy which can sustain only by instilling the confidence in the poorest of the land that his wrong will be redressed and his justifiable grievances redeemed."

Clauses (4) and (6) of the amendment, as the House will notice, deny the aggrieved party the right to go to the court of law and this place the executive authority in the position of an autocrat.

I would like the House to appreciate that the underlying principles of the Constitution we are giving to ourselves guarantee the right of personal liberty and it is based on common rights and reason—the fundamental principle of all democracy. Now, is such a discrimination as is sought to be introduced by the amendment compatible with common rights and reason? Is it not tainted with prejudice and bias created by circumstances that have now changed?

I am aware of the fact that the Congress Party, which is in an overwhelming majority in the House, is pledge-bound to abolish the Zamindari system but it is equally pledge-bound to do so on payment of equitable compensation. Now, in implementing the first part of its pledge, is it not fighting shy of implementing its second part, by preventing the question of the abuse of power by State legislature in the matter of the determination of compensation from going to the judiciary? As Pandit Jawaharlal Nehru has himself remarked: "Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason. Where it is thought that there has been a gross abuse of the law, where, in fact, there has been a fraud on the Constitution, naturally, the judiciary comes in to see if there has been a

fraud on the Constitution or not", but so far pending legislations and recent enactments are concerned even for this limited purpose judiciary has been shut out. This distinction, I humbly submit, is extremely unfair.

Then again clauses (4) and (6) of the amendment discriminate (though not in so many words, but actually), between the provinces of Madras, Bihar and U.P. and other provinces, between Zamindari property and other kinds of properties and provide loop-holes for provinces to enact confiscatory legislations, if they so desire, before the commencement of the Constitution. The amendment in fact, has retrospective effect and takes away the justiciable rights even with regard to section 299 of the Government of India Act. The amendment enunciates a very vicious principle. It is vicious because it virtually discriminates between one kind of private property and another. It is vicious because it treats one section of the Citizens of the Indian Union differently from another. It is vicious because it sanctions virtual expropriation of private properties. I would humbly entreat the supporters of the amendments not to introduce the vicious principle in the Constitution. If they do so, what at present is misfortune for some of us, may be a misfortune for the country as a whole. The Congress organisation has built up a career on great and noble principles. The destiny of the country has passed into its hands and it has great duties to discharge and heavy responsibilities to shoulder. I would implore the Mover of the amendment not to get anything done by the Assembly which might either militate against the principles adopted by the great organisation or be contrary to the pledge given by it in pursuance of its principles.

Mr. President: There is, I find, some kind of humming going on all round which disturbs, I believe, honourable Members as it disturbs me here and I would make an appeal to the Members to allow the debate to proceed in a way in which all can take interest.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, Sir, in supporting article 24 as moved by the Honourable the Prime Minister, I crave the indulgence of the House to say a few words if only because in regard to some of the points covered by the article, I have not always seen eye to eye with the Honourable the Prime Minister and I have now without any mental reservation accepted his point of view.

(At this stage Mr. President vacated the Chair which was then occupied by Mr. Vice-President, Shri V. T. Krishnamachari.)

The expression "payment" in section 299 which is reproduced in article 24 of the Draft Constitution has given rise to some difficulty as it may lend support to the view expressed in certain quarters that payment imports payment in the current coin of the realm, not in bonds, not possibly even in instalments but payment immediately on the compulsory acquisition of property. Clause (2) as placed before the House omits any reference to payment as the expression "payment" has given rise to some difficulty in interpretation. The article now drafted merely provides that the law must provide for compensation for the property taken possession of or acquired. This, taken along with Entry No. 35 in the Concurrent List already passed by this House, which enables the Legislature concerned to provide for the manner of payment, removes all possible manner of doubt in regard to the question whether compensation need be paid in the current coin of the realm and immediately.

The other portion of clause (2) which has given rise to a good deal of controversy is the import of the expression "compensation" in section 299 of the Government of India Act 1935 and article 24 as originally drafted which in substance is merely a reproduction of section 299. On the one side it has been urged that the expression "compensation" by itself carries with it the significance that it must be equivalent in money value of the property or the date of

[Shri Alladi Krishnaswami Ayyar]

the acquisition, *i.e.* its market value. On the other side, it has been urged that taking the clause as it is which refers to the law specifying the principles on which and the manner in which the compensation is to be determined, it gives a latitude to the Legislature in the matter of formulating the principles on which and the manner in which the compensation is to be determined. In this context, it is necessary to note that the language employed in section 299 and that employed in article 24 is not in *pari materia* with the language employed in corresponding provisions in other Constitutions referring to the compulsory acquisition of property on payment of just compensation. The expression 'just' which finds a place in the American and in the Australian Constitutions is omitted in section 299 and in article 24. There is also no reference to any principles and the manner in which the compensation is to be determined at all in the Australian or in the American Constitution. The principles of compensation by their very nature cannot be the same in every species of acquisition. In formulating the principles, the Legislature must necessarily have regard to the nature of the property, the history and course of enjoyment, the large class of people affected by the legislation and so on. There is the further point that the Legislature, in Schedule Seven, item 35 of the Concurrent List already passed by this House, is clothed with plenary power to formulate the principles and the manner of compensation.

It is an accepted principle of Constitutional law that when a Legislature, be it the Parliament at the Centre or a Provincial Legislature, is invested with the power to pass a law in regard to a particular subject matter under the provisions of the Constitution, it is not for the Court to sit in judgment over the Act of the Legislature. The court is not to regard itself as a super-Legislature and sit in judgment over the act of the Legislature as a Court of Appeal or a review. The Legislature may act wisely or unwisely. The principles formulated by the Legislature may commend themselves to a Court or they may not. The province of the Court is normally to administer the law as enacted by the Legislature within the limits of its power. Of course, if the legislation is a colourable device, a contrivance to outstep the limits of the legislative power or, to use the language of private law, is a fraudulant exercise of the power, the Court may pronounce the legislation to be invalid or *ultra vires*. The Court will have to proceed on the footing that the legislation is *intra vires*. A constitutional statute cannot be considered as if it were a municipal enactment and the Legislature is entitled to enact any legislation in the plenitude of the power confided to it. As I have already pointed out, there is no item corresponding to Item 35 as already passed by this House in the Government of India Act 1935, which in terms confers upon the Legislature the power to formulate the principles of compensation and in any construction of article 24, this will be an important factor to be considered. I might mention I have formally indicated my view to the Honourable the Prime Minister even before the article was tabled for consideration by the House. In the view which I have indicated as to the main part of article 24, it may be possibly urged that clauses (2) and (3) apparently intended to deal with the U.P. legislation now pending in the U.P. Assembly are unnecessary. It was felt, however, that, having regard to the fact that a most well-considered opinion by its very nature can be no guarantee against a different view being taken by the highest court in the land and the magnitude of the problem, it was thought desirable in the best interests of all concerned to give a quietus to litigation and that is the reason for the insertion of clauses (2) and (3) in the article.

Clauses (2) and (3), as I have already pointed out are primarily intended to deal with the U.P. legislation now pending in the U.P. Assembly and expected

to go on till after the new Constitution is passed. The two clauses provide for the.....

Mr. Naziruddin Ahmad: It must be clauses (4) and (6)—not (2) and (3).

Shri Alladi Krishnaswami Ayyar: I am obliged to you for that.

The two clauses provide for the reservation of the Bill for the consideration of the President and the President exercising his judgment and giving his assent to the measure. The President is expected to see that the Bill conforms to the main scheme of article 24 and unless the measure is in compliance with the principles as to compensation appropriate to the nature of the subject-matter dealt with by the legislation, he is not expected to give his assent to the measure. The assent of the President in the context and under the circumstances is not a formal assent. If he is satisfied that the Bill has not done justice in the sense and to the extent I have already indicated to the proprietory right of the people who are deprived of their property it will be his obvious duty to withhold assent.

Instead of leaving the matter to be litigated in courts and having regard to the large class of people that are likely to be affected by the legislation, the delay, the trouble, expense and misery that might result from the matter being canvassed in different courts, a conclusive effect is given to the legislation as a result of the President's assent. I am not acquainted with the details of the U.P. measure and I am not in a position to pronounce upon the justice or otherwise of the measure. A reference is made in the clause to a Bill because it is expected in the normal course that the Bill would not pass into law but would be pending when the new Constitution is passed. An appropriate provision may have to be possibly made in the transitory provisions to the effect that a Bill pending on the date when the Constitution is passed may be taken over and continued even after the new Constitution comes into force.

The last clause is obviously intended to deal with the Madras Estates Abolition Act and the Bihar Act. Already notices have been given challenging the validity of the Act. The Act itself is admittedly incomplete in several particulars even according to the views expressed by the Madras Government and possibly defective. The position as taken up by the Madras Government is to the effect that they are authorised under the provisions of the Act to notify several estates and take possession of them without paying any compensation as a condition of their taking possession. It is alleged on behalf of the Government that under the provisions of the Act, they can take their own time for the payment of compensation until after the survey and settlement operations are over which may take several years. The Government have not paid even a portion of the compensation simultaneously with their taking possession of the estates and it is stated that they are advised that they cannot pay compensation even on agreements being executed by the landholders to the effect that any amount paid may be adjusted as against the compensation that might ultimately be found due. The Act provides for rules being made in regard to certain matters connected with the payment of compensation and it was given out in the papers that at the time when the assent to the Madras measure was given it was on the understanding that the rules would be made as early as possible and that the same would be placed before the Governor-General. The non-enactment of these rules however, according to the view of the Madras Government does not stand in the way of their taking immediate possession.

From the papers, I gather that notices of suit have been served by some of the landholders challenging the validity of the Act. If under these circumstances the law is allowed to take its own course and the various proprietors affected are to start litigation, it will take several years before this issue is

[Shri Alladi Krishnaswami Ayyar]

finally settled by the Supreme Court. To say the least, there can be no certainty about the chances of litigation in courts. One court may decide in favour of the Government. Another court may decide in favour of the proprietors. Clause (6) is intended to give a quietus to all future litigation by providing for a certification by the President. Having regard to the large classes of people affected by the legislation, the future of agriculture and the agricultural prosperity in my province, I accord my full support to clause (6) as moved by the Honourable the Prime Minister. On several occasions, I have expressed myself against the Madras measure and I might mention that I am a small proprietor who is vitally affected by the Madras legislation. If the matter is viewed merely from the technical point of view, the proper course may be to have section 299 of the Government of India Act 1935 amended in an appropriate manner or the law passed by the Madras legislature may have to take its own course until the decision of the final court of appeal. But, I felt that the clause as moved by the Honourable the Prime Minister enabling the Government to seek the certification of the President will put an end to litigation. The President would and could grant the certificate only if on examination of the provisions he is satisfied that the measure conforms to the provisions of the Constitution and the landholders affected are getting as speedily as possible a fair and equitable compensation, taking all aspects of the matter into consideration, for the property of which they are deprived. If the President suggests an amendment and the Government or the legislature concerned do not choose to accept the suggestions as to the amendment, it will be the obvious duty of the President to withhold certification and the matter will have to be fought out in a court of law. I do not believe that a Ministry with a sense of responsibility will choose the latter course of fighting out the matter in a prolonged litigation, instead of remedying the defects if any pointed out in a speedy and easy manner. It is in the firm belief and hope that wise counsel will prevail and that the Government will take a broad and just view of the matter that I am supporting the clause as put forward by the Prime Minister.

A few words on the general aspects touched by the Honourable the Prime Minister. Though a lawyer by profession, I may claim I have never approached law in a legalistic spirit. Law according to me, if it is to fulfil its larger purpose, must serve as an instrument of social progress. It must reflect the progressive and social tendencies of the age. Our ancients never regarded the institution of property as an end in itself. Property exists for Dharma.

(At this stage, Mr. President resumed the Chair.)

Dharma and the duty which the individual owes to the society form the whole basis of our social frame-work. Dharma is the law of social well-being and varies from Yuga to Yuga. Capitalism as it is practised in the West came in the wake of the Industrial Revolution and is alien to the root idea of our civilisation. The sole end of property is *Yagna* and to serve a social purpose, an idea which forms the essential note of Mahatma Gandhi's life and teachings. In the fervent hope that the amendment will further social progress of the teeming millions of the agricultural population of this country, I accord my whole-hearted support to the proposition as put forward by the Honourable the Prime Minister.

Shri Syamanandan Sahaya: (Bihar: General): Mr. President, Sir, I stand here with a certain amount of trepidation, not being quite sure of what reception my view-point will receive this morning.

Pandit Balkrishna Sharma (United Provinces: General): Do not worry.

Shri Syamanandan Sahaya: I have however sufficient confidence in the wisdom, the sagacity and the prudence of this House not to deter me in spite of Pandit Balkrishna Sharma to express myself freely and frankly on the issues that are at present under consideration in this House.

Pandit Balkrishna Sharma: I was only encouraging the honourable Member.

Shri Syamanandan Sahaya: Sir, it is fortunate in many respects that the amendment has been brought up by the Honourable the Prime Minister of India, fortunate in the sense that he is endowed with the gift of transcending all formalities, and false notions of prestige in achieving an objective, in accepting a proposition even if it runs counter to his own and unfortunate also in some respects because the scale against the proposition which I am placing before you has been very much overweighted indeed. I shall, therefore, proceed with the handicap but in the hope that my appeals will receive in proper quarters the consideration that they deserve. Even though Panditji is not present in the House at present, I understand he has placed the portfolio in the hands of another able man—that of the Premier of the United Provinces of Agra and Oudh. I shall make a special request to him to consider the few points which I raise in this House and to give it such consideration as it properly deserves.

A lot has been said in this House about private property, about changing conditions, about the impact of time, about the forces that surround us. I have heard them all with great respect and great attention. But without commenting in any great detail on them, I would like to tell this House that the recognition of the right to private property was a thing that was evolved as society grew up. It was not something which dropped all on a sudden from the high skies and in fact the recognition in olden times of the right to private property was a recognition of the principle of right over might. Friends might not agree with me. It is not my purpose here to detain you long over this controversy and perhaps now a hackneyed question; but even so I would be failing in my duty if I did not impress on you the fact that it is really not so simple as some critics think to come here and say that this theory of private property is an exploded one. Whether we like it or not, whether we accept it or not, the fact remains that if you dispose of property as something not deserving of consideration, you really go back to the 'Might is right' theory. It might have at one time the physical might—today it might be the numerical might.

I fully concede that socialisation of the means of production is a sure and certain stage in the evolutionary process. It must come. My only quarrel is with those who want to take it away from the evolutionary process and desire to bring it by revolution. I disapprove of the methods which seeks to hustle it into being. Sometimes my socialist friends begin to act in this manner and behave like the young man in a hurry, with the great risk of not only missing the bus but also missing the ceremony at the Church. It requires a great technique to decide what is the proper occasion for bringing about this important change in the structure of society. If you pluck a mango a day too soon before it is thoroughly mature you lose the sweetness, the fragrance and the flavour of it, although you might have the satisfaction of possessing the mango and eating it too. I claim that the time for taking up that great stride for socialisation and nationalisation of all means of production is not yet come It has been accepted by some of the greatest thinkers of socialistic theories that individual enterprise must have its fullest play before you can adopt socialistic methods and socialist means of production.

I ask every friend, I ask every sincere friend to whom the country, and not a slogan, is dear whether really we have moved forward to an extent where it might be possible for us to distribute the wealth of the country. Today if we

[Shri Syamanandan Sahaya]

start distributing in the words of the Honourable Prime Minister, the mover of this amendment—it will be distributing our poverty alone, for that is what we possess. Man in the ultimate analysis must be the sole consideration and not only man but man with his psychological bearing. If you remove the incentive of the development of private property, you reduce the man ultimately to an automation. You may have some results to begin with but I feel confident that it will not stand the test of time. Even in countries where this method was adopted, people are beginning to visualise that it is useful to allow the man to have some private property and some incentive for the development thereof.

Now let us take the land problem. I concede that the position with regard to socialisation and nationalisation of land is not the same, is not on a par with that of industries. Industries have not been worked enough but land has been. Our difficulty however is that once we start on this errand, we frighten others and then we do not know where to cry halt. Suppose you eliminate a few zamindars what happens next? The wealth of the land is still concentrated in the hands of a few as compared to the very large number who are still landless. The question therefore which I might ask is how long, how often and to what extent are we willing to go to bring about the equilibrium.

Some friends have characterised property as theft. Sir, this I attribute to ignorance. They do not realise that most of the property held now is really purchased property, whether it be landed property or otherwise. Land was the safest investment till a few years ago and the hard-earned savings of the people were invested in land. It was supposed to be an insurance against old-age, against sudden calamities, for widows and for orphans. It is another matter if we decide upon taking away those properties; but let us not go to the extent of characterising property as theft. That, in my humble opinion, would be a very wrong conception of property as it has evolved.

Another friend from Madras seemed to think that he had made a great point by saying that zamindars who started with an income of Rs. 40 lakhs in that province were now having an income of Rs. 240 lakhs. But let me point out to my friend that he has taken only one figure, namely, the figure or income at the time the zamindari settlement was made and now. If he had only cared to see another figure, then he would have been satisfied that he was not making any point at all. That figure is the figure of the land under cultivation at the time of the zamindari settlement and the land under cultivation now.

Shri Kala Venkata Rao : (Madras : General) : I know these figures, but can the honourable Member enlighten me how this will improve the situation?

Shri Syamanandan Sahaya : I hope to be able to convince my friend a little later and show how it will improve the situation. If he had ventured on that enquiry, he would have found that land under cultivation now is much larger than what it was. Might I ask how all this land came under cultivation? Was it by a magic wand? It might be contended and perhaps rightly, that it was due to the tenant, the iller of the soil. I concede that. But who provided the wherewithal? These, Sir, are questions which I think must be taken into consideration by those whom Providence, today has placed in authority to consider what developments, what procedure, what changes should be brought about in the revenue system of this country. Luckily, Sir, for the zamindars, there are two types of land revenue systems in this country. One is the *ryotwari* system where there are no landlords and the other is the zamindari system. If you compare the condition of the tenantry of both these types of land revenue systems, if you compare the rent payable by the tenants under the *ryotwari* system and the rent payable under the zamindari system, you will

find that the condition of the tenantry in the ryotwari areas is in no way better than that in the zamindari areas. I am quoting, Sir, from a commission known as the Floud Commission in Bengal which ultimately decided upon the abolition of zamindari. Even they made it quite plain that the condition of the tenantry was in no way better in the ryotwari area. You will be surprised if you compare the rents in the ryotwari areas with the zamindari areas. In the Province of Madras, the average rent varies from Rs. 6 to 7 per acre and for wet lands it varies from Rs. 10 to 12 per acre, average; whereas in the permanently settled zamindari area in Bihar, Bengal and other places the rent is between Rs. 3 to 4 per acre.

Shri Biswanath Das (Orissa : General) : Sir, I rise to a point of order. It is this. We are here discussing the question whether or not to have article 24 which is a rider on item No. 9 of the State List in Schedule Seven. There is no Bill relating to the acquisition of zamindari lands pending before us now to be discussed so as to compare and contrast the levels of rents in zamindari and ryotwari lands. Therefore, such comparisons and discussions are out of order.

Mr. President : Other speakers have dealt with the question in a general way and I cannot prevent a representative of the zamindars from putting forward his view-point.

Shri Syamanandan Sahaya : Sir, as a matter of fact, the real position is this. Article 24 is being considered and it deals with compensation for private property, and it has been suggested more than once that compensation need not be given and that right to private property need not be respected. Land is one kind of private property. Therefore, apart from the consideration that other people have spoken on the subject, I think I am entitled to speak and say that private property should be respected and full compensation paid in case of acquisition.

Mr. Naziruddin Ahmad : It has even been maintained that zamindari is no property.

Shri Syamanandan Sahaya : Now, Sir, there is another kind of private property and that is industry. We have heard a lot about industrialists having made a lot of profits. Our friends and critics have only given attention to the profits which industries or the industrialists are making, but have they considered what they do with these profits ? If I may say so, the answer is simple —mills and more mills. In fact if you wanted to describe the present-day capitalists in this country, you can give no better or worse description of them than call them the members of a "Mill Multiplication Society." I ask my friends to consider whether this is a good or bad for the country. We are faced with tremendous difficulties. Every day we hear that there must be full production and more production. How is that to be achieved overnight, if we begin socialising all means of production and give no chance to private enterprise to do its best ?

I must, therefore, Sir, congratulate our leaders on their sticking to the property rights and guaranteeing them under this Constitution. While I do so, I have a feeling that the new draft of the compensation clause aims at a certain amount of discrimination not only between property and property, but also between the same type of property. Whatever my Friend Mr. Biswanath Das from Orissa might say, the fact is, and it was made quite clear by the honourable Mover in his speech yesterday, that clauses (4) and (6) have been incorporated in the draft with the sole purpose of meeting the case of certain Bills and Acts in certain provinces. If Mr. Biswanath Das had cared to follow things in this country he would have known that they relate to land only.

[Shri Syamanandan Sahaya]

In this draft, we find an attempt to fight shy of our own judiciary. It is an accepted principle all over that the judiciary is the ultimate custodian and guardian, and the strongest bulwark of democracy. Would it therefore do, Sir, in the very beginning of our Constitution to lay down a procedure by which we might show, in howsoever small a measure, any disregard of or want of confidence in our own judiciary? There is no denying the fact, there is no need of emphasising the point that the judiciary cannot take over the powers of a legislature. It simply cannot. The judiciary can only interpret your law and interpret your law in a just and fair manner. Would it be wise at this stage, I may ask, would it be wise to make a provision with a view to clearly oust the jurisdiction of courts? Some grounds have been placed before us for this, and some difficulties have been pointed out.

Let us however not forget that the vital difference between democracy and other forms of Government like autocracy, oligarchy, etc., is that the democratic system of Government provides for fair and impartial justice not only between citizen and citizen but also between the citizen and the State. And what is the system that has been evolved for this purpose? I know of none else than the judiciary. I, therefore, submit that it will be wrong to concede, and to lay down, that the jurisdiction of law courts should be ousted for any purpose.

Now, Sir, the difficulty which has been envisaged by the Honourable the Mover is mostly what he calls 'dilatory and financial'. The Mover in his speech said that "if we allow these Acts to be considered by law courts it will involve us in such prolonged litigation that we shall never be able to carry out any reform at all and if we pay compensation according to market rates we shall never have the financial wherewithal to undertake zamindari abolition"—I respectfully differ from him. The Government cannot be deterred by any prolonged litigation for the simple reason that the Government can any moment make a legal provision that they shall pay whatever compensation they consider fair, but if later on the courts decide that a higher compensation should be paid the Government will pay it. This is no new procedure; it is already followed under the Land Acquisition Act. The Land Acquisition Officer makes an award, takes over the property and if ultimately the judges decide that more compensation should be paid the extra amount is paid to the party. Therefore, the question of prolonged litigation should not stand in the way of the reforms that we propose to undertake in the matter of land in this country.

Now, let us take the financial aspect. Of the three provinces with which we are at present concerned and for which I am told clauses (4) and (6) have been particularly drafted, we find that in the case of Madras there is no financial difficulty at all as the Honourable the Prime Minister and the Revenue Minister of Madras have made it quite plain on more than one occasion. The total financial requirement according to them is only about Rs. 15 crores, which for a province like Madras ought not be difficult to find if not in one year, at best in two or three years. In the United Provinces the Honourable the Premier and the Members of his Cabinet have evolved a scheme which, I suppose, is going to bring them more money than they would require to pay the zamindars. It will be a kind of what you call an improvement trust scheme where ultimately the trustees gain rather than lose. In Bihar the position, in my opinion, is comparatively simple, because the Government there desire to take up for acquisition larger estates to begin with and with the sayings made from them, they propose to acquire smaller estates. They have even made a statement to the Government of India that they do not at present (perhaps

I am using the word "at present" as my own and not that of the Government of Bihar) propose to take over zamindaris of less than Rs. 5,000. If that is so, the problem of payment of compensation even in Bihar is not a difficult one.

I submit, therefore, that neither the prolonged litigation problem, nor the financial problem is so difficult that without making a provision of the nature, I have been discussing here, in the Constitution, it will not be possible to undertake land reforms.

Sir, I believe our administrators may be genuinely and sincerely apprehensive of these difficulties. If the proposals are the same today as they were, I feel no apprehension whatsoever in any of these Governments undertaking the land reform even with the financial resources that they possess.

Let us now see how the country and the Congress have been looking at the zamindari problem and the compensation to be paid in case of acquisition. I have no doubt that you will be aware that as late as the year 1915 the All-India Congress passed a resolution which I would like to read out for the information of the House.

It runs thus :

> "This Congress is strongly of the opinion that a reasonable and definite limitation should be put to the demand of the State on land and that Permanent Settlement be introduced in all areas, *ryotwari* or zamindari, where that settlement is not in force, or a settlement for a period of not less than 60 years be introduced."

Some friends, Sir, seem to think that 1915 has long gone by and that I am harping on something which is long since dead and gone. But I feel that it would not be wise not to consider the opinions held only about 35 years ago particularly about such an important matter.

However, coming to recent times I may recall to you, Sir, a statement made by Sardar Patel as late as 1939, at Brindaban, where you and Mahatmaji were also present. Referring to the abolition of zamindari system the Sardar maintained that the national and economic salvation of India did not lie in it. The Congress Manifesto, though it advocated the elimination of the intermediaries between the State and the tiller of the soil, recognised—I am using the language of the resolution—'that the rights of the intermediaries should be acquired on payment of equitable compensation.' As late as 1948 and 1949 (on the 6th of April in both years) the Honourable the Prime Minister of India made two policy statements in both of which he clearly stated that any acquisition of private property would only be on the basis of fair and equitable compensation. Equitable compensation therefore seems to be a recognised fact.

What is really perplexing to me is who is to decide what is equitable compensation. The State is taking over the property; the citizen is involved. Will the State be the final arbiter ? The State may set up any machinery for determining equitable compensation, but it has to be other than the Government itself. An honourable Friend speaking a few minutes back said that some kind of administrative tribunal might be set up. We have nothing to say against it. But where it is a matter between the State and the citizen some machinery, be it judicial, or be it an administrative tribunal, should be devised which would decide what equitable compensation is.

Now, Sir, let us come to the Constituent Assembly itself and scrutinise the views expressed and the principles accepted here. In the Objectives Resolution which we passed here we laid down quite clearly what the constitution will strive for and what it will guarantee to the citizens of the State. It guaranteed among other things equality of status before the law. Now, Sir,

[Shri Syamanandan Sahaya]

if we weight clauses (4) and (6) of this draft on the scale of this guarantee, I have no doubt the House will concede that there is no equality of status so far as clauses (4) and (6) are concerned. It does not even given us an opportunity of going before a court of law, much less claiming any equality before it. And for what? Not for considering whether the compensation is fair or not. Only clause (2) lays down the principle of payment of compensation. At no other place have we said that compensation shall be paid. And clauses (4) and (6) say that "the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article". Now, the contravention might be of the entire principle of compensation. Even if a province, for instance, decides not to pay any compensation, such contravention cannot be taken to a court of law. The other day the Honourable the Prime Minister speaking on this particular part of the draft said that it has been provided that if there is a fraud on the Constitution the matter can be taken to court. I will appeal to the legal luminaries present in the house and particularly to the Honourable Prime Minister of U.P. to consider whether clauses (4) and (6) leave any room open for a party to go to a court even if no compensation is paid by the legislature. If that is the position I submit that I have made out a strong case for amending this clause, if not for completely deleting it.

This point has been further clarified in discussions in this House and in clause 13(f) where we have guaranteed the "acquiring, holding and disposing of property" and further on in article 15 of our Constitution where we have guaranteed "equal protection of law" to everybody. I might ask; Is it equal protection of law to deny to one class of zamindars the right of justiciability with regard to the right of compensation for their acquired property and to give other zamindars—of other provinces—the same right? The fact of the matter is that only three provinces are affected. If, suppose, C.P. or Orissa or Bengal bring up a Bill for acquisition of zamindari later on, the zamindars of those provinces will have the protection of law. They shall have the right to go to a court and seek justice. On the other hand we in Bihar, U.P., and Madras are being denied that right. I might ask this House is it really "equal protection of law"? This, we have guaranteed; this we have already passed. Some friends might get up and say "Well, Sir, this House is a Sovereign Body and we can do anything". I would humbly point out to such friends that this House might have the right to make a fool of itself, but wise men will always counsel the House not to make that attempt. Sir, this is an important thing which we are incorporating in clauses (4) and (6). Even the amendment which Mr. Munshi had tabled, namely, that the President before certification may return the Bill for such amendment as he might consider necessary has not been moved by him. It therefore comes to this that President has either to accept the Bill or reject it. And it will be exceedingly difficult for any President to reject the Bill wholesale. I ask the Honourable the Premier of U.P. and other friends: Is it not right that some such provision must be made here which should authorise the President to give to the Legislature concerned his advice and opinion? Will it be fair to leave him only with the option of either accepting or rejecting it? I thought that on the very face of it, it was a proposition which could not be accepted. And there is time yet.

Shri Alladi Krishnaswami Ayyar: I thought that it was implicit in the provisions.

Shri Syamanandan Sahaya: There are many things which are implicit, but we want to make some things explicit also. I submit that this is a point which deserves serious consideration. The time has not been lost yet. I think there is still time when some such amendment to these clauses could be brought up, and with your express consent it could be done even now.

I know, Sir, that I have already taken a great deal of your time. But I would like to recapitulate our commitments before I conclude. As I said, there is the Congress Manifesto, the Policy Declaration by the Honourable the Prime Minister only in April 1949, the Objectives Resolution, the Fundamental Rights Committee Report where we have clearly accepted the principle of acquisition only on compensation, which we are not deviating from in clauses (4) and (6). Then there are articles 13(f) and 15 of our draft Constitution guaranteeing clearly that there shall be equal protection of the law for all citizens. Although perhaps it may be considered as a suggestion late in the day, I will submit that there are already amendments for deleting clauses (4) and (6) and it might be open to the authorities to consider the suggestions which I am making, even at this stage.

As I have said just now, the certification of the President gives him no option and I think it will ultimately come to this that he will have to accept the Bill. As you have given, Sir, twelve hours for the discussion of this matter I do not think I have, by the socialistic procedure, had enough time wherein I could place the point of view of zamindars. However, I will conclude now. But before I conclude I will again appeal to the authorities to consider the points which I have made not merely in the interests of zamindari but in the general interest of constitution-making. I am reminded here of an important point made by the late revered Pandit Motilal Nehru while he was arguing the famous "Searchlight" Defamation Case. He said it was not only necessary for the judiciary to lay down good law but it was equally important for it to create the confidence that the judiciary were laying down good laws and the interest of the citizen was safe in its hands. Sir, it is more important for the Legislature and even more so for a Constituent Assembly that we should lay down only such law as will appeal to all sections of the people as being fair, just and equitable. I plead with the House to accept my suggestion for deleting clauses (4) and (6). If, however, I am not able to secure the approval of the House for my suggestion I shall content myself by exclaiming with Lord Byron that "my only solace is that our tyrants are after all our own countrymen".

Pandit Balkrishna Sharma: Mr. President, Sir, it is a curious thing that this proposition which has been moved by the Honourable the Prime Minister and supported by no less a jurist than Shri Alladi Krishnaswami Ayyar should have evoked a sort of conflicting opinion and emotions in this House. There are many zamindar friends here who are opposed to it because they think that there is something in this article which tries to tread upon their toes. Then there are other men like me who are really opposed to this amendment moved by the Honourable the Prime Minister because we think that this leaves certain loopholes which may make it difficult for our State—either provincial or Central—to do things with speed for the public weal and for the common good. Here we have laid down certain principles which cannot be justified on the grounds of the greatest good of the greatest number. Clause (2) of this article definitely lays down that for public purposes acquisition of property can take place but that acquisition cannot take place without laying down the principles for paying compensation or actually making payment for the things acquired. When this article says: "Property taken possession of or acquired shall not be taken possession of or acquired unless the law provides for compensation for that property or it fixes the amount of the compensation or specifies the principles", it clearly means that we are here leaving a loophole for a sort of legal quibbling. Shri Alladi Krishnaswami Ayyar has very definitely told us here today that this clause does not empower anyone to go to the court and question the decision of the Government on the ground that the compensation paid is inadequate or that the principle laid down is in any way inequitous or fraudulent. That is what the eminent jurist Shri Alladi Krishnaswami Ayyar told us.

[Pandit Balkrishna Sharma]

Now, if actually it is so, then why should we not accept the amendment which has been moved by my sister Shrimati Renuka Ray? In that amendment she has tried to clarify the issues by saying definitely that no law making provisions as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principle or the manner of compensation specified is fraudulent or inequitous. If really clause (2) of this article means what Shri Alladi Krishnaswami Ayyar says and what other jurists maintain, I think there is no reason why the Honourable the Prime Minister should not accept Shrimati Renuka Ray's amendment which makes the matter clear beyond any shadow of doubt. That is my first suggestion about the proposition before the House. As it stands the clause leaves several loopholes. That being so, all our protestations about either the judiciary stepping in or our making the judiciary a third chamber and things of that sort will do us no good, because the proposition as it stands is capable of being interpreted by interested persons in a manner which will put almost insurmountable obstacles in the way of social progress. Therefore, my submission is that while accepting this proposition we must also at the same time accept the amendment of Shrimati Renuka Ray.

If I have understood this article, it only means that we are hereby laying down the principle which will facilitate the activities of the State in the direction of doing some things for the common good and that no private interest shall be permitted to stand in the way of achieving that common good. This is, I believe, the essence of this proposition:

सर्वे भवन्तु सुखिनः सर्वे सन्तु निरामयाः ।
सर्वे भद्राणि पश्यन्तु मा कश्चित् दुःखभाग् भवेत् ॥

Sarve bhavantu sukhinah, sarve santu niramayah
Sarve bhadran pashyantu ma kashchit dukhbhag bhavet.

This is what we want to achieve. Let everyone in society, in this world, be happy. Let none suffer from any illness. Let everybody develop the capacity to see the truth and let nobody be unhappy. This is the prayer which has arisen from the enormous depths of Indian thought and this is the prayer in which we have believed from time immemorial.

Sir, this article I think is an attempt to embody that prayer and to make the way clear for the Government to bring about changes in our social and economic structure. But, as I have pointed out, clause 2 is defective. If it is not, as Shri Alladi Krishnaswami Ayyar says, then there seems to be no need for clauses (4) and (6). If actually we have placed the principles laid down in the article beyond the jurisdiction of the courts of law, then clauses (4) and (6) are absolutely unnecessary. But we have brought in these clauses simply because we wanted to ensure certain social legislations which are on the anvil or may be on the anvil in the United Provinces and in the Presidency of Madras. Therefore we think that there may be something in clause (2) which may militate against our efforts in this direction. Now if we are here discussing that proposition with such reservations, then I would beg of the House not to do so and to make it absolutely plain beyond any shadow of doubt by accepting the suggestion put forward by Shrimati Renuka Ray.

Many questions have been raised here about property: there were questions about the sanctity of private property; questions about private property being an incentive for work and for development of society and also questions about the undesirability of bringing on the Statute Book laws which will take away that incentive which an individual would feel only if he is assured that his

private property shall not be touched. These are questions which raise fundamental issues. The one fundamental issue now before the House is what sort of social concept we shall have and what sort of social concept we shall not permit to be incorporated in our Constitution: this is philosophy more than anything else—philosophy behind a certain idea or a certian line of action which ultimately influences the conduct of society as a whole. We have seen that in the early nineties the idea brought by Darwin—Survival of the fittest—was accepted as true. This truth was borne out by biological developments and by the observations of those scientists who for the first time brought before society the theory of evolution, that nature was red in tooth and claw and that it was only the fittest who could survive and that it is war to the knife. Now, this philosophy, this idea, got hold of the mind of the Westerner to such an extent that everyone of the nations there tried to be the fittest by way of increasing their armaments, with the result that within twenty-five years or thirty years two devastating wars engulfed them, overtook them. We have to see whether that concept of society, that the fittest alone will survive, was right. Subsequently we have found that it is not only the principle of the survival of the fittest that was working in nature but also that the principle of mutual aid was there, that whereas nature was red in tooth and claw, yet nature was mother also, that nature knew how to fondle the child, how to render help to the helpless, and that those principles also were working in nature. Similarly if we today stand up here and say "No, property is sacrosanct, property shall not be touched and any attempt to touch property will violate the principles which have been sanctified by tradition", then I would like this House to know that this is not the way in which your forebears looked at this question. You must remember the famous saying in the Bhagavad Gita—

यज्ञ शिष्टाशिनः सन्तो मुच्यन्ते सर्वकिल्बिषैः ।
भुंजते ते त्वघं पापा ये पचन्त्यात्मकारणात् ।।

Yajna shishtashinah santo muchyante sarv kilbishaihi.
Bhunjate te twagham papa ye pachantyatma karnat.

The *Gitakar* has definitely stated that they are thieves and sinners who have only their own comfort before them in acquiring property and who forget that ultimately the whole society has been created with the spirit of Yajna, with the spirit of sacrifice, with the spirit of mutual aid. As you know, the *Gitakar* has very definitely stated—

सहयज्ञाः प्रजाः सृष्टवा पुरोवाच प्रजापतिः ।
अनेन प्रसविष्यध्वं एष वोऽस्त्विवष्ट-कामधुक् ।।

Sahayajna praja srishtwa purovach prajapatihi.
Anena prasavishyadhwam eshawo stwishta Kamadhuk.

Prajapathi created this whole universe.....

Mr. President: I am afraid the honourable Member has become too philosophical for the House. Let him confine himself to the Resolution.

Shri Kala Venkata Rao: Being so conversant in Sanskrit, I hope that he will be prepared to support Sanskrit as the national language!

Pandit Balkrishna Sharma: Knowing as I do that the honourable Member is a Sanskrit Pandit, I am prepared to let him have advantage over me. However, as I said, Sir, the idea behind all this is that the whole society has been borne with the spirit of sacrifice and, therefore, if anybody, whether he be a zamindar or a capitalist, stands up in the House and says that his rights are to be safeguarded, are to be protected, then I think he is not true to his own traditions, to his own spirit of the past, which has sustained him throughout the dark ages, and therefore to my zamindar friends I would say, do not look at this question in a pettyfogging manner.

We, as a State, we as a political party, have a great responsibility upon us. If we make the acquisition of certain properties justiciable and the acquisition

[Pandit Balkrishna Sharma]

of certain other sort of property non-justiciable, then we will be laying ourselves bare to the attack that we are here definitely giving a sop to one section of the society, the capitalist section of society. Does clause (2) mean that we are keeping the door open for the capitalist to go to a court of law and claim that the principle on which compensation has been decided is fraudulent or that the compensation which has been given is not adequate or equitable? Is this the meaning clause (2)? If this is the meaning, Sir, then I beg to submit we should not be surprised if our opponents come and say that we are acting as mere stooges of the capitalists. If we do not mean it, then we must say in no uncertain terms that no law which makes such provision for the acquisition of property for social purposes shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles on which that compensation is to be paid are fraudulent or inequitous. That is what I want to submit. If we do not make this clear, then I think we are paving the way for very serious consequences to overtake and invade us. With these words I oppose the motion and I request the Honourable the Prime Minister to accept the amendment which has been moved. With that amendment, this will be an ideal proposition before the House and therefore I will have no compunction in giving my full-throated support to the proposition, but unless this point is made clear, I cannot bring myself round to the view that this should be accepted by the House.

Shri Jagannath Baksh Singh (United Provinces: General): Mr. President, Sir, I move an amendment for the deletion of clause (4), but according to your ruling, and in view of the fact that general discussion has commenced, I shall speak in general mainly on clause (4). I am equally opposed, I may submit, to clause (6) of this amendment, but as I understand that there are several honourable Members who know better about that clause, I shall only endorse their arguments and not speak to the House on that aspect of the amendment.

Sir, compulsory acquisition of property has hitherto been governed by the provision of section 299 of the Government of India Act, 1935, as adapted by the Indian Independence Act and the consequential orders. This section has not so far been taken into use in acquiring property. I think the property so far compulsorily acquired has been under Act I of 1894, *i.e.*, the Land Acquisition Act. Regarding the main question of justiciability of rights, there are two provisions in section 23 of this Act which I may mention here. Section 23 Sub-section 1 provides that market value shall first be taken into consideration in determining the compensation for the land acquired; Sub-section (2) further lays down: "In addition to the market value of land as provided above the court shall in every case award a sum of 15 *per centum* on such market value, in consideration of the compulsory nature of the acquisition."

Over and above this, there is a proviso attached to section 35 of the same Act which reads thus: "In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof; the Collector shall refer such difference to the decision of the Court."

These, Sir, are the provisions for "adequate" or perhaps more than "adequate" compensation for the acquisition of private property under an Act enacted by what might be called an executive-ridden body of legislators, and being worked under a constitution which is based on the principle of the supremacy of the executive over the judiciary.

Is it not a contrast full of ironical significance that this constitution which is streamlined for its respect for the Rule of Law, which claims to guarantee the individuals right of access to the judiciary should contain a proviso like clause (4) of the proposed amendment which prevents judicial redress against interference by a State Government with one of the basic rights of man?

Clause (4) lays down two principles for such States where Zamindari Abolition Bills are pending before the legislature at the commencement of the constitution. These are : Firstly, transfer of power to the State Governments to lay down the principle and method for the determination and payment of compensation; secondly, exclusion of the jurisdiction of the law court to question the principle and method as laid down above. Shri Alladi Krishnaswami Ayyar, whose opinions on legal matters are rightly taken as authoritative has made a clarification of article 24 as it stands amended today. For a layman like myself, it may not be quite possible to judge the implications of the opinions expressed by him, but as I have submitted, I am mainly concerned with clause (4). With reference to clause (4) Shri Alladi has said that this particular clause concerns a Bill in the United Provinces. He however, admitted that he was not aware whether that Bill contained provisions which are just or otherwise. Shri Alladi and other eminent lawyers and persons were members of the Fundamental Rights Committee and the Bill of the U.P. came long after the report of the Fundamental Rights Committee. I take it that they too are not supposed to know thoroughly about the Bill. I may take it that other members of the Drafting Committee too are not aware of the implications of the Bill which is pending in the U.P. Legislature. It may, not therefore be out of place if I go into some detail regarding the Bill which is before the U.P. Legislature. I submit that I shall not go into intimate details.

That Bill, is a voluminous piece of legislation and it contains 310 clauses, including sub-clauses which may go to a thousand, and this House has no time to listen to the details of that Bill. Taking that into consideration, I have decided to speak on two points and that too very briefly. The two points are, firstly the effect of compensation and secondly how far it expropriates the proprietors of their rights. Sir, the area of the United Provinces is roughly 6 crores of acres, and 59 per cent. of this is under the tenants who are going to get transferable rights. One per cent, is under the cultivating possession of zamindars, who are going to get that land for their living. This one per cent. works to about 3.74 acres per family of a Zamindar of whom there are about 20 lakhs of families according to the Government figures and 23 lakhs families according to our estimate. This comes to 60 per cent. of the area of the land in the U.P. The zamindars are treated as intermediaries with respect to 59 per cent. of the total area. Taking the meaning of the word "intermediary" as a person who stands between the State and the cultivator of the land, 59 per cent. of such land is under the rights of intermediaries. The remaining 40 per cent. of land 216 lakhs of acres is culturable waste for which the Zamindars have a direct settlement with the Government. Here there are no cultivators and therefore there are no intermediaries. Now, in respect of the 59 per cent. of the total area where the Zamindar is an intermediary between the Government and the tiller of the soil, the compensation which is proposed to be given is briefly eight times the net profit of every estate. Provision has been made for the payment of rehabilitation grant of different multiples on net income below Rs. 5,000 land revenue. About Rs. 5,000 there is only eight times, but on the top grade the payment of compensation will be only three times the net profit. I say so according to a statement of the Honourable the Premier of the United Provinces himself at a press conference held in Lucknow on June 10. Those persons who are going to get three times of their net profit, their compensation will work out to 75 per cent. of their annual income. For instance, a person whose income is a Lakh of Rupees will get Rs. 75,000 as compensation for the whole of his property. Calculated at 2½ p.c. interest per annum, this will mean an income of Rs. 1,875 per year in place of Rs. 1 lakh as now. This is the position regarding compensation for acquiring 59 p.c. of the area of the U.P.

[Shri Jagannath Baksh Singh]

In connection with the remaining 40 per cent. of the land with respect to which, as I have submitted, the Zamindars are not intermediaries, the Government is going to acquire that land without any compensation. This is about two crores odd acres which bears pastures, miscellaneous trees, jungles, forests, water reservoirs, wells and other works and constructions for the improvement and development and the waste lands as well as the cultivated areas, yielding no less revenue than the cultivated land. All this land is going to be acquired without any compensation and it may be noted that this expropriation hits the smaller Zamindar in a much greater degree than bigger ones. I shall place one particular point before the House.....

Shri Mahavir Tyagi (United Provinces : General) : May I know if that land pays any land revenue ?

Shri Jagannath Baksh Singh : Land revenue is being paid on that land as it is paid on the cultivated land. Those Zamindars who have purchased these lands have paid price for it, and their income from these areas, apart from being assessed to land revenue, is subject to income-tax by the Central Government which put the value of the land beyond doubt.

Mr. President : I would ask the honourable Member not to go much into the details of this particular Bill.

Shri Jagannath Baksh Singh : I would not go any further. Now, Sir, this point is not perhaps of a detail, and does not concern any particular province when I say that the acquisition of Zamindaris is being effected as a part of the Congress pledge to abolish the intermediaries between the State and the tiller of the soil. This pledge embodied in the congress election manifesto of 1945-46 has been repeated frequently in the legislatures and outside. I do not propose to take the time of the House in reading out that resolution. But, I may submit here for the information of the House that with a view to implementing that pledge the U.P. Legislative Assembly, on the 8th August 1946, passed a resolution. This resolution says :

"This Assembly accepts the principle of the abolition of the Zamindari system in this province which involves intermediaries between the cultivator and the State and resolves that the rights of such intermediaries should be acquired on payment of equitable compensation"

(These words may be marked)

"and that the Government should appoint a Committee to prepare a scheme for this purpose."

Now, this resolution was moved by the Honourable the Minister of Revenue, and the Honourable the Premier of U.P. in a fairly long speech supported this resolution. In his speech he said, (he spoke in Hindustani) "*Hamara farz hai ki hum Zamindaron ke sath insaf karen*" which means, "it is our duty that we should be just to the Zamindars. It is our *dharma* that we should be just to the Zamindars." We laid much store by his words and the implications of this resolution. I shall make no comment on this. I shall only leave it to the House to judge whether the conditions of compensation and expropriation which I have very briefly described go to prove the fact that the Zamindars of the U.P. are getting an equitable compensation as the Government stated it to be their duty to be just to them. These are questions on which I need not pass any verdict. It is for the House to judge.

I shall in conclusion only say that the case of justiciable rights in respect of private property is unassailable. Paucity of funds is no argument against payment of compensation to the Zamindars when a State Government is making a clean profit of Rs. 45 crores out of sale to the tenants of transferable rights in the land acquired. Equality of treatment to all forms of private property is a principle to which this House stands committed by virtue of the declarations contained in the Objectives Resolution and the provision of article

15 already passed. May I point out, Sir, that even apart from being contradictory to the previous commitments of this House, the amendment if accepted, will stand out as an unprecedented outrage on the fundamental right to property which is deemed sacred and guaranteed by almost every important constitution of the world. There is therefore a moral obligation to delete clause (4) from this amendment as also clause (6) and provide for the payment of a fair and equitable compensation as a justiciable issue. Justice, Sir, should not only be done, nor said to have been done, but it should also seem to be done. With these words, I strongly support the deletion of sub-clauses (4) and (6).

The Honourable Pandit Govind Ballabh Pant (United Provinces : General) : Sir, a large number of amendments have been moved since this article was placed before the House by the Prime Minister. The article has been attacked for various reasons. Many of these amendments run counter to each other and are altogether contradictory. Some of the speakers were not satisfied with the clause, because it concedes too much, while others thought that the compensation that was admissible under it was illusory and not likely to satisfy them.

I think there is still some misunderstanding in spite of the clear exposition given by Shri Alladi Krishnaswami Ayyar and the weighty speech made by the Prime Minister when he moved this article. Raja Jagannath Baksh Singh, the leader of the Zamindari Party in my province, who is also a member of the Joint Select Committee which is considering this Bill, desires that compensation for Zamindaris should be paid in accordance with the principles laid down under the Land Acquisition Act, that is, that the Zamindars should get the market value plus 15 per cent. After hearing him, I feel that we would have been really making a great blunder if we had not introduced clause (4). Vested interests die hard. But, sometimes, they are not even capable of taking a sensible view of things much less a generous view.

He has attacked the Bill that I had the privilege of placing before the U.P. legislature. But, before going to that Bill, as he has referred to the Government of India Act, 1935, and said that section 299 had never been put into force previously, I should like to make a few remarks in that connection. I think what I propose to say will disabuse him of some of his notions if he is still in a receptive mood about which I have my doubts. The Joint Select Committee had occasion to consider this question and what they said may satisfy him. In that Committee the question was considered at some length and what is an important general principle was accepted. There may be acquisition of an individual's property for a specific and a limited purpose. There may be general acquisition of a class of property for the reconstruction of a social order. The principles have to be determined in the light of the purpose, the circumstances and other germane and relevant considerations which have a bearing on these issues. Where the property of an individual is acquired for a post office or for a railway station or for a store-house he has to be paid in accordance with the Land Acquisition Act which prescribes a definite and precise yard-stick *i.e.*, he has to be paid the market value. But where property is acquired not for any such specific purpose but you acquire the property of large numbers of people, not for any productive purpose as such in a limited sense, but for promoting public weal, then the principles have to be devised with due regard for the purpose as well as for the occasion when such step is taken.

Now some friends have referred to the right of private property that is provided in this Bill. I would like to remind them of the Objectives Resolution that we passed on the first day. I would also like to remind them of the Preamble to this Bill. Some times we are apt to forget what is the basic and

[The Honourable Pandit Govind Ballabh Pant]

the vital principle,—the very soul of the legislation which we are undertaking and the Constitution that we are building here. In the Preamble we say—

"We, the people of India having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens justice, social, economic and political, equality of status and of opportunities and to promote among them all fraternity assuring the dignity of the individual and the unity of the Nation".....

I submit that the Zamindari abolition and Land Reforms Bill which we have introduced in our Legislature is designed to promote the social objective of our Republic. So when we judge its provisions we must bear in mind the supreme aim which our State has placed and defined for itself. I stand by every word that the Honourable the Prime Minister said and I repeat that we have no hostility against the zamindars. I for one, want to befriend them and want to be a friend to everyone. I feel we would not be discharging our responsibilities fairly if we deliberately wanted to cause injury to any particular class. So I stand for equitable compensation. Equitable compensation for everyone; but what is equitable compensation? That is the point. Equity cannot be defined in terms of any yard-stick. When we introduce a large measure of social reform, then it would be most inequitous to provide compensation on terms which the State cannot fulfil, which cannot possibly be discharged and which will either break down the machinery of the State or which will be crumbled under its weight. We have to guard against both these things. The capacity of the State is limited. After all, when we take a measure for the well-being of the people while we have to be just to every class, we have to bear the main purpose constantly in mind, and that is the welfare of the entire State and of the entire community. No class and no interest can be allowed to come in its way and if it does come, it will be crushed—it will collapse, it cannot stand.

So, I say when I am told that I promised to be just I claim that I have been just and I am prepared to place the U.P. Zamindari Abolition Bill before any Arbitration Board to examine its contents and to pronounce upon the nature of the compensation provided in it. If any person who is responsible and who can take a large view of things and who can bear the supreme purpose for which our State stands, constantly in view is pleased to take this trouble. I am sure—I am prepared to flatter myself with the hope—that he will compliment me for what we have done and I claim that those who have cared to examine it carefully have almost reached the same conclusion, and in our own province many people think that we have been too generous.

What after all is the compensation that we have provided. We have about 20 lakhs of zamindars so-called. For more than 19 lakhs we have provided 28 times their net annual income as compensation. Can anybody say that it is inadequate? You will find that no one who pays a revenue of Rs. 5,000/- or less is to get as compensation less than 10 times the net annual income. Is it unfair, is it inadequate and howsoever high the revenue paid by anybody, he is to receive no less than 8 times the net income. Those who are acquainted with the history of Zamindari must be aware that when the British first introduced this system, the zamindars were allowed to retain only 10 per cent. out of the gross assets collected by them and there were some who were asked to pay more than they could collect. So what zamindars are paying today or retaining today is only a creature of the Statute. In the olden days they had no status as such. The British Government to start with gave them only 10 per cent of net assets. I am prepared to give them 20 per cent. and to pay them at market value and they must be satisfied with that After all, what are these conventional notions about compensation? Do we ever try to go deep into them? What does compensation depend on even if you take market

value? Market value is more or less the creature of the State. If you demonetise your currency to-morrow, the market value collapses or it may rise hundred fold under a different set of circumstances. Since we took up this legislation for the abolition of zamindaris, the market value of zamindaris has gone down considerably and zamindars cannot get purchasers. Again, it is open to me, to the government, to impose land revenue to the extent of 95 per cent. of the total income, or impose agricultural income tax to the extent of 15 annas in the rupee. There is nothing to prevent any State from doing so. So, how do you define what is equitable compensation? How can you define what is reasonable in the circumstances? It is only a matter which can be determined in the light of all the relevant factors. So, let us not make too much of this mysterious and fashionable expression—'justiciable'—which seems to have possessed a large number of my friends today.

And even if you look at it from the point of view of justiciability, I may tell you that so far as my Bill goes, it enables the zamindars to approach the civil court. If the amount of compensation provided for them by the Compensation Officer is not considered by them to be justified under the Bill, they can go to the civil court. They can appeal to the High Court. So courts are not excluded. The jurisdiction of courts has not been set at naught. What we do desire is this. In spite of the best efforts that we have made to do justice, there are still these notions, not based on reason, but perhaps on prejudice or on self-interest of an un-enlightened character, that what has been provided for is altogether inadequate and meagre. And therefore it becomes necessary to have a clause of the nature of clause (4), for I know that our zamindars, and Taluqdars have still the lust for litigation. In the olden days, they wanted to indulge in bull fights or pigeon contests. Those days are gone. Now they have to fight somewhere and that is in the courts.

But when we are concerned with the solution of problems of enormous magnitude, affecting not hundreds and thousands, but literally millions, we cannot afford to indulge in such luxuries. Howsoever futile the results may be, the very process imposes a strain which should be avoided. Then, we have gone even beyond this. We have not only tried to give adequate compensation, but in addition to that, we are going to make the colossal effort to collect huge sums of money from tenants in order to pay compensation in cash, in whole or in part. I hope we will devise some method by which if we succeed in collecting the money such money will be used for productive purposes. But we are trying to collect the money. We have fixed for ourselves a target of about Rs. 150 crores to be collected in the course of a few months. That is what we propose to do. Does not that indicate our desire to be not only just, but also to settle this problem once and for all finally so that there may be no disputes over it in future. So far as the abolition of zamindaris goes, even if there were no general provision in the law, I would still have asked the House to make a specific provision so that there may be no difficulty hereafter. I concede that we shall have to pay equitable compensation to everybody.

But we do not want to be involved in litigation in any case, whatsoever, and I presume that if at any time this legislature chooses to nationalise industry, and take control of it, whether it be all the industries or any particular class of it, such as the textile industry or mines, it will be open to it to pass a law and to frame the principles for such purpose, and those principles will be invulnerable in any court. They will not be open to question, because the only condition for disputing them, as has been pointed out by Shri Alladi, one of the most eminent jurists which our country has ever produced, is this, that it should be a fraud on the Constitution. No legislature can commit a fraud on the Constitution. No legislature can sink so low as to commit a fraud on the Constitution. A legislature is meant to maintain and to uphold the Constitution. So, we should have no such apprehensions.

[The Honourable Pandit Govind Ballabh Pant]

I do not see why there should be any doubt in any quarter. Some friends think that this clause will stand in the way of socialisation. I do not know what is meant thereby. But Seth Damodar Swaroop who is, I think the accredited representative of the Socialist Party, has himself suggested that there should be no acquisition except by law and also that compensation should be paid. That is accepted even by Socialists. But obviously the State can give such compensation and such compensation only, as will be considered to be equitable, with due regard to the purpose for which the property is acquired and the circumstances under which it is acquired.

So, I submit to those who have moved amendments the other way, that they have no reason for apprehension. Whenever we socialise, we certainly will define and enunciate certain principles and those principles, you yourselves desire, should not be a fraud on the Constitution. So why should there be any difficulty? Why do you think that this clause will stand in the way? To-day our difficulty is that we want production, and more production and yet more of it, and we must not let ourselves to be obsessed by imaginary apprehensions, in utter disregard of hard realities of the day. Some friends here spoke about our re-gaining the confidence of the investor. I do not yet know why we have lost it. If the investor does not choose to invest, it is not because this Government has failed to do its utmost to reassure him. But if in spite of such assurances there are no investments, then I might as well remind the House that the provisions of article 24 go much further than those of section 299 of the Government of India Act. They felt no apprehensions so long as article 299 of the Government of India Act was there. The Government of India Act only dealt with compulsory acquisition of property, while our article 24 deals with not only compulsory acquisition of property, but also with our taking into possession of property for public purposes. So it goes much further.

When they had no apprehensions when section 299 of the Government of India Act was in force, I see absolutely no reason why this article 24 of our New Constitution should give them any cause for apprehension, disquite or distrust. It gives them greater assurance, and I say that, apart from anything, the Congress with its creed of non-violence stands for equitable compensation. But that equity is to be determined by the Legislature and not by the courts, because the Legislature alone is capable of taking that comprehensive view of factors which bear on such complicated issues. There is no justiciable material that can be placed before any court for obtaining its decision on such issues. In the circumstances no other forum can possibly be found. Sometimes we may have to take into account not only domestic conditions, but even international conditions. What has happened in China for example cannot be ignored when we are considering the question of abolition of zamindari in our country. What is happening in Burma cannot be ignored. But no court can be asked to go to Burma, to make an inspection and submit a report. No Commission can be appointed for that purpose. So we have to rely on the Legislature and if we have no faith in ourselves, then I say that we cannot find any satisfaction anywhere else. So my appeal to the House is to take this article in its proper sense and full import, to understand its extensive scope and also its limitations and to remember that everything that we do is in accordance with the objective that we have set before ourselves.

Shri Biswanath Das: Sir, very important principles, such as the utility, protection and preservation of private property, adequate compensation, constitutional safeguards and the like have been brought into the arena of our discussions today. To me the point seems to be very simple and I would appeal to my honourable Friends to pay pointed attention to that aspect of the question which has a direct bearing on our discussions.

The position is this. We have already accepted List II of the Seventh Schedule, known as the State Schedule, attached to this Constitution. Therein we have invested the States with the powers of undertaking compulsory acquisition if and when required. Item No. 9 relates to acquisition of property in the shape of lands. Attempts are now being made to restrict this power under the provisions of article 24 now under discussion. Therefore the question simply is that whether you are going to reverse, qualify or modify the powers that you have given to the provinces which are to be called States under the New Constitution, or allow the provinces or the States to continue to exercise those functions and those powers that have been vested in them under Schedule Seven attached to the Constitution.

In this connection I might invite the attention of Honourable Members to item 9 where practically the principle of compensation has been allowed and accepted. Two questions naturally arise. The first is whether the State is to give compensation or not in case of compulsory acquisition. To this the answer is provided in item No. 9 of the Schedule 7. Here we have differed from persons who hold the view that no compensation need be paid. We are not ashamed of accepting the principle that compensation shall be given for properties to be acquired compulsorily by the State.

Sir, having taken up that position, the other thing that is necessary and essential is whether the executive of the province is to take up acquisition themselves *suo motu* without having any power from the Legislature. To that, clause (1) of article 24 is the answer. I entirely agree with my honourable Friend from Bihar who pleaded with all vehemence that the rest of the article is unnecessary. I must frankly confess, despite all the respect and reverence I have for the Honourable Pandit Jawaharlal Nehru, that it is revolting to my sentiment to call this a Fundamental Right and bring it as a rider on the powers that have already been vested by a vote of this House on the States. You cannot have a cake and eat it too. You have provided for power under the Constitution to the States to legislate on certain aspects of the Constitution. Wherein lies the justification and the justice for you to come now and say "Well, my good boys, I have given you power, but here are the safeguards for the vested interests". To me this is a contradiction in terms. I must frankly confess and record my protest that you have already treated the States and State Legislatures with scant courtesy. You have given autonomy to the provinces, but you have wiped off the very autonomy which you have professed to have given them. The States are shorn of all the autonomy that they enjoyed even under the Act of 1935. To quote an instance, you have provided in this Constitution the powers to levy taxation, realise taxation and distribute it according to a certain principle to be decided by the President. The responsibility of levying taxation which is a responsibility of the State Legislatures has been taken away from the States. The responsibility of assessment, which is a responsibility of State Legislatures, has been taken away from the States. And now you come with another important proposal in the realm of provincial activity by taking away, in the guise of Fundamental Rights, the right to legislate on the question of acquisition of properties. Let there be plain speaking at least. Let us stand erect and say "Here are you, States. We refuse to confide in you. You can have your two hundred members for each State and have a salary of Rs. 150 for each member per month, but you shall not have the power to legislate either on assessing taxation or to legislate on anything worth the name". Until that is done I think we are not playing the role that is expected of us. How long are you going to keep the States spoon-fed in this manner? In many other provisions in the body of the Constitution, you have already provided to keep the States spoon-feeding. I warn you that so long as you resort to spoon-feeding you can never inculcate the sense of responsibility that you so much desire to have in the State Legislatures. The United States

[Shri Biswanath Das]

of America or Australia have given far more powers to the States. Is there any protest or any score that these powers vested in the States have been misused? Why then this suspicion on the future working of State Legislatures when you have not seen either in the present India or in any other part of the world any instances of such misuse in the working of State Legislatures?

Having stated so much about the responsibility that is going to be vested in the States. I now come to the actual body of article 24. I have my strongest objection to clause (6). This clause is an outrage on any sense of legislation, much less to speak of any constitution. Why should you at all have clause (6)? What is the sin that Madras and Bihar have committed? They have passed a legislation in terms of section 299 of the Government of India Act, 1935. The Government of India Act, 1935, lays down very important and essential safeguards in this regard. Provision has been made that previous sanction of the Governor is necessary. And these unfortunate Ministries have got this sanction for the Bills they introduced in their Legislatures. The Bills have been thoroughly scrutinized by both Houses of the Legislature which these unfortunate provinces have. When the Government of India Bill, 1935, was on the Parliamentary anvil it was justified in the House of Lords that second chambers have been provided because they will act as a check on any irresponsible work of the first chambers in Provinces. In these two cases both the Lower and the Upper House have approved these pieces of legislation of these Provinces. The Governors as also the Governor-General have been parties to it. Why then should you take the most unnatural course of putting to shame and disgrace these Legislatures by having to submit their Acts again for the approval of the President? Where is there any parallel to this outrageous act of the Constituent Assembly in this regard, in the matter of an Act already passed by the Legislature, approved by the Governor, assented to by the Governor-General, having again to be submitted to the President of the Union? This to me is an outrageous act on any Legislature—not to speak of Constitution-makers. I therefore record my strongest protest in this regard against clause (6).

Having stated so much about clause (6), I come to clause (4). Now compare and contrast between these three provinces. Why should you on the one hand kick these two provinces for their sin of having taken the earliest course of passing a certain pieces of legislation. This is a point on which I expected the Honourable Pandit Jawaharlal Nehru to furnish this House with an explanation. I waited to get that explanation but unfortunately there are none. Will at least the Drafting Committee do us the favour of explaining why this difference has been made? If clause (2) is so very innocent and innocuous and so very useful, why is clause (4) necessary? On behalf of the rest of the provinces of India, I record my strongest protest against clause (4). Why should you have clause (4)? You are making acquisition of zamindaris in other provinces like Orissa, Bengal, Assam and the rest of India impossible hereafter. Having read this many times more than some of the Members have attempted to do, I must claim that it will make acquisition of zamindaris hereafter, after a year, impossible under this Constitution. Zamindars, clever as they are, with their long purse, with their clever brain, their intelligence and intellect, and above all with the hired brain that India is capable of placing and talented Universities are capable of providing them, they will make this Constitution as a barricade against progress in future in this regard. I warn the honourable Members of the Constituent Assembly through you, Sir. And it pains me very much in this regard—even to the point of shedding tears—because I was the first in India to inaugurate tenancy organisations. I was running two tenancy organisations—the Andhra Zamindari Ryots' Association and the Presidency Proprietary Ryots' Association in Madras—two powerful tenancy organisations

in this regard from 1920 at a time when there was no talk of tenancy organisation anywhere in India. I thought that at least in Free India, though not in India under the bondage of Britain, we would be able to realise our aims. Two years after achievement of Freedom for India, I see that I am where I was in 1920. My apprehensions in regard to this article are the result of mature consideration of the same. The moment I assumed office I wanted to take legislation for the liquidation of zamindaris I recollect today that, when we were discussing this very question in Bombay at a conference of Ministers and I raised this question, one of the biggest guns of the Congress High Command pounced upon me saying: 'You are offering to pay compensation to the zamindars'? Sir, I stand where I did, but I find that a change has come over others. From the speeches of friends demand for fair and equitable compensation for the zamindars is put forth. What is a zamindari except an office. That is the view expressed in the Permanent Settlement Regulations. Sir, assuming it is not an office, look at the Prakasam Committee Report which was supported not only by the Lower House but also by the Upper House of the Madras Legislature. This monumental official Report speaks of the Permanent Settlement in terms of the Congress Resolution. We stand not only on our pledges given to the electorates, but also by the changes taking place resulting from our freedom in the country.

I would not detain the house longer. I know it is impatient. But, Sir, references have been made to election pledges. Yes, we have given pledges to the electorate and we have fought elections or those pledges. The question of zamindari abolition was stressed in our pledges to the people in the elections of 1937 and 1946. How are you going to honour that pledge? In the year 1937, in the Congress pledge we have unfortunately stated that we are going to fight the Government of India Act of 1935. Soon after the election we were called upon to assume office. I was one of the unfortunate few who assumed office and undertook to form a Cabinet. At that time the direction given to us was that we should create deadlocks and make the working of that Act difficult and impossible.

Sir, I must congratulate my honourable Friend the Chairman of the Drafting Committee and Shri Alladi Krishnaswami Ayyar and other friends for their expert knowledge of affairs and for having excelled all others in this matter of sugar-coating the provisions in such a way that they have made the impossible possible today. Look at the draft of the Constitution? You will find nothing there about the liquidation of the Act of 1935. If the Act of 1935 was so good that we could now so fully embody its provisions in our Constitution, were we, congressmen, fools when we resolved to fight that Act and create deadlocks? Anyway I must thank the members of the Drafting Committee for making us swallow this sugar-coated pill which contains nothing but that same Act of 1935. In these circumstances I have no option but to support my friends in demanding that except clause (1), every other clause in article 24 should be wiped off. If this is not done I warn my friends that we will not be able to liquidate the zamindaris anywhere except in the three provinces of Madras, Bihar and the United provinces.

Honourable Members: The question may now be put.

Begum Aizaz Rasul (United Provinces: Muslim): Mr. President, Sir, I am wondering whether after waiting for so long it is my good fortune or bad fortune to be called upon to speak of this very important and controversial matter after the speech of the Honourable the Premier of my province, Pandit Govind Ballabh Pant. But in a way I think it is just as well, because after my speech he will not be able to make any reply to anything that I might say about my province, though I feel sure that I stand on strong ground when I answer some of the remarks he has made.

[Begum Aizaz Rasul]

The Honourable the Prime Minister, in moving this amendment to article 24 yesterday, rightly remarked that few articles in the Constitution have evoked greater and more keen discussion than this article. There is no doubt that for more than a year Members of this House as well as people outside, have been greatly concerned as to the shape and manner in which principles regarding acquisition of property and compensation will be laid down in the Constitution. Sir, with due respect to the Honourable the Prime Minister I am constrained to say that the amendment proposed by him does not lay down principles based on fairness and justice. There are two principles laid down in this article: One is; acquisition of property, clause (1), and the second is the manner and mode of the payment of compensation, clause (2). Now, Sir, under the following article 25(1) it is clearly laid down that every person will have the right to approach the Supreme Court. This of course is not only in regard to acquisition of property but for every purpose. But ordinarily also any person has a right to file a suit attacking an Act authorising the acquisition of property if the compensation is not proper in his opinion. Therefore, Sir, my contention is that when a right has been given to every person living in this Union to approach the Supreme Court, to have recourse to justice, why should this right be taken away under clauses (4) and (6) from only those people who are being deprived of their property in the three provinces of the U.P., Bihar and Madras who are being subjected to legislation which will deprive most of them of their only source of livelihood. I contend that in the Constitution of a country such exceptions cannot be made and therefore I feel that if clauses (4) and (6) of this article are allowed to remain, it will be a great blot upon this Constitution. The Constitution of a country is not made merely for a few years, or to suit this programme or exigencies of a political party: it is made for generations and for all peoples and to keep a provision such as is provided in clauses (4) and (6) will not do credit to the Constitution-makers and will remain an ugly blot. Therefore I earnestly hope that wiser counsels will prevail and that such an absurd provision will not be included.

It may be considered by some people that I am speaking in this strain because I am being affected by it personally, but, Sir, I may say that, although my voice may be feeble in this House, I know that I am voicing the feelings and sentiments of hundreds of thousands of people when I say that such discriminating clauses should not find a place in the Constitution, many newspapers in India have written leading articles on this and expressed their strong disapproval.

The Honourable the Premier of the U.P. stated that the Zamindari abolition Bill that he has introduced in the House and which is now before a Select Committee of which I have the honour to be a member, can be shown in any court of law and that the provisions that he has made regarding compensation would be borne out to be fair by any legal authority. I may respectfully suggest to him that if this is the case, then why the inclusion of this clause (4) which, it is well known, has been inserted at his insistence? If he feels that he is on such safe ground that he can challenge any court of law about the validity, the fairness and the equity of the compensation that he is giving to the zamindars of U.P., then I submit that he should not deprive us of that right that is being given to every man under this Constitution to approach a court of law The Honourable the Premier of U.P. also made the remark that the Taluqdars of Oudh have a lust for litigation. Sir, I should have thought that that would have gone in our favour. If we share our riches with other people and help lawyers in getting rich, I do not think that we should be condemned for that, I had given notice of amendments for the deletion of clauses (4) and (6),

because I feel that such provisions, which are more on the lines of Parliamentary legislation, should certainly not find a place in the Constitution of a country.

My objection is based on two grounds; one is as already stated that certain provinces where legislation for acquisition of property is pending or has already been passed are being debarred from having recourse to the basic and fundamental right given to every citizen in India, namely, the right to approach the Supreme Court. The second reason is the discrimination between industrial and zamindari property because only zamindari property is on the anvil of legislation in the three provinces. Not only that but it also means that if any zamindari legislation is brought up in any other province of the Indian Union, say the C.P., the East Punjab, Rajasthan, etc., the people of those provinces will have justiciable rights. I feel strongly that a Constitution of a country should not find a place for this sort of discrimination. Sir, I am afraid, that you will not give me time.....

Mr. President: I think you had better conclude because before I close the discussion at 12.30, I want to give an opportunity to another Member to speak for some time.

Begum Aizaz Rasul: I only want to say something about U.P.

Mr. President: I do not think it is necessary.

Begum Aizaz Rasul: I am grateful to you for having given me an opportunity to speak but I am sorry I will not be able to make out my case properly at all, because the time that has been given to me is so short. I would like to ask the Premier of the U.P. to kindly consider whether by inserting this clause (4) he is not also taking upon himself the right of not giving any compensation at all if the legislature feels that on account of financial reasons, it is not in a position to do so. The Honourable the Prime Minister yesterday said that the legislature is supreme and no court can override its decisions—If that is so, then why are fundamental rights incorporated in the Constitution? It is only because there is a fear that people might encroach upon other people's rights and therefore some basic fundamental rights are laid down, which are beyond the purview of any legislation and which cannot be touched by the provincial or the Central legislature. Therefore my contention is that either article 24 should not be placed in the Fundamental Rights chapter and if it is, it should be without clauses (4) and (6). In the U.P. nearly a crore of people are being affected by the zamindari legislation. The compensation proposed is so meagre that it will be extremely difficult for these people to plan their lives and exist. Has our Premier given thought to the fact as to what will happen to these people? They are being turned on the streets with no proper provision for their livelihood. Socialisation of the country means all round socialisation. You must guarantee free education to our children—free medical aid and guarantee of employment to every citizen and we will not ask for any compensation—I warn the Premier of U.P. that by depriving the zamindars of their source of livelihood without making any proper provision for them he is creating problems for himself which it may be difficult for him to cope with. With these few words I hope I have been able to convince some honourable Members of the injustice of these clauses.

Mr. President: Maulana Hasrat Mohani, Maulana Sahib, I wish to remind you that we are closing at 12.30.

Maulana Hasrat Mohani (United Provinces: Muslim): I will try to keep to time, Sir.

Shrimati Renuka Ray (West Bengal: General): Mr. President, Sir, you have just said that you want to close the discussion at 12.30. I would appeal to you

[Shrimati Renuka Ray]

that this is the most fundamental clause in the whole Constitution and a large number of Members wish to speak on this article. I hope you will allow full discussion.

Mr. President: The question has been discussed sufficiently.

Maulana Hasrat Mohani: Mr. President, Sir, almost at the very outset I declare that I am very seriously opposed to this whole process, I mean the process adopted by the U.P. Government and its Premier, Pandit Pant, who pretends that his scheme will lead to the abolition of the Zamindari. I think that it will do nothing of that kind. I submit that I have used the words "pretend" purposely because I am pretty sure that a shrewd politician like my honourable Friend, the Premier of U.P. must realize by this time, if he has not already realized, that his scheme will not lead to the abolition of the Zamindari but it will lead, I say to the perpetuation and establishment of such a Zamindari system in the worst form and in this way he proposes only to take the zamindari of a small number of big zamindars and he wants to distribute the lands so obtained among the petty tenants and even landless tenants if they pay ten times the rent which they pay now. Well, I submit, Sir, it will not make any difference. He says that he will make these tenants, if they pay ten times the rent, "Bhoomidars" I say that nobody will be deceived by this jugglery of words. What does it mean? There is no difference between a 'Bhoomidar' and a Zamindar. Perhaps Pandit Pant might have said that because "Zamin" is a Persian word and the word "Bhoomi" is a Sanskrit word, and therefore he wants to substitute one for the other. I say that this will not deceive anybody. I call it merely a jugglery of words. All those 'Bhoomidars' whom he is going to create afterwards will be Zamindars and as I say they will only deprive some big zamindars who pay a land revenue of more than Rs. 5,000 and they will create in their place a large number of small zamindars. It is no use our discriminating between a big zamindar and a small zamindar. The Zamindars will remain there and I admit it would have led to the abolition of Zamindari if his scheme had been based on a more justified basis. I say that if he had based his scheme on getting this land transferred from these big Zamindars to the people or to the State, that might have been something.

Our Premier the Honourable Pandit Jawaharlal Nehru himself admitted in his opening speech the other day when he said. "This resolution that I beg to move tries to avoid that conflict and tries to take into consideration fully both these rights, the rights of individuals and the rights of the community." Further on he says, "that we have to keep these things in view; we have to take property for the State and we have to see that fair and equitable compensation is given to them." I say that if you accept this version of our Premier and also accept that the proprietorship of land will be transferred from the Zamindars to the State, of course, I can understand that and it would mean something. What are you going to do? You are adopting a very curious process; you confiscate the land of a few big zamindars and directly take that into the open market; you are going to sell it at a profit to all these would be 'Bhoomidars' and tenants. I say "with profit" because Pandit Pant has himself admitted that he will realize something like 180 crores of rupees from these future Bhoomidars and that he will pay compensation to the extent of Rs. 140 crores. I say that this surplus sum of Rs. 40 crores (I cannot give it any other name), I say that this is a form of black-marketing of the worst type. We are all condemning the black-marketing going on in the food grain markets and in the cloth markets and I say that we must condemn this all the more. We take possession without any rhyme or reason from these big Zamindars and want to go into the open market and sell them to those people who are also smaller zamindars.

Therefore, what I submit is that I can never admit that this scheme is a scheme for the abolition of Zamindari. I insist on that. Instead of abolishing the Zamindari it will tend to establish and perpetuate an evil system of Bhoomidars that you are going to create who will have the same paraphernalia with them. We have been objecting to the Zamindars that they take advantage of their being zamindars and that they do not allow anything to go to the cultivators of the land. But if you create the smaller zamindars, they will practise the same thing and there is no escape from that. I submit, Sir, that if he says that I am indulging in negative criticism, then I have something to suggest to my honourable Friend, Pandit Pant, and that is he must take courage in both his hands and come forward and say that he will postpone the consideration of this Bill in the United Provinces Legislature, realizing at least the difficulties that will lie in his way and also the criticism of not only the Zamindars but the criticism that I have uttered here. I challenge him to come forward and refute my argument. If not he should postpone the consideration of this article here in this House and also postpone the present Bill in the U.P. Assembly. I am not suggesting anything extraordinary. It has happened here the other day when my honourable Friend, Dr. Ambedkar proposed the Hindu Code Bill. After realizing that there is such a large antagonism against that Bill, he undertook to postpone its consideration. To save his face, he did not say it himself, but he entrusted the work to the Sardar who at the next meeting said: "We postpone its consideration." I think that discussion has been postponed *sine die;* it will never come up again. I suggest, Sir, that my honourable Friend Pandit Pant should also adopt the same procedure and postpone the whole thing; otherwise, he must come forward and reply to my criticisms first.

Several Honourable Members: The question be now put.

Mr. President: Closure has been moved.

Shri Algu Rai Shastri: (United Provinces: General): *[Mr. President, I would like to submit to you, Sir, that this matter is of very great importance and gravity.]

Mr. President: *[I do not think its importance will suffer in any way if its consideration is cut short by a few hours. I am, therefore, of opinion that it is not necessary to prolong its consideration any further. I am going to put the question of closure to the House.]

The question is:

"The question be now put."

The motion was adopted.

Mr. President: Pandit Nehru.

The Honourable Shri Jawaharlal Nehru: (United Provinces: General): If you will permit, Sir, my honourable Friend Mr. Munshi would reply.

Mr. President: Mr. Munshi will reply.

Shri K. M. Munshi: Mr. President, Sir, after patiently hearing the speeches of those who moved the different amendments, I came to the conclusion that the article moved by the Honourable the Prime Minister cannot be more aptly described than in his own words as a just compromise which should be accepted by the whole House unanimously.

The points of view have been ably put forward by all sides. After the masterly exposition of the Prime Minister, and my honourable Friends, Shri Alladi Krishnaswami Ayyar and the Premier of the United Provinces, very little need be said. But I may just refer in passing to a few amendments which deserve notice.

*[] Translation of Hindustani Speech.

[Shri K. M. Munshi]

The amendments fall under four categories. One set of amendments says that there should be no compensation at all. The second set of amendments says that Parliament should not seize property under the Fundamental Rights, but the President should, that is, the Executive should. That is a reversal to barbarism, I need not touch the point any further. A third set says that Parliament should be fully empowered without any judicial review to take over property after fixing the compensation which may be "fraudulent or inequitous", —I am quoting the very words of the amendment, thus giving to Parliament the right by constitution to pass a law which may be fraudulent or inequitous. The fourth... ....

Shrimati Renuka Ray: Mr. President, Sir, I must point out that is a misunderstanding of the whole thing. The point is that it must be Parliament who will decide whether principles are fraudulent or not, and not a court of law. The amendment does not advocate that fraudulent grounds should be allowed but that it must be Parliament who shall decide whether any enactment contains fraudulent provisions or not. This misreading should be corrected.

Shri K. M. Munshi: I do not want to misconstrue or misinterpret anybody, much less my respected Friend, Mrs. Renuka Ray. The amendment she wants to be put on the Statute book runs thus:

"No law making provision as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles and the manner of compensation specified are fraudulent and inequitous."

She wants to go to the international assemblies with this Constitution in her hands. I do not want to say anything further.

The other set of amendments is of this nature not that when there is a fraud of Fundamental right, parties should go before the courts but the principles, the form and the manner should all be scrutinised by the courts so that as the Honourable the Prime Minister said, the Supreme Court should become a third revising Chamber more powerful than both the Chambers of Parliament. That is the third set of amendments.

The fourth set refers to Zamindaris, that is, seeks the elimination of clauses (4) and (5) which has been fully dealt with by my honourable Friend Pandit Govind Ballabh Pant.

We cannot, Sir, go back upon the decisions of this House, nor upon the pledges of the Congress Party, nor upon the pledges of our Government. So far as our pledges are concerned, they are well known and find a place in the manifesto. We have promised even equitable compensation to the Zamindars by our Election Manifesto of 1945. As regards this House, Sir I submit, without being charged with inconsistency, it cannot go back upon the proposition that had been adopted by it. When this matter came up before the Advisory Committee, it unanimously accepted clauses (1) and (2). It was then anticipated that Zamindaris would be liquidated long before we came to the final conclusion of our deliberations in this Constituent Assembly. Sardar Patel while moving it in the House said thus:

"Land will be acquired for many public purposes, not only land, but so many other things may have to be acquired. The State will acquire them after paying compensation and not expropriate them."

Proceeding further, he said with regard to Zamindaris :

"This clause here will not become law tomorrow or the day after. It will take at least a year more."

Of course, at that time we thought that our speed would be so great as to finish our Constitution in one year. That is his reference; but his hopes have been unfortunately belied :

"It will take at least a year more. Before then, most of the Zamindaris would have been liquidated. Even under the present laws, different provinces have brought legislation to liquidate the Zamindaris either by paying just compensation or adequate compensation or whatever the legislature there think fit. The process of acquisition is already there and the legislatures are already taking steps to liquidate Zamindaris."

This House therefore, two years ago set the seal on this resolution by saying that whereas Zamindaris would be liquidated long before we passed this Constitution, so far as the other properties were concerned, they would be acquired on the lines of clause (2) of this particular article.

Therefore this House has accepted the position that acquisition can only be by law, that Parliament when it acquires property by law can fix the compensation, and that as Zamindaris would have been liquidated, there was no necessity for making a provision for that in this article. This is the decision of the House. This article carries out that decision, except in so far as it has become necessary to modify it in the light of circumstances that exist today.

We have extended very much, as has been already pointed out, the scope and powers of Parliament. Members will please refer to entry 55 in list III which this House has passed. Powers of legislating on the principles of compensation, and the form and manner, have been solely left to Parliament and the State Legislatures. In the language of section 299 of the Government of India Act as Members know the words used are 'payment of compensation' which implies, at least on one view, that payment should be in cash and that payment is a pre-condition of acquisition.

Shri T. T. Krishnamachari: (Madras : General) : May I correct my honourable Friend : is he referring to List III of Schedule VII, item 35 ?

Shri K. M. Munshi: My Friend, Mr. T. T. Krishnamachari's memory is certainly much more accurate than mine. It is entry 35, I apologise, not 55. He must realise that I am a very old man—

An Honourable Member: You do not look it any way.

Shri K. M. Munshi: Compared to my honourable Friend.

It is not correct to say that Parliament has not been given full powers. It can fix the form and the manner of giving compensation; it can give bonds or land in exchange for the land acquired. It has much wider powers than the Legislatures in India ever possessed before. Therefore, Parliamentary powers have been enlarged. But Parliament, remember,—in spite of what has been said about justiciability and particularly against the tribe of lawyers more than once—is the sole judge—of two matters. First, it is the sole judge of the propriety of the principles laid down, so long as they are principles. Secondly, it has been authoritatively laid down there is no doubt about it—as has been stated by my honourable Friend, Shri Alladi Krishnaswami Ayyar,—that principles may vary as regards different classes of property and different objects for which they are acquired. We find on the English Statute Book several Acts, the Land Acquisition Act, the Land Clauses Act, the Housing Act, in all of which a varying basis of compensation has been adopted to suit not only the nature of the property but also the purpose for which it is to be acquired. Parliament therefore is the judge and master of deciding what principles to apply in each case.

[Shri K. M. Munshi]

In this connection, if I may, I will mention an instance in my own experience. In 1938 when the Bombay Government wanted to—it was the Kher Ministry in which I had the honour to be a Member—acquire Bardoli lands, the property in one case was worth over 5 lakhs and had been acquired for something like 6,000/-, in a market in which there was no other purchaser, for which the Commissioner had brought down an old Dewan of a State in order to purchase the property. The income of that property was something like 80,000/- a year which he had enjoyed for about ten years. We drafted the Bill stating that the purchase of this property having been made under conditions where there was no fair market and that on account of serious political circumstances no purchaser was ordinarily forthcoming and that therefore a principle had to be laid down by which the then owner was to be repaid the amount invested plus 6 per cent. etc. At that time the Government of India—I was given to understand—referred the matter to their legal advisers and sought their opinion on two questions. First whether the basis of compensation that we had laid down in that Act contained principles within the meaning of Section 299 of the Government of India Act of 1935 and secondly, whether it was within the power of the Bombay Legislative Assembly to depart from the principles laid down in the Land Acquisition Act. On both these points our stand was held to be legal and the Governor-General gave the sanction to the Bill.

Principles are not rigid canons to be applied mechanically. They have to be formulated in the light of the circumstances of each situation; in the light of the reforms sought to be carried out; in the light of the purposes for which the property is acquired. The Parliament is to judge in each case as to what is fair and equitable and whether the principles laid down are calculated to yield compensation, fair and equitable in the light of such circumstances.

The question of justiciability, I fear has been unnecessarily brought into this controversy. In a civilised country, every article of the written Constitution, if there is one, and every law made by Parliament is justiciable in the sense that the Courts can examine each of them to decide that the law-making authority acted within the ambit of its powers and to ascertain the meaning and effect of its provisions. Even if you use the words "compensation shall not be questioned in Court", the Courts will have a right to adjudicate upon what is the meaning of 'questioned in Court'; whether the thing questioned is compensation at all; whether in law the Legislature was acquiring property for compensation. Let there be no mistake: unless you revert to the tribal law, where the word of the tribal chief is the last word, you cannot escape the tribe of lawyers. But one thing is clear. The rule of the tribe of lawyers is any day better than the rule of the tribe of tyrants.

An Honourable Member: Why not put the lawyers in a schedule?

Shri K. M. Munshi: We may put them in a schedule; they will be too glad to legislate upon themselves; but they will take the law to the Law Courts and come out successful—schedule or no schedule.

The question is what is the extent of justiciability in this article? The article requires that if the Legislature is to exercise the responsibility entrusted to it by the Constitution, it must lay down the principles of compensation; it must determine the manner and form in which the compensation is to be paid; and provided it yields compensation that is an equivalent recompense, no Court will go behind the policy of the measure. This has been laid down again and again by the Courts of the British Commonwealth as also by the Supreme Court in America, where the words in the Constitution are "just compensation" and where there is the 'Due Process Clause' in the Constitution.

The Courts will not substitute their own sense of fairness for that of Parliament; they will not judge the adequacy of compensation necessarily from the standard of market value; they will not question the judgement of Parliament, unless the inadequacy is so gross as to be tantamount to a fraud on the fundamental right to own property.

In the minds of people who fear justiciability, there is a lurking feeling that if a law laying down principles of compensation goes to Court, the Court will invariably apply the market value standard. This has never been the case. In America, as I said, where the words in the Constitution are "just compensation" and where the 14th Amendment arms the Supreme Court with the Due Process clause, it has never been so held. In one American case—it was an extreme and extraordinary case—one dollar was paid by way of compensation. The Court held that looking to the circumstances of that case, even one dollar was just compensation. We need not assume therefore that our Supreme Court will consist of a set of stupid people who will indiscriminately apply the market value rule to every kind of acquisition.

In fairness, we cannot omit this kind of clause from our Constitution. It is necessary that the right of the Legislature in matters relating to acquisition of property should be property defined. It is equally necessary that judicial review should be permitted where there is a wrongful deprivation of the fundamental right to own property contained in our Constitution; where the Legislature has seized property by acting outside its powers or without fixing the amount of compensation or the principles on which to determine such compensation or where there is expropriation under the guise of acquisition; where the principles laid down are illusory or where the principles or the manner or the form of compensations are not calculated to yield a fair equivalent; or where the whole thing amounts—as my eminent friend pointed out—to a fraud on the Constitution. The draft as now placed before you, therefore, I submit, satisfies every approach which has been put forward in this House by any section of the honourable Members.

The only other question is of zamindari and after the able and lucid exposition by my honourable Friend, Premier Pant, I need not say anything more. I do not however want this debate to be a controversy between the Premier of the United Provinces and the Zamindars of U.P., as at one stage of this controversy it looked. You must look at the country as a whole. This Constituent Assembly two years ago expected that before this Constitution took final shape, zamindaris will be liquidated. Therefore we are not going back upon the decision of the Constituent Assembly in incorporating clauses (4) and (6). Look at the figures involved in this question. Imagine the dangers there are there. I am not concerned with the merits of this controversy nor with the origin of Zamindari which my Friend, Kala Venkata Rao described. I am only concerned with pointing out that these three Bills of Madras, Bihar and U.P. are already before the country. Action has already been taken under them. We cannot allow a vast number of people to have their rights left in uncertainty after the coming into force of this Constitution.

Begum Aizaz Rasul: May I know if one test case in one province is not enough to decide the principles regarding compensation?

Shri K. M. Munshi: You will realise that I am not concerned with the merits of it. What will happen if clauses (4) and (6) are omitted? I do not belong either to Madras, U.P. or Bihar nor have I any zamindari but we cannot allow the validity of these legislations fought out before any Court when the issues involved are so far-reaching and millions of people are affected by them. That is the reason why I have agreed to this and I think it is the soundest reason. Safeguards have been provided for the three zamindari legislations. All the three Bills will come before the President and he will, if he

[Shri K. M. Munshi]

thinks proper, advise or consult the Provincial Ministries with a view to seeing that justice is done There shall, however, not be a judicial review of the legislations.

Dr. P. S. Deshmukh: (C.P. & Berar General): May I know, Sir, whether he is arguing for or against the article?

Mr. President: You may draw your own conclusions.

Shri K. M. Munshi: If you go to a judicial review, I will tell you what will happen. By these three legislations, seven crores forty lakhs acres have been affected. Secondly, seven crores twenty lakhs of agriculturists, tillers of the soil are affected. If you take the number of zamindars who are to receive less than 16 years purchase which is always considered a liberal measure of compensation, there are 13,000 of them if you take 12 years purchase 5,000 people are only affected as against seven crores and twenty lakhs of tillers. Do you want that the rights of all these people should be hung up for six years so that the laborious process of litigation may proceed from the subordinate court to the District Court, from the District Court to the High Court and so on, and that all these new adjustments which have come into being should be upset? We cannot afford to do that. It will mean a revolution. We cannot go back, only for the sake of safeguarding the interests of some 5,500 zamindars in the.....

Begum Aizaz Rasul: May I know how you have calculated this figure?

Shri K. M. Munshi: I have got the figures from the Ministers here and they have got them from the documents in their possession. If what they have given me is not correct, then I am not correct.

Begum Aizaz Rasul: May I inform the Honourable Member that only in the U.P. there are 22 lakhs of people directly affected, besides their dependents?

Shri K. M. Munshi: I have got the figures for U.P. also. In the U.P. there are only 10,000 zamindars who have got less than thirteen years purchase. These are the figures that I got from Pandit Pant, and there is no reason why they should be disputed. But even assuming that it is not 10,000 but 30,000 can you compare that figure to seven crores and twenty lakhs? Are you going to have a revolution in the country—an agrarian revolt—so that a few thousand people may be kept entrenched in their luxuries and may have all that they have been having all these centuries?

An Honourable Member: What about the individual loss?

Shri K. M. Munshi: Sir, I am not looking at it from the individual point of view. I know some of my friends who but yesterday had an income of 5,000 per month have been reduced to 500 today. But we cannot look at the zamindari legislation from the point of view of individuals. It is a national and social revolution which we have achieved and we cannot go back on it.

An Honourable Member: How is the State.....

Shri K. M. Munshi: I wish you stop interfering with my speech. I submit that this is the best compromise, a just compromise arrived at after discussing all the most important factors, and I want the House to accept it.

Sir, there are some amendments which I am going to accept. One is No. 405 of Shri Yadubans Sahai asking for addition of the words "and given" after the words "the compensation is to be determined". These words were omitted by a typing mistake.

The other amendments that I accept are Nos. 504 and 505 which are verbal in nature. And then I accept No. 428 moved by my Friend, Kala Venkata Rao. He wants the period of one year to be extended to eighteen months because some people feel that the dates for the Madras and Bihar legislations cannot be fixed accurately. And the other amendment I accept is the one moved by Shri Jaspat Roy Kapoor with regard to evacuee property. On the suggestion of the Honourable Gopalaswami Ayyangar, he has re-drafted it and made some verbal improvements, with a view to bring accuracy.

Subject to these five amendments, I oppose all the others. I hope the House will carry this article with these amendments.

Shri Jaspat Roy Kapoor (United Provinces : General) : May I put a question to Mr. Munshi as to.....

Mr. President: I do not think any further questions need be put or answered.

Dr. P. S. Deshmukh: My friend has accepted the amendment of Mr. Sahai, but my amendment should have been preferred to his because the word "paid" is certainly better than the word "given".

Mr. President: I do not know, it is for them to accept or not. No more questions. I am putting the amendments.

The procedure that I desire to follow with regard to the voting on this question is this. I will take, first of all those amendments which seek to replace the original amendment 369. And after these are disposed of, I will take the thing paragraph by paragraph and I will take the amendments to each paragraph.

Now, the first amendment which seeks to replace the whole thing is No. 383, moved by Shri Damodar Swarup Seth.

The question is :

"That in amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted :—

'24. (a) The property of the entire people is the mainstay of the State in the development of the national economy.

(b) The administration and disposal of the property of the entire people are determined by law.

(c) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses.

(d) Private property and economic enterprises as well as their inheritance may be taxed, regulated, limited, acquired and requisitioned, expropriated and socialised but only in accordance with the law. It will be determined by law in which cases and to what extent the owner shall be compensated.

(e) Expropriation over against the States, local self-governing institutions, serving the public welfare, may take place only upon the payment of compensation'."

The amendment was negatived.

Mr. President: Then I put No. 384 of Prof. Saksena.

The question is :

That with reference to amendments Nos. 720 to 769 of the List of Amendments, for article 24, the following be substituted :—

"24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owing, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition except on payment in cash or bonds or both of the amount determined as compensation in accordance with principles laid down by such law.

[Mr. President]

(3) Nothing in clause (2) of this article shall affect—

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property."

The amendment was negatived.

Mr. President: Then I take No. 385 of Shri Brajeshwar Prasad.

The question is:

"That for amendment No. 720 of the List of Amendments, the following be substituted:

'That for article 24, the following be substituted:—

"24. (1) All private property in the means of production may be acquired by the Government of India.

(2) The President shall determine in each case to what extent, if any, the owner whether a private individual, a State, a local self-governing institution or a company, shall be compensated.

(3) That within four years from the date of the commencement of this Constitution, the Union Government shall become the owner of all private property in land which is being used or capable of being used for agricultural purposes.

(4) Any existing law or the provisions of any law which may thereafter be made contrary to the provisions of this article shall be null and void.

(5) The provisions of this article may be amended if ratified by the people signified by 51 per cent. of the total number of voters on the electoral list framed on the basis of adult franchise.'"

The amendment was negatived.

Mr. President: Then No. 472 of Mr. Tripathi.

Shri Kishorimohan Tripathi: (C.P. & Berar States): Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I take amendments to clause (1). The first amendment is No. 386 moved by Mr. Kamath. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, after the word 'property', the words 'except in national interest and' be inserted."

The amendment was negatived.

Mr. President: The next one is No. 387 moved by Mr. Brajeshwar Prasad. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the word 'law' the words 'the President' be substituted."

The amendment was negatived.

Mr. President: Next is No. 388 of Prof. K. T. Shah. The question is:

"That in amendment No. 369 of List VII (Seventh Week), at the end of clause (1) of the proposed article 24, the following proviso be added:—

"Provided that no rights of absolute property shall be allowed to or recognised in any individual partnership firm, or joint stock company in any form of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes or seas surrounding the coasts of the Union; and that ultimate ownership in these forms of natural wealth shall always be deemed to vest in and belong to the people of India collectively; and that they shall be owned, worked, managed or developed by collective enterprise only, eliminating altogether the profit motive from all such enterprise'."

The amendment was negatived.

Mr. President: Then we go to the amendment which covers all the clauses (2) to (6). I will take them separately also, but now I take No. 389 which seeks the deletion of all these five clauses. The question is:

"That in amendment No. 369 of List VII (Seventh Week), clauses (2), (3), (4), (5) and (6) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President: Then I come to clause (2). There are several amendments to this clause. I take No. 394 of Prof. K. T. Shah. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24,—

(i) for the words 'No property' the words 'Any property' be substituted;

(ii) for the words 'shall be taken' the words 'may be taken' be substituted;

(iii) for the words 'unless the law provides for compensation' the words 'subject to such compensation, if any' be substituted;

(iv) for the words 'acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined', the words 'acquired as may be determined by the principles laid down in the law for calculating the compensation' be substituted;

(v) the following be added at the end:—

"Provided that no compensation whatsoever shall be payable in respect of:—

(a) any public utility, social service, or civic amenity which has been owned, worked, managed or controlled, by any individual, partnership firm, or joint stock company for more than 20 years continuously immediately before the day this Constitution comes into force;

(b) any agricultural land forming part of the proprietory of any land-owner, howsoever described, which has remained uncultivated or undeveloped continuously for ten years or more immediately before the day this Constitution comes into force;

(c) any urban land, forming part of the proprietory of any individual, partnership firm or joint stock company, which has remained unbuilt upon or undeveloped in any way for fifteen years or more continuously immediately before the day this Constitution comes into effect;

(d) any agricultural land forming part of the proprietory of any land-owner, howsoever described, which has remained in the ownership or possession of the same land-owner or his family for more than 25 years continuously immediately before the date when this Constitution comes into operation;

(e) any mine, forest or mining or forest concession which has remained in the ownership or possession of the same individual, partnership firm, or joint stock company for at least twenty years immediately before the day this Constitution comes into operation;

(f) any share, stock, bond, debenture or mortgage on any joint stock company, owning, working, managing or controlling any industrial or commercial undertaking which has been owned, worked, controlled or managed by the same joint stock company, or any combination or amalgamation of it with any other company for more than thirty years continuously immediately before the day this Constitution comes into operation;

or

which has paid in the course of its operations and existence in the aggregate in the shape of dividend or interest, a sum equal to or exceeding twice the paid-up value of its shares, stock, bonds or debentures;

or

whose total assets (not including goodwill) at the time of the acquisition by the State of any such undertaking are less in value than its total liabilities."

The amendment was negatived.

Mr. President: Then No. 395 of Mr. Kamath. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'taken possession of or acquired' where they occur for the second time, the words 'to be taken possession of or acquired' be substituted."

The amendment was negatived.

Mr. President: No. 397 moved by Shri B. Das. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed new article 24, for the words 'unless the law provides for compensation' the words 'unless the law provides for fair and equitable compensation' be substituted."

The amendment was negatived.

Mr. President: Then No. 400, moved by Mr. Nagappa.

Shri S. Nagappa: (Madras: General): I wish to withdraw my amendment, Sir.

Amendment No. 400 was, by leave of the Assembly, withdrawn.

Mr. President: Then No. 402. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24,—

'before the word "principle" the word "appropriate" be inserted.'"

The amendment was negatived.

Mr. President: No. 403, moved by Mr. Kamath. The questoin is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'to be determined' a comma and the words 'provided that such principles or such manner of determination of compensation shall not be called in question in any Court' be added."

The amendment was negatived.

Mr. President: No. 404 moved by Dr. Deshmukh. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'is to be determined' the words 'and paid' be added."

The amendment was negatived.

Mr. President: Then comes No. 405 which has been accepted by Mr. Munshi.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week) in clause (2) of the proposed article 24, after the words 'the compensation is to be determined' the words 'and given' be added."

The amendment was adopted.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), after clause (2) of the proposed article 24, the following proviso be added:—

'Provided that when any such law provides the acquisition by any State of the interests of the Zamindars of various degrees and other intermediaries for the purpose of abolishing the Zamindari system, it shall be sufficient if the law provides for the payment of compensation amounting to not less than twelve times the estimated average net income of the Zamindar of any degree or intermediary whose interests are to be acquired.'"

The amendment was negatived.

Shri Phool Singh: (United Provinces: General): Sir, I would like to withdraw my amendment No. 475.

The amendment was, by leave of the Assembly, withdrawn.

Shri Guptanath Singh: (Bihar: General): Sir, I would like to withdraw my amendment No. 476.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'provides for compensation' the words 'provides for fair and equitable compensation based on market value' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' the words 'unless due compensation is paid for', *or, alternatively,* 'unless the law provides for due compensation' be substituted."

The amendment was negatived.

Shri P. D. Himatsingka: (West Bengal: General): Sir, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Shri B. P. Jhunjhunwala: (Bihar: General): Sir, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'or specifies the' the word 'proper' *or, alternatively,* 'fair' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), at the end of clause (2) of the proposed article 24, the following new proviso be added :—

'Provided that no compensation shall be payable to any owner or holder of any movable or immovable property, who, having owned or held such property for thirty years continuously immediately before the coming into force of this Constitution, has either not habitually resided within the State where such property is situated, or has not done anything to develop such property.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), for clause (3) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), for clause (3) of the proposed article 24, the following be substituted :—

'(3) No such law as is referred to in clause (2) of this article made by the Legislature of the State shall have effect, unless such law receives the assent of the President'"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'unless such law having been reserved for the consideration of the President has received his assent' the words 'has received the assent of the President' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'having been' the word 'is' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed article 24, the following be substituted :—

'(4) Any Bill pending before the Legislature of a State at the commencement of this Constitution shall not, after its subsequent enactment, be called into question in any Court on the ground that it contravenes the provisions of clause (2) of this article.'"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24,—

(i) for the words 'If any' the word 'Any' be substituted;

(ii) for the words 'has, after it has been' the words 'may be' be substituted;

(iii) the words 'received the assent of the President,' be deleted; and

(iv) for the words 'assented to' the word 'passed' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24, after the word 'Constitution' the words 'and designed to execute a scheme of agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors for such compensation as the Legislature of the State considers fair.'"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed article 24, the following be substituted :—

(4) No law making provision as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles and the manner of compensation specified are fraudulent and inequitous.'"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), at the end of clause (4) of the proposed article 24, the following explanation be added :—

'*Explanation.*—The provision of this clause shall not refer to the system of land tenure called Ryotwari anywhere in the Union including the Indian States.'"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), for clause (5) of the proposed article 24, the following be substituted :—

'(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect the provisions of any existing law or of any law which the State may hereafter make which imposes or levies any tax or penalty which seeks to promote public health or to prevent danger to life and property.'"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), in sub-clause (b) of clause (5) of the proposed article 24, after the word 'property' the words 'or for ensuring full employment to all and securing a just and equitable economic and social order' be added."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), clause (5) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (5) of the proposed article 24, the words 'Save as provided in the next succeeding clauses' be omitted."

The amendment was adopted.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), for sub-clause (a) of clause (5) of the proposed article 24, the following sub-clause be substituted :—

'(a) the provisions of any existing law other than a law to which the provisions of clause (6) of this article apply, or'."

The motion was adopted

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), sub-clause (a) of clause (5) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President: These two amendments have been put in a new form. The question is :

"That in amendment No. 369 of List VII (Seventh Week), after sub-clause (b) of the proposed article 24, the following new clause be added :—

'(c) The provisions of any existing law made or of any law which the State may hereafter make, in pursuance of any agreement arrived at with a foreign State or otherwise with respect to property declared by law to be evacuee property.'"

The amendment was adopted.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'not more than one year' the words 'at any time' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'not more than one year before the commencement of this Constitution' the words and figures 'after August 15, 1947' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'one year' the words 'eighteen months' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words beginning with 'may within three months' and ending with 'Government of India Act, 1935', the following be substituted:—

'shall not be called in question in any court on the ground that it contravenes any provision of this article.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, the words 'may within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by Public notification so certifies, it' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 359 of List VII (Seventh Week), in clause (6) of the proposed article 24, the words, figures and brackets 'clause (2) of this article' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), clause (6) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added:—

'(7) If any State passes a law designed to execute a scheme of agrarian reform in the State by abolition of Zamindari conferring rights of ownership on peasant proprietors or at least rights of occupancy for such compensation as the State Legislature considers fair on the lines of the law referred to in clause (4) of this article, such law shall be submitted by the Governor or the Ruler as the case may be, to the President for his certification. If the President by public notification certifies the law, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following clause be added:—

'(7) The Parliament may by law in case the social and economic conditions so necessitate, provide for the socialization of any class of property on such terms and conditions as provided in the law.'"

The amendment was negatived.

Mr. President: The question is :

"That with reference to amendment No. 369 of List VII (Seventh Week), after the proposed article 24, the following new article be added :—

'24-A. Nothing in this Constitution shall prevent the Parliament from exercising jurisdiction over, and the State Legislature from acquiring any properties movable or immovable belonging to any public charitable trust without compensation and for the purpose of better utilization and management of the trust property.' "

The amendment was negatived.

Mr. President: I will now put to vote the original amendment No. 369 of List VII (Seventh Week) moved by the Prime Minister, as amended by the amendments which have been adopted.

The question is :

"That proposed article 24, as amended, be adopted."

The motion was adopted.

Article 24, as amended, was added to the Constitution.

The Assembly then adjourned till Four of the Clock in the afternoon.

The Assembly re-assembled in the afternoon at Four of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

PART XIV-A—LANGUAGE

Mr. President: We have now to take up the articles dealing with the question of language. I know this is a subject which has been agitating the minds of Members for sometime and so I would make an appeal to the speakers who are going to take part in the debate. My appeal is not in favour of any particular proposition, but it is with regard to the nature of the speeches which Members may be making. Let us not forget that whatever decision is taken with regard to the question of language, it will have to be carried out by the country as a whole. There is no other item in the whole Constitution of the country which will be required to be implemented from day to day, from hour to hour, I might even say from minute to minute in actual practice. Therefore Members will remember that it will not do to carry a point by debate in this House. The decision of the House should be acceptable to the country as a whole. Even if we succeed in getting a particular proposition passed by majority, if it does not meet with the approval of any considerable section of people in the country—either in the north or in the south, the implementation of the Constitution will become a most difficult problem. Therefore, when any Member rises to speak on this language question I would request him most earnestly to remember that he should not let fall a single word or expression which might hurt or cause offence. Whatever has to be said, should be said in moderate language so that it might appeal to reason and there should be no appeal to feelings or passion in a matter like this.

Now I desire to say one word about the procedure which I propose to follow so that I could have the approval of the House for that procedure.

I have found that there are some three hundred or more amendments to these articles. If each one of the amendments is to be moved I do not know how many hours it will take if I am to allow ten minutes to each Mover to speak. Many of these amendments overlap; many make only difference of a shade in their meaning; many make practically no difference except in their wording. There are some of course which are of a substantial nature. I, therefore, propose to take all the amendments as moved and ask the Members to start the discussion straightaway. Every Member who wishes to speak is free to do so on his amendment, but he has to remember that he must confine his speech to about 10 minutes or 15 minutes at the most. If he wishes to cover all the amendments or all the propositions which arise, probably he will have no time to deal fully with the particular item to which he attaches importance. It, therefore, naturally follows that in observing the time-limit, Members may have to concentrate on particular points to which they desire to attach importance. If the House co-operates and if the Members co-operate, there is no reason why we should not be able to finish the discussion of this question within a reasonable time, as we have done with the rest of the Constitution. I would like to know if the House approves of the procedure which I propose to follow.

Honourable Members: Yes.

Shri Mahavir Tyagi: Sir, I do not accept the procedure suggested, if discussion is to be permitted to cover the whole field of amendments, one will not be in a position to know exactly what a particular amendment signifies or what an amendment to an amendment means. Therefore if the procedure suggested

by you is followed the House will not get the full benefit of the debate. I therefore suggest that either you may be pleased to take the salient points from these Lists of Amendments to be moved and take the decision of the House on them so that such decisions may thereafter be implemented by the Drafting Committee. If this is not done, and if discussion is carried on on the question of the numerals, etc. simultaneously, one would not know what he has to say. I therefore submit that the procedure suggested will not be fair.

Mr. President: I assume that the Members have read the amendments and understood their significance. (Several Honourable Members: Yes.) It is on that basis that I placed my suggestion before the House.

Maulana Hasrat Mohani: May I suggest that the official resolution of Dr. Ambedkar and two others be moved and thereafter the amendments may be moved one after the other. They have become things of no significance. Therefore if you ask Dr. Ambedkar and his companions to come forward and move their amendments and then allow the amendments to those amendments to be moved, that will give a fair chance to honourable Members to express their views.

Mr. President: It is open to Members to say that they do not wish to move any particular amendment. Otherwise I will take all amendments as moved. We shall start the discussion.

Maulana Hasrat Mohani: I have proposed an amendment to the amendment proposed by Dr. Ambedkar. If he says that he does not want to move his amendment.....

Mr. President: Your amendment will be taken as moved.

Seth Govind Das (C.P. & Berar: General): I would like to know whether, in view of the fact that you have said that all the amendments would be taken as moved, the discussion would take place on all the amendments or on each point.

Mr. President: I will follow the procedure which I followed earlier in the day in connection with the other proposition to which also we had a large number of amendments. I shall take the amendments first which cover the whole ground and after they have been disposed of, I shall take up paragraph by paragraph if Members so desire to discuss them.

Pandit Balkrishna Sharma: You were pleased to state that we shall take all the amendments as moved. What then will be the order of the members whom you will be pleased to call upon to speak?

Mr. President: The same order which is ordinarily followed by any Speaker of the Assembly.

The Honourable Pandit Ravi Shankar Shukla (C.P. & Berar: General): Are we going to take amendment by amendment for discussion or are we going to take the whole lot of them?

Mr. President: The whole lot of them.

The Honourable Pandit Ravi Shankar Shukla: If we take amendment by amendment, we shall be able to concentrate on each point. Otherwise there would be such a lot of confusion that you yourself would not be able to fix upon speakers.

Mr. President: That is why I suggested that Members in speaking will concentrate on the particular point to which they attach importance.

Mr. Mohamed Ismail Sahib (Madras: Muslim): There are certain amendments coming still; are we to assume that they are all going to be taken as moved?

Mr. President: All the amendments which I have received up to this particular moment. They will be circulated this evening.

Pandit Balkrishna Sharma: Will it be possible for you to take up article by article?

Mr. President: At the time of voting.

Pandit Balkrishna Sharma: We can take up article by article and discussion will be confined to that particular article for the time being; then the second article can be taken up, so that if the same Member wishes to speak on that article, he can do so.

Mr. President: I do not like that, but of course it is open to the House.

An Honourable Member: Will every Member who has moved an amendment be entitled to speak as a matter of right?

Mr. President: I cannot say just now. I have not counted the number of Members who have moved amendments but I will try to accommodate every Member who has moved an amendment.

Shri R. K. Sidhva (C.P. & Berar: General): What about those Members who have not moved any amendments? Would they also be entitled to speak?

Mr. President: I will try to accommodate every Member.

Shri Jaspat Roy Kapoor: Sir, according to the suggestion which you have been pleased to make, all the amendments will be taken as moved. May I submit, Sir, that this whole Chapter deals with the question of language. Hitherto the practice adopted in this House has been that when a particular Chapter is under consideration, each article is taken up separately. The articles in this Chapter relate to entirely different subjects. One relates to numerals. Another relates to the language of the High Courts and the Supreme Courts, and another to the language of the States; another relates to the language which should be used in communications between one State and another. All these articles relate to absolutely different subjects, and I would therefore submit that, while there may be this departure which you have suggested, so far as taking up each article is concerned, the usual procedure that has been adopted so far may continue to be adopted. Otherwise there will be confusion.

Dr. P. S. Deshmukh: Why should this change be made at the fag-end of the Constitution-making?

Mr. President: Because it is the fag-end.

Mr. Naziruddin Ahmad: Then the time limit should be relaxed.

Mr. President: That is a matter about which I am prepared to re-consider. Instead of ten minutes, I may give some more time.

Mr. Naziruddin Ahmad: I want that each Member should be strictly relevant.

Mr. President: That is exactly the difficulty.

Mr. Naziruddin Ahmad: I have moved certain amendments. If I am not relevant at any time, you will be pleased to stop me, Sir.

The Honourable Shri Jawaharlal Nehru: You have given the ruling that all the amendments of which notice has been given will be taken as moved. Apparently there are two or three hundreds of them. Now, I imagine that some of them overlap and some are completely out of date. If we take them all as moved, ultimately it will take a lot of time. I am merely suggesting that those Members who want to withdraw their amendments might withdraw them by writing to you.

Mr. President: I am prepared to go a little further than that. I will call every amendment and then the Member concerned can say if he wants to move it or not.

Shri Deshbandhu Gupta (Delhi) : Since the Drafting Committee has not been able to put forward any agreed amendment on this question may I suggest even at this late stage a Committee of nine or eleven Members be appointed by the House, to go into the whole question once again and try to bring about some agreed amendment ?

An Honourable Member: No, Sir.

Shri Deshbandhu Gupta: At least, such an amendment can form the basis for discussion and the points of difference can be reduced. I suggest with your permission, Sir, that the following members might serve on that Committee: The Honourable Pandit Jawaharlal Nehru.....

An Honourable Member: No, we are not agreeable to the idea.

Mr. President: I do not think that is practicable. I understand that that procedure has been followed. It makes no difference.

Shri Deshbandhu Gupta: If we can have an agreed solution, that will save a good deal of time and botheration.

Mr. President: It will make no difference. I think I had better close this discussion now.

Shri B. Das (Orissa : General) : Sir, may I have your ruling if the amendments that have been tabled so far are the only amendments and that no further amendments will be accepted, so that time and expenses of the House could be saved ?

Mr. President: The matter will be put to the vote now. The question is :

"That the procedure that I have suggested be generally adopted."

The motion was adopted.

Mr. President: I will now call the amendments one by one. Amendment No. 65.

Shri S. V. Krishnamoorthy Rao (Mysore State) : I have tabled an amendment, Sir, that the question of the language be left to the future Parliament. If that amendment is accepted, all this discussion could be avoided.

Mr. President: There are so many other amendments which, if accepted, would throw all the other amendments out of the picture. I shall now call each of the amendments, and if any Member wishes to withdraw his amendment, he will let me know.

(Members who had given notice of amendments Nos. 65 and 66 indicated that those amendments might be taken as moved.)

Amendment No. 67.

The Honourable Pandit Ravi Shankar Shukla: Sir, I wish to move each item separately.

Mr. President: It will be a question at the time of voting from that point.

The Honourable Pandit Ravi Shankar Shukla: My amendments so far as No. 67 is concerned contains three amendments: One is to delete articles 99 and 184. I wish not to move that. That may be dropped. As regards amendment No. 67, I have given notice of amendments to each article separately. I wish they may be taken as moved and not amendment 67. Amendment No. 67 may not be taken as moved, but the other amendments may be taken as moved.

Mr. President: Which are the other amendments?

The Honourable Pandit Ravi Shankar Shukla: I have given amendments under each article under my name.

(Members who had given notice of amendments Nos. 68 and 69 indicated that these amendments might be taken as moved.)

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General): Sir, I have a point of order with regard to amendment No. 69. Shall I raise it now or at the time of voting?

Mr. President: At the time of voting.

(Members who had given notice of amendments Nos. 70, 71 and 72 indicated that these amendments might be taken as moved.)

The Honourable Dr. B. R. Ambedkar: I am not moving amendment No. 73.

Shri Mahavir Tyagi: I move it, Sir.

(Members who had given notice of amendments Nos. 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85 indicated that these amendments might be taken as moved.)

Dr. P. S. Deshmukh: Sir, if an amendment is absolutely similar, is it permissible for an identical amendment being moved by several Members?

Mr. President: I shall leave them out at the time of voting.

(Members who had given notice of amendments Nos. 86, 87, 88, 89 and 90 indicated that these amendments might be taken as moved.)

(Amendment No. 91 was not moved.)

(The Member who had given notice of amendment No. 92 indicated that this amendment might be taken as moved.)

(Amendment No. 93 was not moved.)

(Members who had given notice of amendments Nos. 94, 95 96, 97, 98, 99, 100, 101, 102, 103 and 104 indicated that these amendments might be taken as moved.)

Shri Mahavir Tyagi: Those Members who are not moving their amendments may pass a slip to you and thus save time.

(The member who had given notice of amendment No. 105 indicated that this amendment might be taken as moved.)

(Amendment No. 106 was not moved.)

(Members who had given notice of amendments Nos. 107, 108, 109 and 110 indicated that these amendments might be taken as moved.)

(Amendments Nos. 111 and 112 were not moved.)

(Members who had given notice of amendments Nos. 113, 114, 115, 116 and 117 indicated that these amendments might be taken as moved.)

(Amendment No. 118 was not moved.)

(Members who had given notice of amendments Nos. 119 and 120 indicated that these amendments might be taken as moved.)

Shri H. V. Kamath: On a point of order, Sir, is it proper for a member to give notice of amendments which are inconsistent with one another? Dr. Ambedkar has given notice of several amendments which are mutually inconsistent.

Mr. President: It is nothing unusual for Members of this House to be inconsistent.

Dr. P. S. Deshmukh: Including the honourable Member himself (*Laughter*).

Shri H. V. Kamath: My amendments have not been inconsistent like that.

(Members who had given notice of amendments Nos. 121, 122 and 123 indicated that these amendments might be taken as moved.)

(Amendment No. 124 was not moved.)

(Members who had given notice of amendments Nos. 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166 and 167 indicated that these amendments might be taken as moved.)

(Amendment No. 168 was not moved.)

(Members who had given notice of amendments Nos. 169, 170, 171, 172, 173, 174 and 175 indicated that these amendments might be taken as moved.)

(Amendment No. 176 was not moved.)

(Members who had given notice of amendments Nos. 177 and 178 indicated that these amendments might be taken as moved.)

Mr. President: Is it necessary for me to go through the ceremony for the rest of the amendments? Nobody will be prepared to withdraw them. After going through 178 amendments, I do not think it is necessary to go through the ceremony for the rest, and I take them all as moved.

Pandit Balkrishna Sharma: May I draw your attention to the fact that some of us gave notice of amendments even today and you were pleased to admit them on the Order Paper. May I know, Sir, whether even those amendments which we have given notice will be taken as moved?

Mr. President: Such of the amendments as were given notice of up to the moment this sitting commenced, will be taken as moved. They will be circulated this evening. There was no time.

Now we shall start the discussion. Mr. Gopalaswami Ayyangar will move the first amendment No. 65.

The Honourable Shri N. Gopalaswami Ayyangar (Madras: General): Mr. President, Sir, I take it that it is quite unnecessary for me to read the whole of this amendment.

Mr. President: I do not think it is necessary.

The Honourable Shri N. Gopalaswami Ayyangar: At the outset, I wish to say that I shall endeavour to the best of my ability to confirm to the appeal you made at the opening of this afternoon's session. I shall try to be brief and what is more, it will be my endeavour to be objective in dealing with this problem. The problem has been before us for quite a long time now. We have discussed it amongst ourselves in small groups, in larger groups in the country, in the Press and so on. A great deal has been said on this problem in all these various places. Opinion has not always been unanimous on this question. There was, however, one thing about which we reached a fairly unanimous conclusion that we should select one of the languages in India as the common language of the whole of India, the language that should be used for the official purposes of the Union. In selecting this language various considerations were taken into account. I for one did not easily reach the conclusion that was arrived at the end of these discussions because it involved our bidding good-bye to a language on which I think, we have built and achieved our freedom. Though I accepted the conclusion at the end that that language should be given up in due course and in its place, we should substitute a language of this country, it was not without a pang that I agreed to that decision.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Unfortunately I am not able to catch what the honourable Member says. Will somebody adjust the mike?

The Honourable Shri N. Gopalaswami Ayyangar: The final decision, as all honourable Members know, on that particular question is that we should adopt Hindi as the language for all official purposes of the Union under the new Constitution. That of course, is an ultimate objective to be reached. It certainly involves that when that achievement takes place, we have to bid good-bye to a language on which many of us have been reared and on the strength of which as I said we have achieved our freedom, I mean the kind of language.

That decision to substitute Hindi in the long run for the English language having been taken, we had to take also two subsidiary decisions which were involved in that one decision. Now the subsidiary decisions were that we could not afford to give up the English language at once. We had to keep the English language going for a number of years until Hindi could establish for itself a place, not merely because it is an Indian language, but because as a language it would be an efficient instrument for all that we have to say and do in the future and until Hindi established itself in the position in which English stands today for Union purposes. So we took the next decision, namely that for a period of about fifteen years English should continue to be used for all the purposes for which it is being used today and will be used at the commencement of the Constitution.

Then, Sir, we had to consider the other aspects of this problem. We had to consider, for instance, the question of the numerals about which I shall have to say something more detailed in the few remarks that I shall permit myself. Then we had to consider the question of the language of the States and we took a decision that, as far as possible, a language spoken in the State should be recognised as the language used for official purposes in that State and that for Inter-State communications and for communications between the State and the Centre the English language should continue to be used, provided that where between two States there was an agreement that inter-communication should be in the Hindi language, that should be permitted.

We then proceeded to consider the question of the language that should be used in our Legislatures and the highest courts of justice in the land and we came to the conclusion after a great deal of deliberation and discussion that while the language of the Union 'Hindi' may be used for debates, for discussions and so forth in the Central Legislature, and where while the language of the State could be used for similar purposes in the State Legislature, it was necessary for us, if we were going to perpetuate the existing satisfactory state of things as regards the text of our laws and the interpretation of that text in the courts, that English should be the language in which legislation, whether in the form of Bills and Acts or of rules and orders and the interpretation in the form of judgments by Judges of the High Court—these should be in English for several years to come. For my own part I think it will have to be for many many years to come. It is not because that we want to keep the English language at all costs for these purposes. It is because the languages which we can recognize for Union purposes and the languages which we can recognise for State purposes are not sufficiently developed, are not sufficiently precise for the purposes that I have mentioned, *viz.*, laws and the interpretation of laws by Courts of law.

Then we have to recognise one broad fact, *viz.*, that while we could recognize 'Hindi' as the language for the official purposes of the Union, we must also admit that that language is not today sufficiently developed. It requires a lot of enrichment in several directions, it requires modernization, it requires to be imbited with the capacity to absorb ideas, not merely ideas but styles and expressions and forms of speech from other languages. So we have put into this draft an article which makes it the duty of the State to promote the development of

Hindi so that it may achieve all these enrichments and will in due course be sufficiently developed for replacing adequately the English language which we certainly contemplate should fade out of our officially recognised proceedings and activities in due course of time. Those generally speaking, are the basis of this particular draft which I have moved.

Now in considering this draft, I wish to place before the House one or two facts. The first that I wish to place before the House is that this Draft is the result of a great deal of thought, a great deal of discussion. It is also—what has emerged—a compromise between opinions which were not easily reconcilable and therefore when you look at this draft, you have to take it not as a thing which is proposed by an individual Member like me or by three Members if I include my two colleagues whose names are set down here. It is not to be looked upon as something which we have put forth. It is the result of a compromise in respect of which great sacrifices of opinion, of very greatly cherished views and interests, these have been sacrified for the purpose of achieving this draft in a form that will be acceptable to the full House.

Now I wish to draw the attention of the House to one or two of the basic principles underlying this draft. Our basic policy, according to the framers of this draft, should be that the common language of India for Union purposes should be the Hindi language and the script should be the Devanagari script. It is also a part of this basic policy that the numerals to be used for all official Union purposes should be what have been described to be the All-India forms of Indian numerals. Authors of this draft contemplate that these three items should be essential parts of the basic policy in this respect for practically all times. I wish to emphasize that fact because I know there is a school of opinion in this House that so far as the international forms of Indian numerals are concerned, they should be placed in this scheme on the same footing as the English language. Those of us who are responsible for this draft, we do not subscribe to this proposition. We consider that to the same extent the Hindi language and the Devanagari script for letters in that language should form a permanent feature of the common language of this country, to the same extent should the international forms of Indian numerals be part of this basic policy. That is at the root of this draft.

It is true that in order to effect a compromise with those who hold a different view we made one or two concessions in this draft which we thought would persuade the others to fall into line with us. One concession was that though the international forms of Indian numerals would be a permanent feature, the President even during the first fifteen years during which the English language will continue to be used practically for all purposes, during that period he may direct that the Devanagari numerals also should in addition to the international forms of Indian numerals be used for one or more official purposes of the Union.

The second concession that was made was that the question of the form of Indian numerals be used for particular official purposes should be one of those questions which the Commission which would be appointed under article 301-B—I think it is 301-B—and it will be one of the duties of that Commission to make recommendations on that subject. We certainly visualised the possibility of that Commission saying, "Let the international forms of Indian numerals be replaced altogether by the Devanagari form of numerals" But we were willing to make this concession, because we thought it would be a gesture which would be appreciated by those who take a different view, and we also were perfectly sure that before an impartial Commission of the sort that will be constituted in the future, arguments in favour of the retention of the international forms of Indian numerals permanently will weigh more

[The Honourable Shri N. Gopalaswami Ayyangar]

heavily than it might in the atmosphere of a House where opinion is so divided as it is today in this House. Well, we were willing to take those risks. I mention these facts to show how great a sacrifice those who stand for the basic policy which I have enunicated have had to make for the purpose of reaching an amicable understanding with the exponents of a different view.

Now, I do not think it will be necessary for me to recommend the claims of the international forms of Indian numerals to this House. They must have read a great deal about it already, and I am sure those who will follow me here will have a lot more to say about it, and so I do not go into the history of this question. I will only mention one or two facts. These forms of numerals originated in our country, and therefore, we should be proud to continue the almost universal use of these numerals which is now made in this country as a part of the future language set-up in this country. (*Hear, hear*). Secondly the whole world, perhaps with one or two exceptions, has adopted these numerals. It is but right that we should keep in step with the whole world, or it should be really the other way, the whole world is already ready to keep in step with us who really gave these numerals to the world. And shall we throw away this proud position in the world with all the attendant advantages that it brings to us? Shall we do so, in order to take to something which is not universally used even in this country and which it is impossible for the world at large to use in the future? Those two facts I should like to place particularly before this House before they reach a conclusion on this matter.

Now, Sir, with regard to this particular point, a number of alternatives have been proposed, but I would refer only to the latest which was put into your hands in the course of today, and that is the proposal which says it will place the international forms of Indian numerals practically on the same footing as the English language in the scheme of things. That means that for the first fifteen years, the international forms of Indian numerals will continue to be used and after that period Parliament might be left to decide for what purposes the international form or the Devanagari form should be used, or both should be used. It looks a very attractive proposition. But at the back of it is this feeling that you visualise the prospect of displacing that international form of Indian numerals altogether in this country. To those of us who are responsible for this draft, that is not a prospect which we can contemplate with anything like equanimity in the largest interests of the country and the world. And therefore it is because of this wrong approach to the whole problem that I am constrained to say that it is not possible for those who hold our particular view to consider this alternative.

Now, Sir, a few words as regards the provision we have made in Chapter III, that is, the language of the courts. We consider it very fundamental that English shall continue to be used in the Supreme Court and the High Courts until Parliament after full consideration, after Hindi has developed to such an extent that it can be a suitable vehicle for law-making and law-interpretation, comes to the conclusion that it can replace the English language. My own feeling is that English will last in the form of Bills and Laws and interpretations of such laws, much longer than fifteen years. That is my own expectation. Now, it is important that we should realise why this chapter has been put in. Law-making and law-interpretation require an amount of precision; they require a number of expressions and words which have acquired a certain definite meaning; and until we reach that stage in regard to the Hindi language —and I do not think at present the Hindi language is anywhere near it, ignorant as I am of Hindi myself (*hear, hear*)—I have seen a good deal of the Hindi translations of what happens in this House and I am constrained to say that even the little Hindi I know does not enable me to make out anything from

that kind of translation. Perhaps people more versed in Hindi may be able to understand it; perhaps I do understand it sometimes, because of the large number of Sanskrit words that are used in these translations. But that is not Hindi, in the sense that you could use it for court or legislative purposes.

I can tell you a story within my own experience. Ten years ago, I was making a Constitution for the State of Jammu and Kashmir. The language of the Legislature had to be described in a section, and those who were drafting it, those officers had simply copied out the language in the Government of India Act, that is to say, English should be the language, but if any member was unacquainted with it or was not sufficiently acquainted with the English language he might be allowed to speak in any language with which he was familiar. Well, it so happened that the late Sir Tej Bahadur Sapru happened to be in Srinagar when I was considering this draft, and I thought that I might take advantage of his presence there for advice and sent this draft to him. The only portion to which he objected initially was this section about the language of the Legislature. He said, "What, in an Indian State where Urdu is the language of the courts and schools, and so on, could you really put in English language as the language of your Legislature?" I had a long discussion with him; I told him, "I quite see your point. I am willing to agree that the language of the Legislature should be Urdu to the extent that those people who are not acquainted with English should be permitted to speak in Urdu. But you are a great lawyer and supposing tomorrow I want you to appear before either the High Court here or the Privy Council and argue and interpret a section of the Constitution, if it is framed in Urdu would you feel happy?" He appreciated my point. I told him as a compromise: "I will put in Urdu as the language of the Legislature for debates with a proviso that the authoritative texts of Bills and Acts shall be in the English language." He instantly agreed to my suggestion and thought that this was the most sensible solution of the problem that confronted us both.

I am mentioning that to you, because at the present moment in India we have to face a similar problem. Our courts are accustomed to English; they have been accustomed to laws drafted in English; they have been accustomed to interpret in English. It is not always possible for us to find the proper equivalent to an English word in the Hindi language and then proceed to interpret it with all the precedents and rulings which refer only to the English words and not the Hindi words. That is why we felt it absolutely necessary —almost fundamental—to this Constitution if it is to work that this Chapter should go into it.

Sir, I do not wish to go into other matters, because I am afraid I have already exceeded the time you have fixed for me. I would only appeal to the House that we must look at this problem from a purely objective standpoint. We must not be carried away by mere sentiment or any kind of allegiance to revivalism of one kind or another. We have to look at it from the stand point of practicability. We have to adapt the instrument which would serve us best for what we propose to do in the future and I for one agree with you, Sir, that it will be a most unhappy thing, a most disappointing illustration of our inability to reach an agreed conclusion on so vital a matter if on this point we have to divide the House. I am sure that good sense will prevail.

Sir, I move:

"That after Part XIV, the following new Part be added:—

'New Part XIV-A

CHAPTER I—LANGUAGE OF THE UNION.

Official language of the Union.

301A. (1) The official language of the Union shall be Hindi in Devanagari script and the form of numbers to be used for the official purposes of the Union shall be the international form of Indian numerals.

[The Honourable Shri N. Gopalaswami Ayyangar]

(2) Notwithstanding anything contained in clause (1) of this article, for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union, for which it was being used at such commencement :

Provided that the President may, during the period, by order authorise for any of the official purposes of the Union the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals.

(3) Notwithstanding anything contained in this article, Parliament may by law provide for the use of the English language after the said period of fifteen years for such purposes as may be specified in such law.

Commission and Committee of Parliament on official language.

301B. (1) The President shall, at the expiration of five years from the commencement of this Consitution and thereafter at the expiration of ten years from such commencement, by order constitute a commission which shall consist of a Chairman and such other members representing the different languages specified in Schedule VII-A as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the progressive use of the Hindi language for the official purposes of the Union;

(b) restrictions on the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in article 301E of this Constitution;

(d) form of numerals to be used for any one or more specified purposes of the Union,

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language of inter-State communication and their use.

(3) In making their recommendations under clause (2) of this article, the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of the non-Hindi speaking areas in regard to the public services.

....

(4) There shall be constituted a Committee consisting of thirty members of whom twenty shall be members of the House of the People and ten shall be members of the Council of States chosen respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under this article and to report to the President their opinion thereon.

(6) Notwithstanding anything contained in article 301A of this Constitution, the President may after consideration of the report referred to in clause (5) of this article issue directions in accordance with the whole or any part of the report.

CHAPTER II—REGIONAL LANGUAGES

Official language or languages of a state.

301C. Subject to the provisions of articles 301D and 301E, a State may by law adopt any of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State :

Provided that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used at the commencement of this Constitution.

Official language for communication between one state and another or between a state and the Union.

301D. The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State or between a State and the Union :

Special provision relating to language spoken by a section of the population of a state.

301E. Where on a demand being made in that behalf the President is satisfied that a substantial proportion of the population of a State desires the use of any language spoken by them to be recognised by that State he may direct that such language shall also be officially recognized throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III—LANGUAGE OF SUPREME COURT AND HIGH COURTS, ETC.

Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.

301F. Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides—

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or a Governor or a Ruler, as the case may be,

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

Special procedure for enactment of certain laws relating to language.

301G. During the period of fifteen years from the commencement of this Constitution no Bill or amendment making provision for the language to be used for any of the purposes mentioned in article 301F of this Constitution shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under article 301B of this Constitution and the report of the Committee referred to in that article.

CHAPTER IV—SPECIAL DIRECTIVES

Language to be used for representation for redress of grievances.

301H. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Directive for development of Hindi.

301I. It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichments by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India, and drawing wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages."

SCHEDULE VIIA

1. Assamese
2. Bengali
3. Canarese
4. Gujarati
5. Hindi
6. Kashmiri
7. Malayalam
8. Marathi
9. Oriya
10. Punjabi
11. Tamil
12. Telugu
13. Urdu

Pandit Lakshmi Kanta Maitra: With regard to the draft to which the honourable Members was just now referring, does he contemplate that any portion of the draft can be considered separately or in isolation?

The Honourable Shri N. Gopalaswami Avyangar: I thought I said that the scheme should be looked upon as a whole. It was the result of a great deal of discussion and compromise. If I may emphasise it, it is an integrated whole We cannot give up one part of it, unless it be a very minor or verbal correction

[The Honourable Shri N. Gopalaswami Ayyangar]

that you want to make, or even a minor matter of substance. It does not matter very much. But the important things in this draft are an integrated whole and if you touch one part of it the other things fall to pieces.

Seth Govind Das: Sir, it has been a problem for me in which language I should Address the House today.

Mr. Naziruddin Ahmad: On a point of order, Sir. The honourable Member is supporting Hindi and he should not, therefore, speak in English.

Mr. President: I see no point of order in it. Any Member of the House is entitled to speak either in Hindi or in English, or in any other Indian language.

Seth Govind Das: I should like to say a few words to my South Indian Friends at the very outset. As I just now said, it has been a problem for me for a few days past and I have been thinking whether I should speak in English or in that official language which is going to be adopted by this House today.

I am convinced, Sir, that as far as we all are concerned, our views are made up and I do not expect that I shall be able to convert any Friend to my view. Therefore I do not want that it should go in the records of the history of our country that when I was speaking in favour of making Hindi as our official language I had spoken in English, in a foreign language and, therefore, I propose to speak in Hindi. I am sure that if my South Indian Friends will hear me attentively I shall try to speak in such language that they will be able to follow every word which I say.

Shri S. Nagappa: On a point of order, Sir. The honourable Member wants to carry the day without making us understand what he says. If he is to carry the House with him, is it not his duty.....

Mr. President: There is no point of order in it. It is for him to decide whether he wants to carry the House with him or not.

Pandit Govind Malaviya (United Provinces: General): May I make a request on behalf of those Members of this House who are supporters of Hindi that the honourable Member may speak in English?

Seth Govind Das: *[Mr. President, I consider this to be the most important day in my life. Besides, the measure of my happiness at what is happening today is also very great. I express my gratitude to you, Sir, for the fact that you have always been kind to listen to whatever I have said here from time to time with regard to this issue. Also on the opening day of this august Assembly, when your Predecessor Dr. Sachidanand Sinha, who also hails from your province, was the provisional Chairman of this House, I had raised the question of National language. Thereafter, I have been raising this question here from time to time, which I feel may have caused annoyance to several of my Friends in the House. I have had too often to approach Members of this House with regard to this matter and it may not be an exaggeration to say that I must have covered miles upon miles in this House in doing so. I have visited them at their local residences; I have visited them in their home towns in connection with this question. I have been earnestly trying to persuade them to agree with our view-point in regard to this question.

I am very happy that agreement has been reached, as the Prime Minister puts it in respect of about 95 per cent. of the issues involved in this question. Nevertheless I would like to emphasize that on the question on which differences still exist, we should reach decisions in an amicable spirit. But if our

*[ ] Translation of Hindustani speech.

differences are not resolved and even if a division is demanded at the time these questions are put to the House no bitterness should be allowed to come in. We have accepted democracy and democracy can only function when majority opinion is honoured. If we differ on any issue, that can only be decided by votes. Whatever decision is arrived by the majority must be accepted by the minority respectfully and without any bitterness. You have made an appeal, Sir, to the House to this effect and Shri Gopalaswami Ayyangar has also made a similar appeal and I too make the same appeal to the House.

I express my gratitude to my Friends from South India and from other non-Hindi regions for having accepted at least one thing—that is Hindi in Devanagri Script alone can be the language of the Union, whether we call it the National language or the State language. As I have just stated, accordingly to our Honourable Prime Minister, unanimity has been reached amongst us over 95 per cent. of the issues, involved in the language controversy. In the remaining five per cent. some questions of principles are involved. If honourable Members from South India or from other regions are unable to agree to our view-point in regard to these questions, we should allow them the liberty to stick to their own view-point and without allowing any bitterness in our hearts we should leave the decision to be taken by votes.

I may now take the question of numerals for consideration. It is a question that is causing strong excitement in the minds of all. I fail to understand as to why it should cause any resentment at all. I would like to recall to the mind of the honourable Members, the events in connection with language question that have taken place during the last two or three years. When for the first time I had raised the question of national script before them, the question of numerals was not raised by my friends from the South. At that time they had a different outlook about this question and it did not then appear to them to be of such momentous importance as it appears to them today. In order to refresh their memory I am going to read out the formula that was signed by a large number of them. I read it out both in Hindi and English. In Hindi it reads thus :

"हम लोग इस बात के पक्ष में हैं कि भारत के विधान में यह रखा जाय कि राष्ट्रभाषा और राष्ट्र लिपि हिन्दी और देवनागरी होगी । राष्ट्र-संघ पार्लामेंट म सब काम हिन्दी और देवनागरी अक्षरों के द्वारा अथवा उस समय तक के लिये जो संघ पार्लामेंट निश्चय करे, अंग्रेजी में हो ।"

Its English version is thus :

"We support the view that the Union Constitution should lay down that the national language and character shall be Hindi and Devanagari respectively, that in the Federal Parliament business shall be transacted in Hindi written in Devanagari character or, for such period as the Federal Parliament decides, in English."]

Kazi Syed Karimuddin (C.P. & Berar : Muslim) : On a point of order, Sir, what is the document that is being read out in the House ?

Seth Govind Das: *[This is a document that contains the formula regarding the national language. It was accepted and signed by a number of Members of this House. It contains the signatures of some of the big personalities here. It bears the signatures of Shri Gopalaswami Ayyangar, Dr. Pattabhi Sitaramayya, Prof. Ranga, Shri Algesan, Shri Thirumala Rao, Shri Ananthasayanam Ayyangar and Shri Kala Venkata Rao.]

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*[ ] Translation of Hindustani speech.

Shri Kala Venkata Rao: Why is my name being dragged? I do not understand the reference to me.

Seth Govind Das: You have signed this formula which I have just read. That is the reference in which your name has been dragged or has come in.

*[I submit, that when you had accepted Davanagari script you had accepted Devanagari numerals also, for otherwise you could have insisted on the introduction of international numerals even at that time.

Many of our Friends from Bombay also had given their acceptance to the formula and the signatures of Sjts. Nijalingappa, Pataskar and Gupte are on the document.

Many of our Bengali Friends had also agreed to it. You will find on it the signature of Mr. Maitra, Mr. Majumdar, Mr. Guha and Shri Surendra Mohan Ghose and many others. Shri Bishwanath Das, Shri Lakshmi Narayan Sahu and Shri Yudisthir Mishra from Orissa had also given their consent to it. Shri Rohini Kumar Chaudhuri and Shri Chaliha from Assam too had accepted the formula. Signatures of almost all the Hindi-speaking Members of the House are to be found on this document. What I mean to say is that the question of numerals has very recently been raised. Nobody gave any importance to this question at that time when this formula was adopted. I do not dispute any one's right to raise this question at this stage. Of course a Member has that right. My only submission is that when they were ready to accept Devanagari script in its present form, it is plain that they should accept Nagari numerals also, for numerals are an integral part of a script and are not something extrinsic to it. When they were in favour of accepting the Devanagari script they should at least permit us without any rancour, bitterness or anger, the right of remaining firm in our original views.

Now I take up the other points. The article moved by Shri Gopalaswami lays down that Hindi in Devanagari script shall be the official language of India. But if you read the article carefully, you will find therein an attempt to keep the day, when Hindi will take the place of English, as far as off as possible. This House seems divided into two groups on this issue. One accepts Hindi in Devanagari script to be the official language of the country but it wants to postpone the replacement of English by Hindi to the remotest possible date. The other group wants Hindi to replace English at the earliest possible moment. I would like to draw the attention of the honourable Members to the resolution passed by the Congress Working Committee—in this respect. The Working Committee wants that every attempt should be made completely to replace English by Hindi within the period of fifteen years so that English may have no place at all here after fifteen years. But Shri Gopalaswami Ayyangar has told us in his speech today that English may have to be retained for long, even after fifteen years. I must tell him that we do not agree to this. Our definite opinion is that if English is at all to go from the country it must go at the earliest possible moment. We are accepting an interim period of fifteen years during which English should be replaced by Hindi. But this does not mean that during this period English cannot at all be replaced by Hindi in any sphere. Sir, you and also the Members of the House are aware that formerly we were of the opinion that the question of interim period should be left to the Parliament for decision. The formula that I have just quoted was accepted also by the non-Hindi speaking people; later on we agreed to a period of five years. We had then thought that English could be replaced by Hindi during five year, if we made earnest efforts in that direction. Thereafter a National Language convention was hled in Delhi.

*[ ] Translation of Hindustani Speech.

Though the convention was held under the auspices of the Hindi Sahitya Sammelan, learned persons from almost every region of the country were invited to it. I will content myself by saying that it was the first convention of its type in the Country. Bengal was represented by Dr. Suniti Kumar Chatterji and Shri Sajni Kant Das, Secretary of the Bangiya Sahitya Parishad, Karnatak was represented by Shri L. Krishan Sharma, Secretary Kannad Sahitya Parishad. From Malayalam attended the great poet Vallathol who occupies the same exalted position in Malayalam literature as was occupied by the late Rabindra Nath Tagore in Bengali literature. Kunhan Raja of Malayalam also attended the convention. From Maharashtra, Mahamahopadhya Shri Kane was to come to it but being unable to undertake the journey he kindly sent a message for the convention; Shri Ale Ballabh from Orissa, Shri Nil Kant Shastri, Dr. Raghwan Bishwanath Satyanarayan, outstanding figures of Telugu had attended it.

Thus you will find that the convention, though convened by Hindi Sahitya Sammelan, was attended by scholars of almost all the regional languages of the country. It decided that Hindi should take the place of English within ten years. Thus the interim period of five years that was decided earlier, was extended at this stage to ten years. Thereafter, when our South Indian Friends expressed the view that the time of ten years appeared to them very short, we agreed to fifteen years. I do not claim that we have done them any favour in this respect; on the contrary we express our gratitude to them for the favour they have bestowed upon us by accepting Hindi in Devanagari script as the National language of the country. We have no objection at all to fixing the period at fifteen if it be convenient to them. A period of five, ten or fifteen years may be considered a long period in an individual's life, but in the life of a Nation it is not much. It is with this idea that we agreed to extend the interim period from ten years to fifteen.

Now the main question that concerns us is whether you are going to replace English within fifteen years or you require a still longer time. The Congress Working Committee has already given its verdict on this issue. The National Language convention too has stated its view in this respect in clear terms. Even then Shri Gopalaswami says today that he does not find any prospect of complete replacement of English by Hindi for a long time even after fifteen years. I beg to tell him frankly that we at least do not agree to this. This is the second point covered by my amendment.

The third point in my amendment is this. Why should the provinces, that have already adopted Hindi and where Hindi is already in use in High Courts, be forced to use English? Take for instance U.P. There everything is being done in Hindi. All the Bills and Resolutions are drafted in Hindi. Now, according to the article moved by Shri Gopalaswami Ayyangar, English will have to be used there for every purpose for fifteen years. It is plain that such a provision cannot take us forward in regard to the use of Hindi; it will only take us back in this respect. How can we accept a proposal which imposes English in the provinces where Hindi is already in use? In some States, Hindi has been in use, in Courts for all purposes, since long. But according to Shri Ayyangar's formula, Hindi should be replaced there by English. Well, there is wide difference between us and South Indian friends in this respect. We are unable to accept such a retrograde proposition.

Now I come to certain other points. A new charge has of late been levelled against the supporters of Hindi. We are accused of holding communal outlook in regard to language question. Even our great leaders have levelled this charge aginst us. I would like to tell them most humbly that so far as we are concerned, we do not look at this question from communal angle at all.

[Seth Govind Das]

We look at it, from a purely national point of view. I may point out that during my public life of the last thirty years I have never been a member of any communal organisation. Maulana Abul Kalam Azad is well aware of the fact that in 1921 when the Khilafat movement was afoot, I was a member of the Central Khilafat Committee. You may take the case of others also who are today taking any part in the Hindi movement. Tandonji's case is before you. Have we ever been connected with any communal organisation? In this connection, I may be permitted, Sir, to tell the House a few things about my own self. There was a time when Hindu-Muslim riots were frequent at Jubbulpore. During one of the riots a mosque was razed down. I got the mosque rebuilt at my own cost. At Khandawa, a town in my home province, my father has constructed a Dharamsala in memory of my respected mother at a cost of about few lacs of rupees. A temple of Shri Lakshmi Narayan had also been built in the precincts of the Dharamsala. The foundation of the temple was laid by Shri Vinoba Bhave. Almost all religious scriptures have been given a place in this temple. The Quran is there; the Bible is there. Buddhist scripture, Guru Granth Sahib, Jain scriptures and Parsi scriptures are all there and their sanctity is duly mentioned. In view of this how can you accuse us, the supporters of Hindi, of communalism? It is a great injustice to accuse us of communalism.

I do not say that Urdu is used here only by Muslims. I do agree that many Hindu poets and scholars have also created outstanding literature in Urdu. Despite this, I cannot help saying that Urdu has mostly drawn inspiration from outside the country. If you want to verify the correctness of my observation, you may read the Urdu literature. I am not altogether a layman in this respect. I have some, though not profound knowledge of literature. In Urdu literature nowhere do you find any description of the Himalayas. Instead you find the description of *Koh Kaf*. You will never find your favourite *Koyal* (Cuckoo) in Urdu literature but, of course, *Bulbul* is there. In place of Bhima and Arjuna you will find there Rustom who is completely alien to us. Therefore, I must say that the charge that we hold communal outlook is absolutely unfounded. I do not say this because of any contempt for Urdu. We love Urdu and will continue to love it. I say so because it is a hard fact. To be frank, Sir, the supporters of Hindi have never been communal in outlook but the same cannot be said for the supporters of Urdu. They do have communal outlook.

Ours is a secular State and we all are one on this point. We treat every religion equally. We do not want to stand in the way of the development of any religion. But we do admit the fact, that in spite of our secularism there are different cultures in the country. There is Muslim population in China and Russia too but there is no difference at all among Muslim and non-Muslim population of these countries. There is no difference in their names; their dress, their language and their culture are all the same. It is true, we have accepted our country to be a secular State but we never thought that that acceptance implied the acceptance of the continued existence of heterogeneous cultures. India is an ancient country with an ancient history. For thousands of years one and the same culture has all along been obtaining here. This tradition is still unbroken. It is in order to maintain this tradition that we want one language and one script for the whole country. We do not want it to be said that there are two cultures here.

We have no hostility to any of the regional languages; we are well aware of the fact that the National language can never flourish unless the regional languages are fully developed and enriched. It is not to flatter my non-Hindi speaking friends that I am giving expression to this thought. In my Presidential address at the annual session of the All India Sahitya Sammelan held

at Meerut, I had made it clear that the regional languages must be given every encouragement to develop themselves and that they should be given the highest place of honour in their respective regions. Every State of the Union must use its own language in its schools and colleges, in its courts and Legislatures. It is not my intention in saying so that the languages other than the State language, but spoken by substantial persons of the people of that State should not be given any recognition. But, as has been laid down in the resolution of the Congress Working Committee, the language demanded should be recognised, only when twenty per cent of the people of the State want it to be recognised. But if one or two per cent of the population makes a demand for the recognition of a particular language, the State cannot afford to satisfy the demand, for it will retard the development of the State language. With this view I have put in another amendment also which lays down that if twenty per cent of the people in a State make a demand for the recognition of any language, that may be conceded. This is quite consistent with the resolution adopted b the Congress Working Committee in this respect.

Our ultimate object is that Hindi should take the place of English at the earliest possible moment and for this I have embodied certain suggestions in my amendments. I have suggested that there should not be appointed two bodies—one Commission and then one Parliamentary Committee—for the same purpose. There should be only one committee—Parliamentary Committee—for this purpose. This Committee should be assigned the task of finding out ways and means to replace English by Hindi within fifteen years.

Lastly, I have one more observation to make. We had, the people of India had, visualized a picture of free India and that picture will remain incomplete until the question of national language is resolved. The people of the country will understand the meaning of *Swaraj* only when this question is completely resolved.

I am very happy that every one of us is prepared to accept Hindi as a national and State language; we should make all possible attempts not to allow any bitterness to come amongst us with regard to this issue. Hindi had received already the blessing of Pandit Nehru. Some eighteen years ago he wrote me a letter which I am going to read out in Hindi. It is dated, Colombo, the 16th May 1931, and is to the following effect :

> "I am sorry for not being able to come to Madura on this occasion. I wish I could come there and render some service which I possibly can, to my Tamil Nad friends. Particularly I wish I could take part in the deliberations of the Hindi Sahitya Sammelan. Hindi has now completely assumed the role of national language and most of the work of the Congress is being done in Hindi. It is gratifying to learn that Hindi is increasingly spreading in Tamil Nad I would have come and gladly offered my co-operation in this pious task, but I am sorry that on account of compelling reasons I am unable to come there. I hope the session of the Hindi Sahitya Sammelan will be a success and will pave the way for the spread of Hindi in Tamil Nad.
>
> Sd. JAWAHARLAL NEHRU."

Panditji wrote this letter eighteen years ago and I am glad to find that we have assembled today to give concrete shape to the prophecy he made eighteen years ago.]

Mr. Naziruddin Ahmad : Mr. President, Sir,.....

Shri Deshbandhu Gupta : I hope the Honourable Member would speak to Sanskrit.

Mr. Naziruddin Ahmad : The subject before the House is of very great importance. I think in a matter of this great importance which affects thirty-four crores of people, there should be no quarrel, but at the same time I should say that there should be no unseemly or hasty compromise. It is not for as enlightened people as compared with the vast population of India to come here

[Mr. Nazaruddin Ahmad]

and exchange courtesies and agree in a mere spirit of a compromise on something which affects many other outside. (*Hear, hear*).

I submit Sir, that we have not been taking into consideration what is compendiously described as the non-Hindi areas. It will not do to say that some Members have entered into a compromise, into an agreement. That agreement will not be binding on the people, and people will not accept it. I submit that in a matter like this, we should proceed with caution and from experience to experience. There should be no compulsion; there should be a national language on a free, voluntary basis. If Hindi is to be accepted as the national language of India, it should be free and voluntary choice. Its beauties and other virtues should be understood by the people before it would be possible to accept Hindi finally as our national language. While my esteemed Friend, the last speaker, was speaking in Hindi, I heard whispers even from those who understand a little bit of Hindi that the language was unintelligible. I submit, therefore, that we should not all at once try to make Hindi the national language of India.

The amendment which I have ventured to submit before the House is No. 177. It is not necessary to read the amendment, as I am sure many honourable Members have already read it. The main purpose of my amendment is that we should not make a declaration of an All India language all at once. My object is that English should continue as the official language of India for all purposes for which it was being used, till a time when an All India language is evolved, which will be capable of expressing the thoughts and ideas on various subjects, scientific, mathematical, literary, historical, philosophical, political. I submit that this should be the way of approach. The suitability of the language for all India purposes for ever should not be a matter left to be decided without a mandate from the electorate, by 315 members. It is easy to be led away by courtesies and generosities. It is not a question of a marriage ceremony or a dinner party where we can afford to be generous. This is a matter which should be a matter of voluntary acceptance by the people.

I submit that so far as Hindi is concerned, it has yet to establish its claim. I have, however, heard the protagonists of the Hindi language say that this is the time when we should agree to have Hindi as our national language. I have also heard it said that if we do not accept Hindi now, the chances of Hindi would be gone for ever. If that is so, Hindi has no case for immediate acceptance. If it is a fact that this House, generously minded as it is, should agree in a voluntary manner without consulting the public convenience, without considering the necessary attributes of an All India language in a modern world, I think the voice of the people should be ascertained. But, I find that there is a tendency in this House to be overgenerous where they should be cautious and proceed on practical lines.

We have said that we want nationalisation. I hope it is already apparent that you cannot nationalise all at once and that it would be highly undesirable. We wanted to abolish the class distinction in the railways. We reduced the classes from four to three. I am sure now it is apparent to everybody that we have to revert to the four class system. We want to break capitalism all at once. I think there is already a realisation that though capitalism has its evils, it is a necessary evil. It should be modified, but should not be abolished. So also, in the field of industrialisation, much loose talk has dried the money-market. I should therefore think that in the matter of language, we should rather proceed in a cautious manner.

My suggestion is that English should continue for such a period till when an All India language is evolved. You cannot make a language suitable for

a modern world by a legislative vote. The suitability of a language requires a large number of things. It requires great writers, great thinkers, great men, scientists, politicians, philosophers, litterateurs, dramatists, and others. I believe without giving any offence, that Hindi is a language which is in a very rudimentary condition in this respect.

After all, India is free. We have to contend with modern forces in the international field. I submit in this modern world we cannot avoid English. We must have English whatever may be the other languages we may have. English is inevitable. But in this respect, we are showing a somewhat inferiority complex. We are really exhibiting what is called a compensatory behaviour. I should think there should be no inferiority complex in the matter of language.

An Honourable Member : Superiority complex !

Mr. Naziruddin Ahmad : It may be superiority complex which is even a bad thing. That would be a kind of weakness. I submit that the British have gone; British domination was a thing worth removing. But what about their language ? Is the English language a British language ? I submit it is a world language. Take the case of many other colonies and many other countries. Take the case of Japan. Japan thought that it must rise in the world. It adopted the English language as the official language voluntarily. They went to America and other places and learnt English and with the help of the English language, English science, modern thoughts and world activities were open to her. But for the unfortunate entry of Japan in the last war, Japan would have been one of the greatest nations of the world. That is why I submit that English should be compulsory. It may be a disagreeable necessity; but still, it is a necessity.

Now, the question of selecting a national language, in my opinion, should be dependent upon two conditions. Before putting down these conditions, I should like to ask honourable Members to consider the situation. If you have, I am speaking from the point of view of non-Hindi areas—if you have to learn Hindi, you have to learn it as a foreign tongue. You can learn your mother tongue without literacy; but a foreign tongue you can learn only through books. Now, in a non-Hindi area, a boy must be first of all literate in his own mother tongue before he can possibly learn an All India language, Hindi.

I submit, therefore, that before we impose upon the people of India a compulsory all-India language, the prerequisite should be their literacy in their own language. After fifty years of tremendous labour, and of over forty years talk about primary education, we have not been able to make literate more than 13 or 15 per cent. of our people. At least 85 per cent of our people are absolutely illiterate. Does it stand to reason that you can teach Hindi as the official language to the people of India all at once ? You cannot do so. The prerequisite condition of imposing upon the people of India national language should, I submit, be mass literacy in the various areas. I should submit that the first condition is there should be a mass literacy campaign and there should be a minimum percentage of literacy in each area before we impose a foreign tongue upon an unwilling people.

The second condition which I should prescribe would be that you must re-group the provinces on a linguistic basis. The reason is simple. We recognise in this official compromise draft that there should be regional languages. If we have regional languages, there will be clashes between the various people talking different tongues huddled together in the same province. In order to avoid all troubles, people generally speaking one tongue should be placed in one province. If we do not proceed like this, the difficulty would be that there will be tyranny of the majority in a certain area over the minority.

[Mr. Naziruddin Ahmad]

I do not wish to go into the various controversies which are now raging. I believe these controversies should die down when we re-group the provinces on that basis. If we do not do it now, it will never be done and endless troubles will arise. If the provinces are re-grouped on a linguistic basis, then, it would be possible for them to think of a foreign all-India tongue. I submit that for a modern State like India, we require a modern language. I submit that simple Hindi can not be the official language. It must be a mixture in which the various languages of India should contribute. I am not a man who does not believe in an official Indian language, but I am not to be blind to facts. I cannot permit myself to be blind to facts even out of patriotic motives. So, time should be given to evolve a suitable language. Our Constitution and our laws are in English and yet we provide only for fifteen years for a substitute. If you will try to translate only our laws, you will find how difficult it is to do it accurately.

After all there should be a realistic approach. I submit that if we proceed unrealistically the result would be reaction in the various non-Hindi provinces. It will be extremely difficult for them to pick up the tongue, and acquire sufficient mastery over that tongue in order to discharge the functions of an all-India language. The great thing to remember is that Hindi itself would have to be developed. It is not a question of fifteen years it is a question of experiment and experience. It will take long years' for great writers and thinkers to be born who will develop it: and secondly, it will require a long time for the people not merely to speak conversational Hindi—which is very easy—but literary Hindi which would be extremely difficult.

I submit that in one of the clauses of the proposed article 301B, clause (3) it is provided that as far as possible the claims of non-Hindi areas should be reconciled in choosing men for public services. I submit this would be productive of considerable amount of hardship. Take the case of a boy in a non-Hindi area. He will have to learn his own mother-tongue which may be different from the regional language. The boy may have again to learn a mother-tongue which may be different from the regional tongue. He has therefore initially to learn two languages. If he is to aspire for higher honours in the public services and in the internal political field as well as in external field, he will have to learn English and then he will have to learn the official tongue—Hindi. Just think of the huge waste of energy which our boys and girls will have to undergo to learn these languages. The result would be that middle-class men of poorer means will be deprived of the advantage of learning English. The result of accepting an all-India language all at once would be that there will be less English schools and more Hindi schools; richer people—though we aim at a classless society—will become richer and poorer people will get poorer. English will be available only to children of richer people and therefore activities in the foreign field, activities in all-India field requiring knowledge of English in order to avail of the sciences and the arts of the West will be open only to them. The poor and the middle-classes will be deprived of it. This would be the effect of this sudden change. When British came here Persian was the official language and they waited for sixty years before they introduced English as the medium of instruction. Then again, they did not make it compulsory, they proceeded cautiously. I submit that we should take a leaf out of their experience. I have said in my amendment that there should be compulsory primary education and when we find that in each State there is at least 60 per cent literates in their own mother-tongue and when also the provinces have been divided on linguistic bases, then there should be a Commission and the Commission's report should be debated in the Legislative Assemblies and Councils as well as in the Parliament and

then these debates would be before the country for a sufficient time, and then we will get a more true and real picture of what is to come. Then it would be easy for the people to select or evolve the national language. If we proceed like this, then acceptance of a national language and the selection would be easy otherwise it would be fraught with grave difficulties. It is not permissible to dwell at length on these matters since the decision on this question must depend on broader issues.

I submit that besides Hindi there are other claimants. I have tabled an amendment that Bengali should have its claims. This is only by way of suggestion that Bengali is the most advanced Indian language in the whole Dominion. That is accepted by persons competent to speak. I submit the first Bengali book 'Charya' was published in the 12th Century. That is the earliest Indian book traceable apart from Sanskrit. Then in the 16th and 17th Centuries there were a lot of Bengali books. Then there were a large number of writers Charu Chandra Dutta, Bankim Chatterjee and a host of others who enriched Bengali literature and, omitting a large galaxy of writers, the late lamented Rabindranath Tagore. He wrote enormously and enriched Bengali literature and it is the finest medium of thought; and I believe if you consider a language on merit, Bengali will have a prior claim. I do not wish to detract from the utility and excellence of other languages but I only put the claim of Bengali on a proper plane. I submit that Bengali language is highly developed and its only difficulty is that it is not spoken by a vast majority. But an official language should not be based merely by the fact that a large number of people speak it. Its suitability to express modern ideas, scientific literary and other, should also be an important factor. I do not want to take up the time of the House on the beauties of the Bengali language.

The Honourable Shri Ghanshyam Singh Gupta: We want to hear your views on Sanskrit.

Mr. Naziruddin Ahmad: I am extremely thankful to the honourable Member Mr. Gupta for anticipating me. If you have to adopt any language, why should you not have the world's greatest language? It is today a matter of great regret that we do not know how with what veneration Sanskrit is held in outside world. I shall only quote a few brief remarks made about Sanskrit to show how this language is held in the civilised world. Mr. W. C. Taylor says, "Sanskrit is the language of unrivalled richness and purity."

Mr. President: I would suggest you may leave that question alone, because I propose to call representatives who have given notice of amendments of a fundamental character, and I will call upon a gentleman who has given notice about Sanskrit to speak about it. The honourable Member had given notice of Bengali, English and also Sanskrit. So I think he can better leave it there. I think I had better allow a gentleman who has given notice of Sanskrit, independently of all other languages, to speak about Sanskrit.

Mr. Naziruddin Ahmad: Yes, Sir, I shall not stand in between. I will only give a few quotations. Prof. Max Muller says Sanskrit is the "greatest language in the world, the most wonderful and the most perfect." Sir William Jones said that "Sanskrit is of a wonderful structure, more perfect than Greek, more copious than Latin, more exquisitely refined than either. Whenever we direct our attention to the Sanskrit literature, the notion of infinity presents itself. Surely the longest life would not suffice for a single perusal of works that rise and swell, protuberant like the Himalayas, above the bulkiest compositions of every land beyond the confines of India". Then, Sir W. Hunter says that the "Grammar of Panini stands supreme among the Grammar of the world. It stands forth as one of the most splendid achievements of human invention and industry..... The Hindus have made a language

[Mr. Naziruddin Ahmad]

and a literature and a religion of rare stateliness." Prof. Whitney says, "Its unequalled transparency of structure give it (Sanskrit) indisputable right to the first place amongst the tongues of the Indo-European family." Professor Bopp says "Sanskrit was at one time the only language of the world." M Dubo's says "Sanskrit is the origin of the modern languages of Europe." Professor Weber says Panini's grammar is universally admitted to be the most wonderful grammar in the world. Prof. Wilson says 'No nation but the Hindu has yet been able to discover such a perfect system of honestes." Prof. Thompson, says "The arrangement of consonants in Sanskrit is a unique example of human genius". Dr. Shahidullah, Professor of Dacca University who has a world-wide reputation as a Sanskrit scholar says "Sanskrit is the language of every man to whatever race he may belong."

An Honourable Member: What is your view?

Mr. Naziruddin Ahmad: My own view is that it is one of the greatest languages and.....

An Honourable Member: And should it be adopted as the National language or not? It is not spoken by any one now.

Mr. Naziruddin Ahmad: Yes and for the simple reason that it is impartially difficult to all. Hindi is easy for the Hindi speaking areas, but it is difficult for other areas. I offer you a language which is the grandest and the greatest and it is impartially difficult, equally difficult for all to learn. There should be some impartiality in the selection. If we have to adopt a language, it must be grand, great and the best. Then why we should discard the claims of Sanskrit. I fail to see. If the non-Hindi people have to learn a language, they would rather learn Sanskrit than a language which is infinitely below Sanskrit in status, quality and rank. And then with regard to the script of Hindi. I have here an article by a professor of Benaras University—Mr. C. Narayana Menon who has written a pamphlet entitled "Script Reform". He has pointed out the script in Hindi is the most erratic. It has hands and feet proceeding in all directions like an octopus. The script is not smooth and rounded and the language is not capable of being speedily or easily written. Sir, this ease of writing is also one of the factors to be considered in a modern language.

Sir I have taken some time but I submit the considerations are very serious and I submit that we should not take any hasty step. We should all evolve a language and test it before we adopt it. I submit Bengali, Sanskrit and other languages are so many candidates and their cases have to be considered

Shri Sarangdhar Das (Orissa States): May I just ask one question of the honourable Member, whether.....

Mr. President: No question need be put or answered.

Shri Sarangdhar Das: I only wanted to know—I did not hear him clearly, whether he said English was the official language in Japan?

Mr. Naziruddin Ahmad: Yes.

Mr. President: I may explain to Members the procedure I am following in selecting speakers. I am taking amendments which are of a fundamental character and asking the Movers of those amendments to speak, so that all the points of view of a fundamental nature might first come before the House.

The Honourable Shri K. Santhanam (Madras: General): I hope that giving an amendment is not the only criterion for calling speakers.

Mr. President: No, that is really no criterion at all. But I am selecting the speakers who have given notice of amendments of a fundamental nature so that they may speak on their resolutions. Shri Krishnamoorthy Rao.

Shri S. V. Krishnamoorthy Rao: Sir, I have tabled four amendments. No. 69 says—that the *status quo* should be maintained and the question of language should be left to be decided by the future Parliament. In fact, when the Honourable Shri Gopalaswami Ayyangar's amendment was distributed to us, I thought we had buried the hatchet and come to a decision about this language question. Sir, it is a most wholesome resolution which gives scope on the one hand for the Hindi protagonists to develop their language and to introduce it gradually as the common language in India. On the other hand it allays the fears of the other people of India that there will be no imposition of a language and that they will be allowed time to fall in line with their Hindi friends gradually and take their place in the Hindi speaking populations of India. But unfortunately the number of amendments of which notice has been given to this resolution makes me shudder and I think it is better this question is left to the future Parliament to be decided. For the last two years, we have been wrangling over this question. It is unfortunate that we have not, though we have decided many questions by common understanding and adjustment, we have not been able to come to an understanding on this vital question. Sir, my submission, therefore, is that let the House accept my amendment to maintain the *status quo*.

My second amendment is about the clause which gives power to the President for the introduction of Devanagari form of numerals, in addition to the internation form of Indian numerals in the common language of India. My submission is that this should not be so. In fact, as the Honourable Gopalaswami Ayyangar has already said, and as everyone knows, these international numerals are our numerals, and simply because they went out of India and others developed them and brought them up to their present form, that we should treat them as something foreign to us and that we should discard them, I think, will be the height of folly. Sir, are we going back or are we going forward with the rest of the world? It is the greatest contribution that India has made to the scientific thought of the world and revolutionised it, and I for one would never yield in my love of the international numerals which are Indian in origin and which are our numerals, and we should reclaim them as our own numerals and proclaim to the world that they are ours and I think to discard them as something foreign is not in the interest of the whole country. So my amendment is that this power which has been given to the President in the proviso to clause (2) of 301A—the latter part of it—"Provided that the President may during the said period, by order authorise .. the use of the Hindi language....and of the Devanagari form of numerals in addition to the international form of Indian numerals." I mean the latter portion of it—"and of the Devanagari form of numerals in addition to the internation form of Indian numerals" should be omitted, and we should stick to the international form of numerals only as it is really ours.

Then my next amendment is No. 188 that is, about the establishing of an academy to develop Hindi language so that it may be acceptable to the whole of India. My respectful submission is that today Hindi is only a regional language and a provincial language and just because it is being spoken by about ten crores of people out of thirty-two crores, we are raising it to the level of a common language. I would call all languages spoken in India as our national languages—Tamil, Telugu, Kannada, Malayalam, Bengali, Gujerati and all the other languages are national languages. But for the purpose of the Union, we want a common language and we are prepared to accept Hindi as our common language. But Hindi has to become such a language that its effect would be seen in all the ramifications of national life, and for this it should develop very much. My submission is that today Hindi has not yet developed to that stage. In fact I can quote from some of our own South Indian languages to show that they are far more developed than Hindi is

[Shri S V Krishnamoorthy Rao]

today To give a few instances For certain scientific terms these are the words used in the Great Indian English Dictionary published in Lahore—

For Hydrogen, the words used are	*Udajan*
Mr Banerjee used the word	*Aardrajan*
For Bromine	*Durogh ee*
Mr Banerjee uses the word	*Baramina*
For Nitrogen	*Bhooyathid*
Mr Banerjee uses the word	*Netrojan*
For Iodine	*Janchukee*
Mr Banerjee uses the word	*Yethena*
For Oxygen	*Jaraka*
Mr Banerjee uses the word	*Akshajan*
For Carbon	*Prangara*
Mr Banerjee uses the word	*Karajan*

So far hydrogen, nitrogen, oxygen and carbon we, in Kannada use 'Jalajanaka', 'Sarajanaka', 'Amlajanaka' and 'mala'. Thus, different words are used for different scientific terms If that is to be the case, how are our students and scientists to deal with the rest of the world ? I maintain that so far as scientific and technical terms are concerned we must use international terms. Take an article like 41 of the Constitution It says, there would be a President for India We have got four translations of it here and the terms used are quite different

Shri Sundar Lal's translation gives हिन्द का एक प्रेजीडेंट होगा
Shri Rahul Sankrityayan says भारत का एक राष्ट्रपति होगा
Mr. Gupta says भारत का एक प्रधान होगा
Kaka Kalelkar translates President as parama panch परमपंच

In the South Indian languages we use the word Adhyaksha which is quite easily understood Why not use that word ?

I may give you examples of some constitutional words from these four translations.

Compensation In Kanarese we use the word 'parihara'.
Kaka Kalelkar uses the word नुकसान भरी
Shri Rahul Sankrityayan uses क्षति पूर्ति
Guptaji uses the word मुआविजा
Shri Sundar Lal says यतजाना 'yethjana'.

Citizen : We say 'paura.'
Kaka Kalelkar says नागर
Shri Rahul Sankrityayan says नागरिक
Guptaji says जानपद
Shri Sundar Lal says नागरा

Republic: We use the words 'janta rajya'
Kaka Kalelkar says लोकराज
Shri Rahul Sankrityayan says गणराज्य

Guptaji says गणराज्य
Shri Sundar Lal says लोक राज

Oath : We use the word 'pramana'.
Kaka Kalelkar says मागध शपथ हलफ
Shri Rahul Sankrityayan says सम्भाषन, शपथ
Shri Guptaji says निश्चयोक्ति, शपथ
Shri Sundar Lal says वचन भरना हलफ उठाना

Take the word *Residuary power :* We use the word Sheshadhikar.
Kaka Kalelkar says बाकी बचे अधिकार
Shri Rahul Sankrityayan says शेषाधिकार
Guptaji says अवशिष्ट विधान शक्ति
Shri Sundar Lal says रही सही शक्ति

Take the word *Legislation:* We use the words 'sasana; kanun
Kaka Kalelkar says कानून
Shri Rahul Sankrityayan says व्यवस्था
Guptaji says विधान
Shri Sundar Lal says कानून

Take the word *Authentication :*
Kaka Kalelkar says सचियाना, परमानन, सही करना
Shri Rahul Sankrityayan says प्रमाणित करना
Guptaji says प्रमाणिकता
Shri Sundar Lal says सही करना

I have taken only five words and for these each translation gives a different word. Then which of them are we to use in the Constitution ? My submission is that constitutional terms have certain connotations in the international field. Take for example the word "Parliament" you may go anywhere in the world, it has got one particular meaning What word are we to use for it ? I submit that these terms have to be evolved by a committee of experts, not only Hindi speaking people, but experts from all the important languages of India. That is why I have tabled my amendment No. 188 which reads—

"That in amendment No 65 above, the proposed article 301-I be renumbered as clause (1) of that article and the following be added as clause (2) :—

(2) The President shall appoint a permanent Commission consisting of experts in each of the languages mentioned in Schedule VII-A for the following purposes :—

(i) to watch and assist the development of Hindi as the common medium of expression for all in India,

(ii) to evolve common technical terms not only for Hindi but also for other languages mentioned in Schedule VII-A for use in science, politics, economics and other technical subjects,

(iii) to evolve a common vocabulary acceptable to all the component parts in India "

I hope Shri Gopalaswami Ayyangar will see his way to accept this amendment. In fact, my difficulty is that we use the same word to mean different things in the different languages of India. I will give you a few samples of these.

[Shri Krishnamoorthy Rao]

For the word aircraft the word given in this Kaka Kalelkar's glossary is *havagadi*. Why not use the word "viman"? It has been in common use. For bank the translation given in this is *sahukar, bunk*, whereas we have got a very fine word in Sankrit—it is *dhanakothi*. We use the word *mantri* for Minister in South India, whereas in many of the invitations that we receive from our Hindi friends I find the word 'mantri' used in the sense of Secretary.

Then, for the Council of States the translation given is riyasat sadan. The States are gone now. Out of 582 States only two or three remain and still the old meaning of State is hanging over and is still being used.

The translation for the word 'court' is given as qutchery. We in the south use the word kutchery for office.

These are the words which are in common use in all the Indian languages. I began to learn *Devanagari* letters only when I learnt Hindi during my jail life. Hindi was for long called 'Musalmani' language in the South. This Hindi and Hindustani question is purely for the north. But we are prepared to accept Hindi. It was a great gesture when Maulana Abul Kalam Azad told us that Hindi in Devanagari script should be the common language of India. But a regular tirade is being carried on against him in some of the North Indian papers and he is accused of attempting to impose Urdu on the people of India. We cannot look at this question objectively at present. In the greater interests of the country this question should be decided in a dispassionate atmosphere when feelings have sobered down. That is the purport of my amendment.

So far as the time question is concerned, my submission is that there should be no relaxation of the fifteen years period. Sir, I have tried to learn Hindi. I have translated some books from Hindi into my own language Kannada also. But it is a very difficult language for me to make up my mind to speak before this House. We cannot learn the technicalities of the language, the idiomatic language of the Hindi-speaking people. It takes time. I would give a challenge. Let either Mr. Govind Das Tandonji or Guptaji live among the Tamil people and learn to speak the Tamil language: the time taken, I will put it, as just enough for the introduction of the Hindi language for the south They will take not 15 years, but 20 or 25 years. It is really a difficult problem You cannot look at it only from your point of view. That is why I submit that a time lag is necessary and fifteen year is the minimum period that we can accept.

No language in the world can isolate itself. In fact I have got a glossary prepared by the Mysore Constituent Assembly for the technical terms. I just took out this book and tried to find out how many Urdu or Hindustani words were in this booklet. In fact this consists of 30 pages. We have got 67 words which are Urdu or Hindustani in origin. In our puritanism are we going to give up all these words? If you take English itself and study the history and development of that language, it has attained international importance because it has borrowed freely from other languages. If Hindi is going to be the common language of India and meet the needs of a growing nation, it should develop itself borrowing freely from all the languages. We cannot have any narrow outlook so far as the development of the language is concerned. Take the words 'bench', 'rail', 'table', etc. Many of these have become common words What is the word that we can coin for bench in Hindi. Are we going to change them? I think that should be a most suicidal policy.

My next amendment, Sir, is about the connotation of the word 'Kannada'. In the schedule it is mentioned as 'Kanarese'. This is a hybrid form of Kannada and this was only used by the missionaries who no doubt have done yeoman's service to the Kannada language. Kannada is the word used by one of our

poets Nriapathunga in the 9th century. I hope Mr. Gopalaswami Ayangar will accept my suggestion.

With these words, Sir, I commend my amendments for the acceptance of the House.

Mohd. Hifzur Rahman (United Provinces : Muslim) : *[Mr. President, my amendment relating to language is that in place of Hindi, Hindustani should be the national language of India and it should be written in both the scripts—Devanagri and Urdu. Moreover, wherever our esteemed Friend Shri Gopalaswami Ayyangar has mentioned 'Hindi', that should be replaced by "Hindustani" and for the word "Hindustani" "Hindi and Urdu" should be substituted. This Hindustani should be so developed that it may absorb Urdu, Hindi and all other languages of India and thus it may get an opportunity of full development.

The language problem is so important that we have to think over it minutely. Since we have got an opportunity for discussing this problem in the Constituent Assembly, I propose, because I think it necessary, to express my views relating to this problem.

At this juncture the language problem has assumed greater importance. When we look back, we find that during thirty years' battle of freedom which we fought under the leadership of Mahatma Gandhi, whenever the language problem was taken up, it was discussed fully. Today I am confused and confounded because till yesterday, the whole Congress was unanimous regarding the solution of the language problem. There was no dissenting voice. All said with one voice "Hindustani shall be the national language of our country, which shall be written in both the scripts, namely, Hindi and Urdu." But today they want to change it.

Freedom of the country and language are among those problems in which Mahatma Gandhi was keenly interested and to which he attached very great importance. In the beginning when the Language problem came before the country he (Mahatma Gandhi) was enrolled as a member of the Hindi Sahitya Sammelan and he tried to advance the cause of Hindi. But slowly and gradually he realized that it was not the Hindi of his liking. It was a separate language which was Sanskritized and its protagonists were trying to make it more and more Sanskritized and call it "Hindi". He differed and proclaimed that to him, "Hindi" meant "Hindustani". This is the reason why he propagated for the advancement of "Hindi", that is, "Hindustani" Whenever I had any talk with him regarding this question, he always said to me "By Hindi I mean that language which is spoken in Northern India and which is spoken and understood by the Hindus and Muslims throughout the length and breadth of India". This was the language which was according to Mahatmaji, Hindustani or Hindi. But when he realized that his object was not gained by calling it "Hindi or Hindustani" he resigned his membership of the Sammelan and espoused the cause of Hindustani and said that only this plain and simple language could be the national language. He also said that he did not want Hindi as "Rashtra Bhasha" and that he wanted this position for 'Hindustani', the cause of which he would propagate In this connection his efforts were crowned with success. He told the protagonists of Sahitya Sammelan that he accepted only Hindustani as the simplest language of the country. He did his best for the advancement of Hindustani, I still remember and cannot forget 30th January when the greatest tragedy occurred and a tyrant snatched away Mahatma Gandhi from us. Three days before this occurrence, I had a talk Mahatma Gandhi in Birla House.

*[ ] Translation of Hindustani speech

[Mohd. Hifzur Rahman]

It was 10 or 11 O'clock at night. He told me "It is a source of greatest pleasure to me that now there is peace in the country. You have helped me in restoring peace in Delhi. Now I have to propagate the cause of Hindustani and you have to help me in this task also." We assured him of our full support.

Gandhiji's one desire was to raise India to the highest summit of glory and greatness. Throughout his life he endeavoured for the achievement of this objective and eventually sacrificed his life for it and thus gained his object. It baffles me to think how anybody—high or low—who desires that India should be great and glorious, could forget the great principle propagated by Gandhiji, and how it is that they want to do away with this language for which Gandhiji lived and died. Now they want to replace it by Hindi. It confuses me to think how Congress could forget the principles preached by Mahatma Gandhi, although his name is associated with every thing that is being done. You may retort saying "Why do you associate Gandhiji's name with this problem?" To that, I would reply that I have mentioned Mahatma Gandhi in this connection only because this was a very important problem for Gandhiji. In addition to this, Congress, too, had accepted Hindustani as the *lingua franca;* therefore whatever Mahatma Gandhi has said and whatever principles he has laid down, should be followed, and nobody should raise any voice against his commandments.

The language problem is one of those problems on which Mahatma Gandhi had laid emphasis. When he was publishing his paper in Hindustani, he felt the necessity of closing the publication of his paper in Hindi. On that occasion he had said if his Hindustani paper was a source of displeasure for the people and if they objected to his doing so and they would not read his paper, they should not run away with the idea that he would only close down the Hindustani paper, nay, the Hindi paper shall also cease publication. At that time we had submitted to him that he need not close down any one of them, and that we shall tour all over India, raise funds and enrol subscribers for these papers and shall recompense the loss incurred. The result was that only in Delhi alone we had procured 100 subscribers in one day. In short, to him Hindustani alone was suitable for India. He called this language Hindustani and not Hindi. If ever he used the word 'Hindi', he changed his opinion later on. This shows that after hard thinking and research he had arrived at the conclusion that Hindustani should be the *lingua franca* of India.

But today here and now Hindustani is being replaced by Hindi and obviously steps are being taken against Gandhian ideology and against the thirty years' history of the Congress. Formerly Hindi was not considered to be outside the pale of Hindustani. But when the voice was raised that Hindi should be the language of the Union, then I realized the difference between Hindi and Hindustani. I learnt that by Hindi they mean that language which shall be Sanskritized and the words of Persian, Arabic and Urdu origins shall be excluded and they shall be substituted by new words.

Again and again assurances are forthcoming that this is not the case and that by Hindi they do not mean to exclude the current words and the words of Arabic, Persian and Urdu origins. They assert that such words shall not be excluded; nay, they shall remain as they are. We are consoled that these words shall exist. But take the example of U.P. As I have already pointed out in the party meeting, in U.P. they have already declared Hindi as the language of the province and the State. The result is that new words are being coined and new methods are being adopted. Urdu words have been excluded — [illegible]re been substituted by new words. They have also excluded

the current words. The words 'Wazir' and 'Naib Wazir' are understood by every one. But today the use of these words is considered to be a crime. These words have been replaced by "Sachiv" and "Sabha Sachiv". This is not all. Even current words as Muqaddama, Misil, Muddai and Muddalay which even villagers speak and understand and use in their day to day conversation, are being replaced by such expressions which even Hindus neither understand nor speak. This shows that by Hindi they mean Sanskritized Hindi, from which thousands of Urdu words shall be excluded and substituted by new words. At the same time every effort is being made to eliminate Hindustani and Urdu words. My Friend, Seth Govind Das, has just said that he had a soft corner for Urdu but it was the language of Muslims.]

Seth Govind Dass: A word of explanation, Sir, I never said that Urdu was the language of Muslims.

Mohd. Hifzur Rahman: *[Then please repeat what you have said. You made the following statement only because you accept Urdu as the language of a particular community :—

"I am compelled to say that in Urdu we find foreign expressions." I would like to submit that Muslims did not bring the language from Persia, Spain, or Arabia. Urdu is the product of Hindu-Muslim unity; their conservations and way of life, the glimpses of which could be found in every market-place, in every house and every lane and by-lane. It was the product of their mutual love and affection. But today it is looked down with contempt because it contains foreign expressions, and for this reason it cannot be the language of the Union." But I say with all the emphasis at my command that this proposition is wholly incorrect; because in spite of the assertion to the contrary, in point of fact, Urdu is pregnant with Indian thoughts and expressions. If you would study Urdu poetry and Urdu poets, you would realize your mistake. One of the modern poets of Urdu, namely Mushim of Kakori, while praising the Holy Prophet of Islam says thus :—

"From Kashi clouds are proceeding towards Mathura. The cool breeze has brought the sacred waters of the Ganges on her shoulders. The news has just reached that clouds are coming for 'Tirath' (Pilgrimage) : on the wings of clouds, etc. etc." Even in a religious poetry like this 'Ganges' and 'Mathura' has been mentioned. The poet has substituted 'Kashi', 'Mathura' and 'Ganges' for 'Macca', 'Medina' and 'Zem-Zem'. This is the correct position and I would like to say that any assertion to the contrary is wholly incorrect.

Like Muhsim, Nazir of Akbarabad also draws his similes mataphors and inspiration from Indian background. Here is an example :—

He gives us a pen-picture of death and says :—

"سب ٹھاٹھ پڑا رہ جائے گا جب لاد چلے گا بنجارہ
جب چلتے چلتے رستے میں یہ گون تری ڈھل جائے گی
اک بدھیا تیری مٹی پر پھر گھاس نہ چرنے پائے گی
یہ کھیپ جو تو نے لادی ہے سب حصوں میں بٹ جائے گی
دھی، پوت، جنوائی، بیٹا کیا ؟ بنجارن پاس نہ آئے گی
سب ٹھاٹھ پڑا رہ جائے جب لاد چلے گا بنجارہ"

The poet means to say that when the "Banjara" (grain merchant) puts his loads on his carriers to leave the place, he has to leave behind all his grandeur, That is to say, when a man would die, he would leave behind all his wordly

*[ ] Translation of Hindustani speech.

[Mohd. Hifzur Rahman]

things here. In these lines the following words are purely of Indian origin and have nothing to do with Arabic and Persian :—

"(bullock) بدھا , (worldly things) لہانہ،

(grain merchant) بنجارہ , (daughter) دھی"

In this connection I can also mention Amir Khusrau and the modern poets like Iqbal and Akbar of Allahabad, who were influenced by the thoughts and ideals of this country.

This will have to be accepted in clearest terms that the present Sanskritized form of language which is being proclaimed as the *lingua franca* of India can never be the national language of our country. Similarly that form of Urdu which is encrusted with Arabic and Persian words, can never be the language of our day to day life, market-place and business. This is the reason why Mahatmaji had rightly said "If there is any language which can be the language of the Union, it is Hindustani in which both Urdu and Hindi are incorporated." Even Bengali words and expressions of other languages of India have been included in this language.

The protagonists of Hindi assert that the State language should be the language which has been developed through Sanskrit, and thousands of Urdu, Persian and Arabic words should be eliminated which are generally used and are included in the language of the country, and these words should be replaced by the words of Sanskrit origin and thus literary Hindi should become the language of the country. Similarly, adoption of Urdu, as *lingua franca* means, the adoption of that language which has been developed through Arabic and Persian and which has no place for the words of Sanskrit origin.

Both these assertions are faulty. And I say that the language which is spoken in northern India should be accepted as State Language. It is simple and easy and possesses the tendencies of smooth development and popularity throughout the country, because it is not the creation of any particular individual.

There is yet another point. Some of my colleagues, while talking of Hindi Sahitya Sammelan, have said that Mahatma Gandhi had said that India's language was Hindi : I want to inform you that he had changed this view, and consequently Mahatmaji, through the "Hindustani Pracharni Sabha", adovcated till his death that "Rashtra Bhasha" of the whole country should be Hindustani. Moreover, for the last thirty years, it has been declared over and over again from the platform of the Indian National Congress with unanimity that the State language of India would be Hindustani. And Hindustani has always been defined in these words :—"Hindustani is that language which is spoken from Bihar right up to Frontier". If we leave the excluded area of the Frontier, even then the fact remains that this language is spoken and understood from Bihar up to East Punjab. Not only this, there are Hindus and Muslims all over the country who understand and speak this language. You are ignoring the principle of Mahatmaji and the thirty years old history of the Indian National Congress and compelling us to accept that thing which is against the history of language; and Congress and you want to impose it upon us and you tell us in authoritative tone that only that language can be and will be the language of the country which you decide to be the language of the Union. I had challenged it in the Party meeting and I am enquiring here also. Tell me why this baseless thing, which is against the principle of Mahatmaji and the thirty years' old decision of the Congress, is being put forward. But I regret to say that neither was I given a reply there nor have I received any reply here.

After all, tell me why this change has been made in the principles laid down by Mahatmaji and the decision of the Congress ? I would like to say faankly

that unfortunately the partition has caused this bad effect on our minds and it was the result of this fact which has made us oblivious of such an important principle. This is the reaction of the partition. And it is due to this reaction that we are thinking in these terms. And in this state of grief and anger, which is the outcome of their own hands and for which all must share the blame, they are showing their narrow-mindedness against a particular community of the Indian Union. They want to settle the language question in the atmosphere of political bigotry and do not want to solve this problem as the Language problem of a country.

This is dangerous. I am astonished that in speeches this very sentiment is being expressed over and over again. And instead of settling this question amicably with mutual love, attempts are being made to overawe us with anger. But in my opinion, rather in the opinion of every wise man, this attitude is in no way helpful for the development of either the country or the language. In short, State language should be easily understandable and readily acceptable by the whole country. It should not be imposed by the majority, otherwise it would never attain popularity. For this very reason Mahatmaji had suggested Hindustani as the language of the Indian Union. The cause of Hindustani was espoused and advocated by the Congress for full thirty years before the whole world.

If we want to go back and decide to remain in the narrow sphere, as is happening today, we must not forget that in this world languages do not develop by putting limitations; on the contrary, they develop by expansion and by borrowing words from every language. They are not imposed on people. They attain popularity by their mode of expansion. History tells us that the languages of the world develop through expansion and by borrowing words from other languages. And if you coin and put forward new words for radio etc., it would become something like fun. The same sort of fun I find in the Assembly of U.P. As a member of the Assembly I have had chance to see that Ministers stand up and begin to read such words which they themselves find difficult to understand. But just after ten or twenty minutes when they stand to make a speech, they again begin to speak the same language which was declared by Mahatma Gandhi and the Indian National Congress as Hindustani.

Therefore, if you do not recognize the Hindustani language and adopt Hindi, it means that you are not following the right path. It is just possible that there would have been no intention to consider this matter on communal lines and this thing would have come to our minds spontaneously. But I think that the communal tinge is there. Sometimes it so happens that a thing enters into one's mind and he cannot explain how he conceived it. So it is quite possible that the change from Hindustani to Hindi would have occurred in this very way. Partition took place and created this bitterness and reaction. Today it is thought that to overawe a particular community, such a thing should be brought forward which might prove that the language question is being settled in a different way and not in the manner in which it ought to have been settled.

It has been said, we want only one Hindi language for this reason that we want one "Sanskriti". I fail to understand what you mean by that. In India some people speak Punjabi, some Bengali and other speak some other languages. If this thing affects and influences 'Sanskriti', then the languages of all the States and Provinces of India should be wiped out, because "Sanskriti" remains safe only when the language of the entire country is one. But I think that speaking of different languages does not affect culture. Switzerland is a small country, where four languages, namely, Italian, French, German and Swiss are spoken, and work is carried on in all these four languages which are recognized by the State. But this does not affect the culture of Switzerland. And if here it stands in the way of the cultural unity of India, then a pet language of a particular community should not be recognized by the State and a language easily understandable by all the communities and acceptable to all

[Mohd. Hifzur Rahman]

the citizens of India should be declared as the "Rashtra Bhasha" of our country. It is against justice and integrity to impose one's "Sanskriti" on others.

Some people say that in Russia people have same names and they have the same way of living. Excuse me, this is not the issue. This has been simply dragged in. You must know that in Russia's several hundred different languages are spoken and all of them have been recognized by the State. In Russia people have still such names as Abdur Rahman, etc. If somebody's name is Abdur Rehman or Shanti Parshad, it does not effect the culture of any country. It does not make any difference if on religious ground somebody is named after "Khuda" (خدا) or Ishwara" (ایسور) If you talk of such a "Sanskriti" in which culturally all are one, I would submit that in this country I do not find that "Sanskriti". The honourable Members sitting here are putting on different costumes, speak different languages, and have different names. Do these things affect their culture? No; this reaction is the product of Partition and under the influence of this reaction you are impressing upon a particular community in a roundabout way that they have to accept this particular way of life.

This is not the way of solving the language problem. Solve the language problem scientifically. Solve it reasonably. The arguments which have been put forward are neither in accordance with the principles of Mahatma Gandhi nor with that of the Congress. If you consider the language question in the right way, you will find that neither literary Hindi nor literary Urdu can be the language of this country. Only simple Hindustani can be the language of the country. Therefore, we should adopt this language (Hindustani) and only this can be the language of the people.

In so far as the question of script is concerned, I would submit that there is some difference between this question and the question of language. We find that in certain scripts some phonetic sounds cannot be expressed correctly. After declaring Hindi as the "Rashtra Bhasha", will you not tell us, "you ought to say "Shakti" (شکتی) and not "Taqat" (طاقت) because the supporters of Hindi say that the word "Shakti" (سکتی) should be used and not the word "Taqat" (طاقت). They say, use the word "Hirday" (ھردے) and not "Qalb" (قلب) or "Dil" (دل); say "Samaj" (سماج) and not "Majlis" (مجاس), "Bhawan" (بھون) and not "Aiwan" (ایوان) Hindi says use the world "Bhawan" and Urdu says use the word "Aiwan" then Hindustani comes forward and puts forth the compromise It says use "Samaj" as well as "Majlis". Therefore, I say that the language ought to be such which contains all those words which are used generally. It should contain both the words "Taqat" and "Shakti", "Hirday" and "Qalb". It should accommodate all such words as "Samaj", "Majlis" and "Society". And it should be such a language which we can speak freely. If you want to adopt Devanagri script, I am not against it. But if you give Devanagri the first position, give Urdu script also an additional position.

For governmental information, communique and court proceedings Urdu script, too, should be permissible.]

Shri Mahavir Tyagi : *[How will you accept numerals ?]

Mohd. Hifzur Rahman : *[I feel if you solve the language question in this way, then certainly the language of the country would be such with

*[ ] Translation of Hindustani speech.

which every one would be completely satisfied, and it will be spoken and understood throughout the length and breadth of the country and people would be able to take part in the affairs of the country freely. Numerals are also connected with this question as has been pointed out by my Friend Mr. Tyagi. I have nothing to say on the question of retaining English for fifteen years. I have already spoken about it on a previous occasion. I say you may adopt the language of the country, whether you call it Hindi or Hindustani, as soon as you like. I am not against it. But I agree with the arguments that have been put forward in support of retaining English for fifteen years and adopting English numerals. By accepting English for fifteen years, English numerals would automatically come in.]

Shri Mahavir Tyagi : *[If you will write in Urdu seven hundred and eighty six, then you will have to write these figures in English numerals.]

Mohd. Hifzur Rahman : *[If you accept English numerals, I do not think there would be any difficulty in expressing these figures either in Urdu or English. Before hearing the arguments in support of the English numerals I was not aware of their importance. Of course after hearing these arguments, I have realized that it would be more convenient to adopt the numerals of a language which has been in use for a considerably long time than to adopt the Devanagri numerals. But with the gradual development of Hindustani and with the progressive replacement of English by it, you can certainly use the Hindustani numerals also. I mean to say, you can use Nagri numerals by all means.

As regards the directive principles in which you have said that Hindi ought to be developed in such a way that it may contain all the languages and cultures of India, I would like to submit that you give this status to Hindustani and not to Hindi. And it should be made clear herein that the language should be all-embracing, so that it may absorb literary Hindi, literary Urdu, Oriya, Punjabi and Bengali, etc.

I agree with the regional languages which are mentioned in this list. It has my full support. I accept that in various regions and Provinces these languages should have the second place as State language. This is my honest opinion that in Delhi and in U.P., which is a big Province, Urdu, the simple and easy language too, should have been the State language, for the simple reason that U.P. is the cradle of Urdu and it has been nursed and nurtured here. In the first place, Hindustani ought to be the State language in U.P. but if Hindi has been adopted, then Urdu also should be given the status of second language, which like a State language should remain in use in educational institutions, High courts and Legislature. It may get a place there and may be used freely.

In conclusion I appeal to the House to accept Hindustani as the language of the Union and the country, because in comparison to other languages it is simpler and more appropriate to be the *lingua franca* of India. As I have told you that in Switzerland four languages are in use, in the same way, I do not think that there would be any difficulty if Hindi and Urdu script also remain in constant use for fifteen years with English. There would be no difficulty if in such a big country two scripts remain in use for ever.

If we recognize the secular State with all its implications, then I would submit that secular State is an assertion and no assertion can be true unless it has for its support some arguments and reasons. If we really believe in the secularity of the State then we should not consider such matters with a narrow outlook. And we should not give up those languages which we have nurtured here We should not ignore Urdu which we even today own as ours.

*[ ] Translation of Hindustani speech.

[Mohd. Hifzur Rahman]

We ought to consider these matters with a clean heart. If you will consider this matter in this way, I am sure will with me that the language of this country ought to be Hindustani, Hindustani and nothing but Hindustani. With Devanagri script, Urdu script should also remain.]

Mr. President: The House stands adjourned till 9 O'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Tuesday, the 13th September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 13th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

New Part XIV-A (Language)— (*Contd.*)

Mr. President: There are two or three amendments more which I consider to be of fundamental character. There is one about Sanskrit language but I do not find Pandit Maitra here. The second is by Mr. Shankarrao Deo which says that all the reservations in favour of English should automatically cease at the end of fifteen years. That also I consider to be of fundamental character and there is another amendment of which notice was given by Dr. Subbarayan to have Roman character. So I propose to call these first and after that I go to general discussion.

Shri R. V. Dhulekar (United Provinces : General) : I have proposed amendment No. 240.

Mr. President: Come along, then.

Prof. Shibban Lal Saksena (United Provinces : General) : I have also an amendment.

Mr. President: All have, but I said "amendment of a fundamental character."

Shri R. V. Dhulekar: Mr. President, Sir, nobody can be more happy than myself that Hindi has become the official language of the country. I may remind the House that on the very first day when I spoke I spoke in Hindi and there was an opposition that I should not speak in the language which I called the National language of the country. I tried to move an amendment that the Procedure Committee should make all rules in the Hindi language with a translation in the English language. I said that the Hindi version should be considered as the authentic version and if there was any discussion about the interpretation, then the Hindi version should be considered authentic. On that day in spite of the fact that the then President tried to rule me out of order, I claimed that as a Member of the Constituent Assembly and as a son of this country I had a right to speak in the language which I feel is the national language of the country. A momentum was created and today I find that Hindi in Devanagari script has become the official language of the country.

Some honourable Members: Not yet.

Shri R. V. Dhulekar: Some say "not yet", but I say that it is a fact. However much you may try to postpone the day—in your opinion it may be an evil day—in my opinion it is a fortunate day, it has come. However you may oppose it, it is a decision that the country has taken. Some say that it is a concession to Hindi language I say "no". It is a consummation of a historic process". It is the result of an historical process which has been going for a long number of years, nay centuries. I may say that Swami Ramdas wrote in Hindi, Tulsi Das wrote in Hindi, then again the modern Saint, Swami Dayanand wrote in Hindi. He was a Gujarati but he wrote in Hindi. Why did he write in Hindi? Because Hindi was the national language of this country Then again I may say that our Father of the Nation Mahatma

[Shri R. V. Dhulekar]

Gandhi also, when he came into the Congress, immediately did away with English and he spoke in Hindi. He did not try to write in English. He wrote his own biography in Hindi and got it translated by Mahadeo Desai. I may submit to those people who are under a misapprehension that it is an imposition—I may say that it is not an imposition. Hindi has become the universal language of this country and has taken the field. There was a tug of war and there was a race among languages and the only language which had the national language characteristics in it, which had the power and the strength became today the national language of this country.

Shri H. R. Guruv Reddy (Mysore State) : Shall we not say official language?

Shri R. V. Dhulekar : I say it is the official language and it is the national language. You may demur to it. You may belong to another nation but I belong to Indian nation, the Hindi Nation, the Hindu Nation, the Hindustani Nation. I do not know why you say it is not the National Language. Some of you want that Sanskrit be the national language—I may say Sanskrit is the international language—it is the language of the world. There are four thousand roots in Sanskrit language. Sanskrit is the root of all roots. Sanskrit is the language of the whole world. And you will see that some day when Hindi becomes the official and national language, Sanskrit will become the language of the world.

Now, today because we are nationally minded, therefore I say that Hindi is the national language. You say, Hindi is the official language. but I say it is the national language. You are mistaken when you say that it is the official language. There was a race among the languages and Hindi has run the race and you cannot now stop its career. The amendment I have moved is that Parliament should decide how long this present official language—English —should last in this country. You are afraid of the Congress. You are afraid of your future Parliament, and therefore in framing this resolution, you have put in commissions and committees. I may tell you all that these Seigfried line and Maginot line will be of no avail when the members come to the Central Assembly after two or three years. They will say that Hindi will be the language of the country. That I have decided.

An honourable Member : But your decision is not binding upon us.

Shri R. V. Dhulekar : I have already sent in my amendment to the effect that all these commissions and committees should be brushed away, for however much you may wish to erect a barricade so strong that the surging tide of the Indian nation will not be able to defeat it, or to surmount it, I say that you will all fail and by putting in the clause about commissions and committees. you will be sowing the seeds of dissensions and.....

Mr. President : I would ask the honourable Member not to go into that question, but to confine himself to the merits of his case. I do not think you are advancing your own case by speaking like this.

Shri R. V. Dhulekar : I say, Sir, that you are creating from the very first day, 'a cause of action,' for Parliament, to decide that these commissions and committees should go.

When we take into consideration the long history of the growth of this national language you will see that it is not on this ground alone that I am going to oppose that the official language of the country should not continue for fifteen years. I feel that the lease of another fifteen years will not be in the national interest. My friends ask me, "What will you do if English is not adopted as the official language?" I will most calmly and with folded hands

request you to consider the position, and I will say that you do not know the heart of the country. English language is not the language of the brave people. It is not the language of scientists at all. There is no word of science that the English language can calm to be its own—neither can it claim its own numerals. You say, let this English language remain as the official language in this country for another fifteen years. I shudder at the very idea of it, at the very idea that our universities and our schools and our colleges and our scientists, that all of them should, even after the attainment of Swaraj, have to continue to work in the English language. What will other people say? What will the ghost of Lord Mecaulay say? He will certainly laugh at us and say, "Old Johnnie Walker is still going strong" and he will say, "The Indians are so enamoured of the English language that they are going to keep it for another fifteen years." And some here say, it will remain for twenty years, and some say, for fifty years and there are still others who say, they do not know for how long it should remain as our official language.

I would like to put a straight question to these friends of mine, and it is this. In 1920 or even in 1885—there are some who are older than myself here—what were you thinking should be the language of this land? What should be our language after the attainment of Swaraj? I would say that those who felt that English should be our official language, they were caught napping. They were caught napping by Swaraj. But when I entered the Congress at the age of 18, I had a clear vision that Swaraj will come. I had a clear vision that we will govern ourselves in a particular way. I had a clear notion about my language. I had a clear notion about my country. And I had a clear notion about my civilisation and I had a clear notion about my culture. If I had no clear notion like that, why should I have served this country from morning till night, since my birth into this country—that is, when I came of age? I had the notion that my country will have my own language, and my own culture. But today, I hear people asking another fifteen years for English in this country. Have we not had enough of it? We have had it for the past two hundred years, we have had this slavery of a foreign language. This English language has produced no great men; Even in our slavery we produced great men. Some people may say that on account of the English language we got our freedom, I say, "No". Only those people joined the freedom's fight who forgot the English language, and who had extreme hatred for the English language and who knew that the English language was a poison and that it will kill our country. I would with all humility say to Shri Gopalaswami Ayyangar, "I do not understand your language. And you do not understand my language. You did not know the language of the country for the last 40 years, and so you will not understand my language today".

And so, Sir, I confess I do not understand your language today and I will not understand your language tomorrow also. You put in a plea for the English language. You, Sir, all along were thinking that Swaraj will not come and so my friends there, were all along working in English language. While we small people gave up our roaring practices, the other people had their roaring practices with the English language. We also can have a roaring practice today if I go to the Federal Court. But we are wedded to poverty; we are wedded to the freedom of our country, to the freedom of our country from bondage and from the bondage of a foreign language. But here you say, postpone the change for fifteen years. Then I ask, when are you going to read the Vedas and the Upanishads? When are you going to read the Ramayana and the Mahabharata and when are you going to read your Lilavati and other mathematical works? When are you going to read your Tantrams? After fifteen years? You may say so, because you people believe in the saying, "After me the deluge. Let us impose upon this country, this beloved country the English language as the official language." My friends say we cannot learn the Hindi language, and much less the numerals. Then I ask you, what is your official language,

[Shri R. V. Dhulekar]

in the eyes of the outside world? I am not in the confidence of the Government of India, but I am informed that when in Russia our Ambassador submitted the credentials in the English language, that country refused to receive it. They said you must present the credentials in your own language: and when the credentials were presented in Hindi, then they were accepted. Here is Russia which knows how to honour a country's language and here are our friends who do not know how to honour their's. They feel that I am a stranger in my own country. They say that Dhulekar is talking a language which is not the language of the country. I say, and I claim that I am the only man in this House who can love the Hindi language, the mother's language. I am the only man who can express the Indian thought. (*Interruption*). My friends are largely cut off from the common man in the street. Look at the galleries and see how few people have come here to hear you. That is because they know you have given up the cause of the country, because you have brought out a proposition so wrong and so big that it cannot be understood. You should put your proposition in the fewest number of words. The longer it is the greater the weakness of the Constitution. Why have you tried to hang all sorts of things on its sides and to erect barricades and Maginot lines? You have done this because in your heart of hearts, you believe that this is not the voice of the country. Let us not surround the Hindi language with Devanagari script, with all tantric figures and.....

An honourable Member: And *Mantras* !

Shri R. V. Dhulekar: And *Mantars* so that the future generations in India may not brush it aside. Let me point out in all humility that in spite of these Maginot lines, Hindi will be the language of this land and the Devanagari script and numerals will be the script and numerals for this country. My request is to leave it to Parliament to decide the question. May I ask my friends one question? Are they afraid of democracy? Are they afraid of Parliament? Are they afraid of their own sons and grandsons who will be the members of our future Parliaments? Is that the reason why they do not want to leave this question to be decided by Parliament? It is only the people who are afraid of democracy who put in provisos after provisos for commissions and committees, because they have no faith in democracy. They do not believe that people who are elected on adult suffrage will be able to do the right thing.

Yesterday an appeal was made by my Friend Mr. Hifzur Rahman—I do not know whether he is in the House—yes, there he is—and I would like to give a word in reply. He is very much annoyed, very much perplexed to know why the people of India have forgotten Hindustani and why they have forgotten the Urdu script and the Persian script and all the paraphernalia which goes under the name of Hindusthani. And he made an appeal in the name of Mahatma Gandhi that we should make Hindusthani the official language of the country, writing it both in Persian and Devanagari scripts. I feel he has forgotten history, and I might remind him a little.

For the last thirty-eight years, during the period I have been in the Congress, the history of this appeasement policy or this friendly policy or the Hindusthani business has to be recollected a bit. I may ask in the name of Lokamanya Tilak, in the name of Surrendranath Banerjee, in the name of Mahatma Gandhi, why not have separate electorates also? I may say that except for a few thousands of Muslims, sons of this country, who are still with us, except for them, the bulk of the Muslim population was not with us. They did not feel that this country was theirs. And therefore they wanted to separate. They wanted to have separate electorates. And the Congress knew as far back as 1916—and even before—that they could not fight against the foreign rulers by fighting a triangular fight and therefore.....

An Honourable Member: Are you speaking on your amendment? You are alone.

Shri R. V. Dhulekar: Yes, I am opposing Hindusthani. And I know you will never be with me.

As I was saying the Congress knew that it could not fight the triangular fight and so it was necessary to exclude the bulk of the Muslim population from the fight. There was a straight fight between the Indians and the English Government and this appeasement policy....

Mr. President: I would remind the honourable Member that it is not a communal question at all. The question of language that we are discussing is not a communal question at all.

Shri R. V. Dhulekar: No, Sir. But I know Maulana Rahman and I have experience of U.P. and he has been lecturing there and here also, and I say whatever I heard yesterday it was all on a communal basis. I am going to give him a national interpretation of history. The bulk of the Muslims, barring our friends like Maulana Azad and Kidwai.....

The Honourable Shri Jawaharlal Nehru (United Provinces: General): May I enquire whether all this is relevant?

Mr. President: No, I have reminded the Speaker more than once.

The Honourable Shri Jawaharlal Nehru: But still he is persisting.

Mr. President: I do not think you are really advancing your case.

Shri R. V. Dhulekar: I will not pursue this matter further, Sir. So it was necessary that we should go on with that policy, so that we might fight the British. Now we find that policy was not successful to our woe. We have been through all these things in a friendly way and in a brotherly way; we have suffered and are suffering. Therefore it is with the greatest unhappiness that I have to say that in spite of our honest efforts to solve the problem of this country on a non-communal basis, the result has been that we are suffering still. Hence I wish that my Friend Maulana Hifzur Rahman may take it from me that it is only a reaction to our honest efforts, honest efforts which did not succeed, that the pendulum has gone over to the other side.....

The Honourable Shri Jawaharlal Nehru: Hear, hear!

Shri R. V. Dhulekar: I am very happy at the thought that I have spoken the mind of my honourable Friend the Prime Minister. Certainly if their efforts had succeeded, whatever they said, or whatever the Father of the Nation said had succeeded, no person could have been happier than myself Do not conceive for a moment that I am a communal-minded man. When I oppose Hindustani I do so, not on account of my lack of love for those people but because of my love and affection for them, the honest love that an honest man has for his brethren. Today if you speak for Hindustani, it will not be heard. You will be misrepresented, you will be misunderstood and therefore my honest advice to Maulana Hifzur Rahman is that he should wait for two or three years and he will find that he will have his Urdu language, he will have his Persian script; but today let him not try to oppose this, because our nation, the nation which has undergone so many sufferings is not in a mood to hear him. I have heard him, I appreciate him and I know how he feels. I am myself a Persian scholar and I have read Urdu and I have loved it. I can say that I have written more in Persian and Urdu than my Friend Maulana Hifzur Rahman. I had a clerk for twenty years who was a Muhammadan, all along when there was fight between Hindus and Muslims at Jhansi and other places. So many of my friends came to me and said "You have got a Muslim

[Shri R. V. Dhulekar]

clerk, turn him out". I said "No, he is my brother, he is my own kith and kin and blood of my blood." I believe that all Muslims who are in India and all those who are in Pakistan are my own blood, they are my own brethren. It is because of my abiding faith in my country and in myself that I am in the Congress. The Congress does not belong to Hindus or Muslims, it belongs to all. It may be surprising and strange that a person who claims that Hindi should be the national language of this country should at the same time claim to be a friend of Urdu or Persian. I have the widest sympathies .....

Mr. President: It is better the honourable Member concludes He has been rather not always relevant and the House is not in a mood to listen to him.

Shri R. V. Dhulekar: With these words I move my amendments and support the unqualified adoption of Hindi in Devanagari script and Hindi Numerals, for no other language can be the official language of India, not even for a minute.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, at the very outset I must apologise to you and to the House for my absence from the House when it commenced its sitting and when you were pleased to call me to speak to my amendment. My only explanation for it is that I was engaged so long in a very important committee meeting of the Government of India elsewhere and therefore my absence was not due to any slackness on my part.

Sir, I must confess that I am the sponsor of an amendment which has caused considerable surprise to many an honourable Member of this House and to many people outside. It has been received, if I may say so, with mixed feelings in the country. One set of reports that I have so far received and the shoals of letters and congratulations seem to indicate that I have hit upon a right and honourable course. The other set seems to suggest that I am trying to take India several centuries back by proposing that Sanskrit should be the official and national language of India. Let me tell you at once that I am sincerely convinced that if on the attainment of freedom, this country is to have at all anything like an official language which is also to be the national language of the country, it is undoubtedly Sanskrit.

Some honourable Members: No, no.

Some honourable Members: Yes, Yes.

Pandit Lakshmi Kanta Maitra: I have no desire to wound the susceptibilities of those who think that Hindi is the be-all and end-all of their existence. I have no quarrel with them. But let them not make a fetish of it, for that may ultimately defeat their very purpose. If I did not from the very beginning, Mr. President, press on my friends for acceptance of my amendment, that is, my proposal for adoption of Sanskrit as the national and official language of India, it was because of my deep concern for the very serious efforts that were made by several responsible Honourable Members of the House to bring about a sort of an honourable rapprochement between the two important contending sections of opinion in the House. I held back and I refused to side one way or the other because I felt that I could not honestly support either. However, when things reached a stage when we were almost hopeful that an agreed formula for an official language of India was going to be acceptable to both, with sufficient give and take on either side, I felt that I must not bring in my proposal of Sanskrit to upset the apple cart. Unfortunately for us, and may I say for the whole country, the matter took an unhappy turn, as in my humble opinion, for a very small and comparatively unimportant matter the whole agreement had to break. It is regrettable.

Today in this Constituent Assembly we are going to take the most fateful decision, the decision about the official and national language of India. Sir, in the present temper of the House I am really apprehensive that whichever amendment is carried by a majority of the votes—whether Hindi in Devanagari script and with the international form of Indian numerals as proposed in the draft moved by my honourable Friend Shri Gopalaswami Ayyangar on behalf of the Drafting Committee, or that moved by the other group, the austere whole-hogger Hindi group with everything Hindi—the defeated Section will be leaving this Assembly with a sense of despair, a sense of frustration born of acute bitterness that has been generated in the course of the debates on this question for weeks on end. I have therefore come forward, knowing full well that it is temerity on my part, to ask the House to accept, as the national language of India, Sanskrit and not any other language.' Sir, my amendments in brief seek to replace Hindi by Sanskrit with all consequential changes in the draft moved by my honourable Friend Shri Gopalaswami Ayyangar. Besides that.....

Pandit Balkrishna Sharma (United Provinces : General) : Numerals also in Sanskrit ?

Pandit Lakshmi Kanta Maitra : I am coming to that.

Besides that, I have got another substantial amendment, namely the addition of Sanskrit in the list of the languages of the Union. It is surprising that before my amendment was tabled, none even considered the desirability of recognising Sanskrit as one of the languages of India. That is the depth to which we have fallen. I make absolutely no apology for asking you seriously to accept Sanskrit. Who is there in this country who will deny that Sanskrit is the language of India ? I am surprised that an argument was trotted out that it is not an Indian language, that it is an international language. Yes, it is an international or rather a world language in the sense that its importance, its wealth, its position, its grandeur have made it transcend the frontiers of India and travel far beyond India, and it is because of the Sanskrit language and all the rich heritage of Indian culture that is enshrined in it that outside India we are held in deep esteem by all countries. Is there any soul in this House who can challenge this proposition ? Is India admired and respected all the world over for her geographical size or for the multitude of her population ? Our land has been characterised by uncharitable foreigners as a country hopelessly heterogenous and bewilderingly polyglot. Yet, notwithstanding all that, they have earnestly sought for the message of the East which lies enshrined in the Sanskrit language.

Shri H. V. Kamath (C. P. & Berar : General) : On a point of information, Sir, may I know whether this language is called Sanskrit or Samskrit (संस्कृत) !

Pandit Lakshmi Kanta Maitra : I am deeply grateful to my honourable friend Mr. Kamath for this *debut* in humour; as a piece of honour it is all right.

Shri H. V. Kamath : It is not humour; I did not intend it as such.

Pandit Lakshmi Kanta Maitra : When I am talking in English I think it is natural that I should use the English pronunciation.

Sir, Sanskrit has the oldest and the most respectable pedigree of all the languages in the world. I have got here a collection of opinions of some of the biggest orientalists that the world has ever produced; the concensus of opinion of men like Professor Maxmuller, Keith, Taylor, Sir William Hunter, Sir William Golebuk, Seleigman, Schopenhauer, Goether, not to speak of numerous other people like Macdonell and Dubois. All have accorded to Sanskrit the highest place, not to please us, because when these opinions were expressed

[Pandit Lakshmi Kanta Maitra]

we were a subject race under a foreign power on whose behalf adverse propaganda was conducted against us by personages like Miss Mayo whose *'Mother India'* was characterised by Mahatma Gandhi of hallowed memory as a "drain inspector's report". Notwithstanding all such adverse propaganda carried on against India by the interested agencies in foreign countries, the world came to know the real India, gradually through these great orientalists who had devoted their lives to the study of the Sanskrit language and literature and all that is contained in it. These great servants unhesitatingly declared that Sanskrit was "the oldest and the richest language of the world," "the one language of the world," "the mother of all languages of the world."

If today India has got an opportunity after thousand years to shape her own destiny, I ask in all seriousness if she is going to feel ashamed to recognise the Sanskrit language—the revered grandmother of languages of the world, still alive with full vigour, full vitality? Are we going to deny here her rightful place in Free India? That is a question which I solemnly ask. I know it will be said that it is a dead language. Yes. Dead to whom? Dead to you, because you have become dead to all sense of grandeur, you have become dead to all which is great and noble in your own culture and civilisation. You have been chasing the shadow and have never tried to grasp the substance which is contained in your great literature. If Sanskrit is dead, may I say that Sanskrit is ruling us from her grave? Nobody can get away from Sanskrit in India, Even in your proposal to make Hindi the State language of this country, you yourself provide in the very article that that language will have to draw its vocabulary freely from the Sanskrit language. You have given that indirect recognition to Sanskrit because you are otherwise helpless and powerless.

But I submit that it is not a dead language at all. Wherever I have travelled, if I have not been able to make myself understood in any other language, I have been able to make myself understood in Sanskrit. Two decades ago, when I was in Madras, in some of the big temples at Madura, Rameshwaram, Tirupati, I could not make myself understood in English or in any other language, but the moment I started talking in Sanskrit, I found that these people could well understand me and exchange their views. I came away with the impression that at least in Madras there was the glow of culture of Sanskrit. Notwithstanding their inordinate passion—which is only natural—for their regional languages—Tamil, Telugu, Malayalam and Kannada—the Southerners did study Sanskrit on a fairly wide scale.

Our idea of Sanskrit has been very crude. We seem to think that Sanskrit is only composed of big, bombastic phrases, grandiloquent phraseology, several feet long, that it has only one style like that of Bana's *Kadambari*, or of *Horshacharita* or *Dashakumar Charitam*. But may I submit to you what was, with some amount of self-conceit, said by an eminent poet,

Sahitya Sukumarabastuni :—

Drihra-nava-graha-granthila
Tarka ba Moyu Sangbidhatari
Samang Lilayata Bharati."

You think that I cannot compose simple yet forceful pieces in plain Sanskrit? Whether it is a soft, delicate matter like poetical literature or whether it is learned discourses in abstruse subjects like philosophy and dialectic, when I am composing it I can handle the language for either purposes with equal ease." Sanskrit is such a language that it can be used either for very serious subjects as philosophy, science and also for light literature, it is an easy vehicle of expression for all shades of thought. I am sure that those who know Sanskrit, will endorse every single word of what the great poet uttered some centuries ago.

An honourable Member : Will you please speak in Sanskrit, so that it may be understood by all of us ?

Pandit Lakshmi Kanta Maitra : I am not here to parade my knowledge of Sanskrit. I am not going to commit the blunder of some of my friends, who, in their zeal,—despite the request of others to speak in English so that they might be understood by everybody, persisted in the language of their hobby. I am not going to do that. I want to make myself understood by every single honourable Member in this House. If I can speak Sanskrit, I do not claim any special credit for it. I ought to be able to speak in it; and if I cannot speak, I ought to be ashamed of my culture and education. Therefore, you do not try to put me up as piece of curio here. When I am pleading for Sanskrit, let there be no derisive merriment anywhere in the House. Let me ask every honourable Member of this House, irrespective of the province he comes from, "Does he disown his grandmother ?"

Sir, we are proud of the great provincial languages of this country—Bengali, Marathi, Gujarati, Hindi, Tamil, Telugu, Malayalam, Kannada and others. They constitute a variety of wealth of Indian culture and civilisation. This is not a province's property. It is all our national property. But all these languages derive their origin from Sanskrit. That is the parent language and even in the case of the languages in the South, they have taken a large number of Sanskrit words to enrich their language. Therefore, I submit that if we could set our hearts on it, we could develop a simple, vigorous, chaste, sweet style of Sanskrit for the general purposes of our life.

I do not suggest that from here and now every one of us would be able to talk Sanskrit. My amendment is not like that. What I have proposed in my amendment is, that for a period of fifteen years English will continue to be used as the official language for the State purposes for which it was being used before the commencement of the Constitution. At the end of fifteen years, Sanskrit will progressively replace English. That is all my amendment purposes.

Let me tell you that in every province, in every University we have got arrangements for teaching of the Sanskrit language. Men like me, who tried to introduce Hindi in anticipation of its being adopted as the State language of this country, experienced a tremendous amount of difficulty in getting Hindi teachers—at least in Bengal. You will be surprised to know that. That is a problem. If you want to coach up thousands and thousands of your young men in Hindi, you want teachers for that; you want literature for that; you ought to have elaborate printing machinery, books, texts, primers, teachers and all the rest of it. That would be a very great handicap; and, in spite of all that the Central Government and provincial governments might do, this problem cannot be easily solved. And mind you anybody from the Hindi speaking areas would pose as a great Hindi scholar. I have got them tested and found them no good. If on the other hand, you have Sanskrit as the official language, every University has got Sanskrit as a compulsory subject up to a certain standard and as an optional subject after that stage. There will be therefore absolutely no difficulty on the score of teaching or learning Sanskrit.

Shri B. N. Munavalli (Bombay States) : The same difficulty will be felt.

Pandit Lakshmi Kanta Maitra : I know that in the case of Mr. Munavalli at his age—I hope he will not be offended when I say that he is aged—it may be difficult to learn a new language. But if Mr. Munavalli thinks that he can more easily master Hindi, than Sanskrit, I have no quarrel. Let him have it.

What I am pleading is that I have noticed a deep feeling of jealousy—pro-

[Pandit Laxmi Kanta Maitra]

ing. I do not justify it, but I realize that feeling. Many people have been led to think, "of all languages why should Hindi be set up as the national language? It is after all a provincial language". Nobody can deny that it is a provincial language. You are lifting a provincial language to the status of a national language. You cannot deny that. There is a vast amount of truth in that. Who will deny that languages like Bengali, Tamil, Telugu, Gujarati, Malayalam, Marathi, Kannada have got very rich literature of which they can legitimately feel proud?

Yet Non-Hindi speaking members are not claiming their own provincial languages for recognition as the official languages of India. Do you realise the spirit of sacrifice that lies behind it? I have never pleaded that Bengalee shall be the State language of this country. I have never suggested it, though I feel that I have a very rich language and literature made richer by our Poet Laureate Rabindranath Tagore and given an international reputation. I felt that in the larger interests of the Union, we must evolve a language, be it Hindi, which by our joint co-operative effort might be built up for the use of the whole country.

But, having gone a considerable way, we stood still at a certain stage. I personally feel that it was regrettable and unfortunate. Some of my friends have criticised me saying: 'Having swallowed a camel why do you strain at a gnat?' They ask, why, having agreed to Hindi script, I am objecting to the Hindi numerals? Now, do you seriously suggest that Indian freedom will not be worth having, will not be worth its name, if it is not cent per cent. Hindi in everything? Does anyone put this forward as a serious proposition? If so, why should they not have the sense of humour to realise that this very argument can be used by people on the other side in favour of adoption of their own languages? Sir on this question there was a close tie. The Honourable Govind Ballabh Pant on one occasion made a magnificent speech. He said: 'We are not going to impose this language on the non-Hindi people'. That was a statement worthy of the Premier of the biggest province in India. But unfortunately that province and not mine has now become the problem province in this matter. This language trouble started there. The controversy about Urdu and Hindi and Hindi language with Nagari numerals started there till it reached a stage when both sides sat down to settle their differences. When we could not achieve a measure of success in our endeavours notwithstanding the appeals made by speaker after speaker for an agreement, the Premier of the U.P. declared: "No, no. We are not going on impose Hindi on you. We must have an agreed formula." Now, if this is not imposition,—Hindi language in Devanagari Script with Hindi numerals—what else is imposition, tell me? If you say that there will be absolutely no imposition of Hindi but voluntary acceptance by all, and at the same time insist on cent per cent acceptance of Hindi demands, is it not a demand for our voluntary surrender? Be frank about your proposition. But, this is not the way in which an issue like that of language can be solved. Language means the very life-blood of a nation. It cannot be lightly trifled with. I do not believe in producing a language under a made-to-order procedure or by the fixing of a date-line and all that. It is a living organism which grows and thrives.

Now if you want to have a language for the whole of India, what language has the largest claim? Certainly from the point of view of democracy, from the point of view of the largest number of people speaking or understanding it, probably Hindi, which is spoken by about 14 crores of people, has the strongest claim. Hindi has, however, a bewildering variety of dialects. People from U.P. have told me that if Hindi is accepted as the State language the population of the western United Provinces would have to learn it afresh, because they

do not know that language. Yet when the claim is made on the basis of statistics of 1931 that Hindi is the one language spoken by the largest number of people, according to the Common notions of democracy it may be all right. But in settling language questions, mere theory of democracy must not prevail. If a language is spoken by a very large section in the land, it does not necessarily mean that it is the language of the majority.

In this connection I will give you an illustration which will show the extent to which passions can be roused on the question of language. I shall refer you to what happened last year in Eastern Pakistan. After the partition of Bengal, the Founder of Pakistan issued a fiat that for the whole of Pakistan, Urdu should be the State language. Do you know what was the reaction in East Bengal to this fiat? The Bengalee Muslims of East Pakistan got very much agitated over this imposition of Urdu on them, and asked. "Are you going to destroy our Bengalee language? We whole heartedly supported you in your effort to create the Islamic State of Pakistan. Dare you now touch our language?" Demonstrations started all over Eastern Pakistan and there were the usual counter measures such as tear-gas attacks, lathi charges etc. Pakistan authorities raised the scare that it was the Hindu fifth column that was responsible for that agitation. But at once the Muslim intelligentia and their educational and cultural associations came forward and said that it was all bunkum. They said "you are trying to throttle the language of Rabindranath Tagore. We are not going to tolerate it." People were lathi-charged, imprisoned for rising in revolt on the question of language. At a gathering of students and professors in Dacca, the moment Mr. Jinnah advised people to take to Urdu in Arabic script as the language of the newly created Islamic State, there were cries of 'No, no'. As he proceeded, these cries rose louder and louder which could not be silenced. These things were not reported in the Press. After seven days' futile efforts, Mr. Jinnah had to retrace his steps to Karachi. Thereafter a communique was issued to the effect that Bengalee would continue to be the State language of Eastern Pakistan. The Bengalee speaking Muslims of Pakistan made it a condition precedent to their acceptance of Urdu in Arabic script, that Mr. Jinnah would make Bengalee also a State language in Central Pakistan. They said that they would go to Karachi to see that in every place there, side by side with Urdu there was also Bengalee used before they accepted Urdu also for Eastern Pakistan. So when there was this counterblast by the Muslims of Eastern Pakistan, the authorities came to their senses. Next the authorities said that they would have Bengali in the Roman script. This was not tried. Recently they have proposed to make an experiment with Bengali in Arabic script in certain selected places. But such efforts are bound to fail.

I submit that language is such a vital thing that if by mere votes or fiats you decide it, it will sink deep into the hearts of those who do not voluntarily accept it. They will go with sore and lacerated feelings, which will ultimately break all asunder. Sir, I am not a pessimist—but I feel that in the absence of an agreement our passions are bound to be aroused on any decision on this issue of language. I heard the cold calculated speech of my honourable Friend, Shri Gopalaswamy Ayyangar. In it there was an undertone of depression but there was also a note of firmness that he was prepared to go thus far and no farther. When he was making his speech, I interposed an observation—

> "Sir, is it your idea that we will have to take the whole draft as it is or we can take out parts?"

He said, "No, no; it must be taken as an integrated whole". His idea is—and I think it is the right idea—that this whole chapter of linguistic provisions must stand or fall together; that does not mean that small minor changes cannot be made here and there; but it will be absolutely unacceptable to us if simply

[Pandit Lakshmi Kanta Maitra]

the first part for instance, *viz.*, "Hindi in Devanagari script" is carried and the rest thrown out. The acceptance of Hindi is conditional on the rest of the provisions being accepted. (*Hear, hear.*)

I am making my position absolutely clear. Now, Sir, it is my firm conviction that if we want to avoid the provincial jealousies and acrimonious feelings which are bound to follow the enforcement of a provincial language or the raising of it to the status of a national language—we must adopt Sanskrit which is the mother of all languages, a language which can be learnt in my humble opinion in fifteen years by intensified effort, for which the necessary facilities and the arrangements, are already in existence in the country. Perhaps it would seem impossible to enforce it now—within 15 years, within the present generation it may not be possible; though those of you who know it might develop its use. But the coming generation can learn it and use it for all purposes.

Meanwhile I do not want to bring in inefficiency in the administration of the country. Therefore I want that for these fifteen years English should continue as the official language of the country. I know that when I was making a similar speech in another place, I was severely criticised. A friend of mine from the Hindi-speaking area, told me, "Look here, Maitra, you are passionately pleading for English for the next fifteen years. What is your idea? Are you waiting for the time when the British would come back?" I told him that we had our grouse against the Britishers, against the British domination of our country but not against the English language and culture as such. When the Britishers first came to this country, in the last century, English was not understood. People knew not a syllable of it. A story goes that A Bengali babu serving in an English mercantile firm in those days went to his boss and said, "Sir, today is the "Rath Yatra" (car festival). "Leave, Sir, Leave". "What rath?", the boss asked. With his knowledge of English the Babu could not explain what "rath" was. He said, "Church" "Church" "wooden Church Sir", "Jagannath sitting", "rope and pull," Sir. The poor European was dumbfounded. This was the earliest stage of English knowledge but soon after, people like Raja Ram Mohan Roy, Keshab Chander Sen, Bankim Chandra, Ramesh Dutt and others mastered the English language. Then, within a few years magnificent poetry and prose were produced in the English language by poets like Kumari, Toru Dutt, Michael Madhu Sudan Datta and others whose poetry compares favourably with the finest lyrical poetry in the English literature So in the beginning there may be difficulty but if you apply your mind, you will learn Sanskrit in no time. Meanwhile for international commerce, higher and scientific education, Judiciary etc. English has to be used in India.

Sir, I am a lover of the English language and literature in as much as it is the one priceless thing that we have acquired in all our humiliation, miseries and sufferings during the English rule. My honourable Friend, Shri Gopalaswamy Ayyangar, was referring to it as the instrument with which we got our freedom. I found derisive laughter was going round at this observation of his. But is it seriously proposed that the English language should be completely banished from this land and not allowed to play any part in our future lives? If today, Mr. Krishnamachari or Maulana Abul Kalam Azad or Pandit Balkrishna Sharma and myself have to talk together, not in the English language but in tongues, it will be a veritable babel. It is out of such babel that the [illegible]uage has drawn us together. And if any attempt is made now to [illegible]glish language from this country. India will lapse into barbarism. We must have an international language and English is a language which is spoken by sixty crores of people. English is not now the property of the English people alone. It is their property and mine. There is a brilliant chapter

in the book written by one of the Viceroys, called "Babu's English". The Britishers know the profundity of the knowledge of English that Indians possess; they know the clarity and precision with which the Indian people speak the language. This has been our reputation. In my experience extending over a decade and a half in high British circles, I have seen how the European members of the Legislative Assembly of old days had often wondered at our mastery of the English language. They often remarked, "We wonder how you people in the Legislative Assembly immediately after you listen to the speech of the Home Member or the Railway Member, stand up and criticise. We cannot do it. We must have enormous time to prepare for it." So, we had beat them in their own field. English language has opened to us the vast store house of knowledge and wisdom of the world accumulated throughout the ages. We cannot afford to close its doors now. While English will be there, you will also develop Hindi, or for the matter of that every provincial language. Give every regional language of India free scope to develop according to its own genius, to be enriched by accretion of accession from other languages. If you want to do that, you must have Sanskrit as the national language.

What is being done in Israel? Now that the Jews got their freedom, they have installed Hebrew as the official language of their State. They wanted to show respect to their language, their culture, their civilisation, and their heritage. What I am asking, Mr. President, through my amendment is that we should revive our ancient glories through the study of Sanskrit. We should give our message to the West. The West is steeped in materialistic civilisation. The Message of the Gita, the Vedas , the Upanishads and the Tantras, the Charaka and Susrutha etc., will have to be disseminated to the West. It is thus and thus alone that we may be able to command the respect of the world;—not by our political debates, nor by our scientific discoveries which, compared with their achievements, are nothing. The West looks to you to give them guidance in this war-torn world where morals are shattered and religious and spiritual life have gone to shambles.

It is in these circumstances, it is in these conditions that the world looks to you for a message. What kind of message are you going to send to foreign countries through your Embassies? They do not know who your national poets are, your language, your literature, or the subjects in which your forefathers excelled.

I was surprised to see that in the matter of the numerals, very few people knew what magnificent contributions India had made to the world not only in regard to the numerals, but in algebra, in mathematical notation, the decimal system, trigonometry and all the rest of it. All these were India's contributions to the world. It was given to our illustrious friend from Madras—I am referring to the Chairman of the University Commission—and our present Ambassador to Moscow, whom the late revered father of our Industries and Supply Minister, Dr. Syama Prasad Mookerjee, picked up from the South and gave him the fullest facilities at the Calcutta University—to bring out the treasures of Indian Philosophy for the benefit of the outside world. If you do not know that language, the language which you have inherited from your forefathers, that language in which our culture is enshrined, I do not see what contribution you are going to make to the world.

I want to know whether my appeal evokes any response in the hearts of my friends from the north or the south. You should have the highest respect for Sanskrit, the language of your forefathers. Is it not the proper thing for you to do in difference to them, when you have got today the chance of shaping the future generations? Let us bury our hatchets and cheerfully accept Sanskrit as the National and official language of free India. I honestly believe that if we accept Sanskrit, all these troubles, all these jealousies, all this bitterness

[Pandit Lakshmi Kanta Maitra]

will vanish with all the psychological complex that has been created. There may be, of course, a feeling of difficulty; but, certainly, there will not be the least feeling of domination or suppression of this or that. It is in that belief that I earnestly appeal to you in the name of that great culture and civilisation of which we are all proud, in the name of the great Rishis who gave that language to us, to support this amendment; for once, let the world know that we also know to respect the rich heritage of our spiritual culture.

Mr. President: I have been thinking of calling upon some one who has given notice of an amendment which is of a fundamental character. When he has finished, then, we can take up the other things. Mr. Anthony has given notice of an amendment to substitute the Roman script for any other script. I think that is more or less of a fundamental character.

Mr. Frank Anthony (C.P. & Berar: General): Mr. President, Sir, I have given notice of two amendments. These amendments appear in the eighth list and are numbers 338 and 347. The first amendment reads:

"That in amendment No. 65 of Fourth List, in clause (1) of the proposed new article 301-A, for the words 'Devanagari script' the words 'the Roman script' be sbustituted."

My second amendment is:

"That in amendment No. 65 of Fourth List, after the existing proviso to the proposed new article 301-C, the following proviso be added:—

"Provided that no change shall be made in the medium of instruction of any State University or in the language officially recognized in the law courts of a province or State without the previous sanction of Parliament."

Sir, in giving notice of these two amendments. I have sought to make my approach a highly objective one. The conclusions which I have reached are my own conclusions, but they are based, I believe, on a sense of realism and I believe also in the principle of the greatest good to the largest number of people in this country.

Sir, in speaking on this subject, which, unfortunately, has become so highly controversial, may I, at the outset, claim that I have no axe to grind? I have been fortunate in that I come from Jubbulpore a Hindi speaking area. I have also been fortunate in that from an early age. I have learnt Hindi in the Devanagari script. More than that, I have had to earn my living essentially through the medium of Hindi. The cross-examination of witnesses in criminal cases is generally done in the Central Provinces through the medium of Hindi. Arguments in scores of murder cases before assessors who are not conversant with English, have usually to be done through the medium of Hindi.

May I say also, at the very outset, that I accept this premise entirely, that if India is to achieve real unity, a real sense of Indian nationality, then every one of us must accept this premise that we must have a national language, English is my mother tongue. Because I am an Indian, because English is my mother tongue, I maintain that English is an Indian language. The honourable Member who has preceded me has just mentioned that English is not the prerogative or the monopoly of the Englishman. It has become the mother tongue, and assimilated to or has become part of the people in different parts of the world. Although English is my mother tongue, and though I claim English as an Indian language, I realise that English cannot, for many reasons, be the national language of this country.

At the same time, I am bound to say with regret that I cannot understand the almost malicious and vindicative attitude towards English. As my honourable Friend Pandit Maitra has pointed out, understandably, rightly, in the political field, there may have been a sense of bitterness, a sense of resentment

against the Britisher. But do not let us get confused and muddled-headed in our thinking, do not let our resentment against the British be imported into our attitude towards the English language. As he has said, the English language is one of the few good things that the British incidentally, perhaps unthinkingly, gave to this country, and so opened up a treasure house of literature, thought and culture which a knowledge of the English language has given to the Indian people. I cannot understand this attitude of bitterness against English, wanting to efface it, and thereby to do a deliberate disservice to our people. After all, a knowledge of English which our people have acquired over a period of 200 years is one of the greatest assets which India possesses in the international field. I say this without qualification that India's claim, India's acceptance of leadership in the international field is due largely, if not entirely, to the capacity of our representatives abroad to hold their own, more than hold their own in speaking English in international forums.

Sir, at one time, there was no doubt in my mind as to what should be the national language. Before this unfortunate controversy was precipitated, I took it as axiomatic that Hindi would be the national language in this country. At that time, I say, I had no particular predilection as regards the script. I have been fortunate in that I know the Devanagari script. It is one of the simplest scripts in the world. At that time, before this unfortunate controversy was started, I would have, without qualification, accepted Hindi in the Devanagari script as the national language. But, today, I have moved away from that. I say without offence that those friends of ours who have been ardent, if not fanatical, protoganists of Hindi have done the cause of Hindi greater disservice than any one else. By their intrasigence, by their intolerance,—they may not recongnise it as such, but the other non-Hindi speaking people have interpreted their actions and speeches and their attitude as fanatical intolerance,—they have created, whether they like it or not, an attitude or resentment, an attitude of resistance to what should have naturally been accepted as the national language of this country. Sir, I feel that because of the unfortunate heat and intolerance which has been imported into a subject of such a vital importance, it has become necessary to define the content and extent of Hindi. I come from a Hindi speaking province. Before this controversy started, we accepted Hindi as understood, not by a person who claims to be a person endowed with literary polish, but as understood by the man in the street, by a literate Hindi speaking person, we understood Hindi to have a certain content. What do we find today? In this spirit of intransigence, in a spirit of fanatical zealotry, there is a process of a purge which has become current and unless we define it, my own feeling is that in this present fanatical movement a new kind of Hindi which is unintelligible to the Hindi speaking Hindu in the street a new kind of Hindi which is unfamiliar to the people, a highly sanskritised Hindi will be imposed. There seems to be some kind of a vendetta against languages which have a non-Sanskrit or a non-Hindi origin. There seems to be almost a sense of hatred against using the commonest language. Today the word 'Subera' is not used as it may have some Urdu origin but our friends use 'Prath Kal'. I talk to my servant about "Prath Kal' he does not understand what I am saying. A student told me that an axiom which is taught to him regularly is,

हिन्दी के विरुद्ध भाषण देने से साम्प्रदायिक भावना उत्पन्न होती है ।

This is the type of Hindi that we are seeking to impose on our people. Even if you take the Constitution in Hindi how many of your Hindi-speaking Hindus can understand it. I attempt to read our so-called Hindi translation but I do not understand one word in four sentences. I take up my various dictionaries and these unfamiliar words do not even appear in the dictionaries. How do you expect me to acquire this newform of Hindi overnight? Therefore I feel that it is necessary that we should define it.

[Mr. Frank Anthony]

After all if we allow these precipitate, intolerant motives to inspire our national language at this stage, it will mean that terrible, unnecessary and avoidable hardship will be done to Hindi Speaking Hindus. When I go home to Jubbulpore students come and complain to me—Hindi speaking Hindu boys :

> "As a result of the precipitate policy adopted by the Nagpur University. our careers are being ruined We were first class up to Matriculation standard. Certainly we speak Hindi in our homes but we have not achieved the necessary standard to take a first class degree. Overnight the Nagpur University have introduced Hindi."

If it is operating so harshly against the Hindi speaking Hindus, what is the position of linguistic minorities in C.P. ? Overnight you are rendering them illiterate. Yet you pay lip service to the ideals of secular democracy, you talk of equality of opportunities on the one side and on the other hand you implement precipitate policies which are the negation of the principle of equality of opportunity.

Sir, I am sorry to have to speak with such fervour on this particular subject but I do feel very strongly about it. As I have said, I have no axe to grind but my friends—I do not question their motives—I believe they are sincere and fervent but let me appeal to them—their sincerity is being misconstrued by those who do not see eye to eye with them. They feel that at the bottom of this intransigence and intolerance is an ill-conceived communal motives—whether they are directed with that purpose or not—to make all the ideals of a Secular State still-born. I cannot understand it. What are you afraid of ? Some of you have not forgotten the slave mentality of the past 200 years. As my Friend Pandit Maitra has said language is a living, dynamic thing. You cannot put it in a straight-jacket. You cannot artificially prescribe the process by which language will grow, and will be inspired. What are we seeking to do ? You seem to be motivated by a fear that the Hindus are so emasculated that they will repudiate their own culture, they will repudiate their own language; and to prevent the Hindus from repudiating their culture in evolving their own language you must therefore put in a rigid formula. I cannot understand it. Who are you afraid of ? Who is going to take away your Hindi in its inevitable and natural growth to its full stature as the National language. Sir, I cannot help feeling that this attitude is analogous to an attitude where some Britishers wake up some morning; for some reason their memories are carried back to the bitternesses of the Roman invasion and they start a movement that all words of Latin origin should be expurgated from English ! There is nothing different from a movement to expurgate words of Latin origin from English—between that movement and the movement to purge Hindi of every word however assimilated it may have become to Hindi which has either an Urdu or a Persian origin.

I am not holding any brief for my Muslim friends, I never held any brief for them or for the politics of the Muslim League, but I do say that a language grows by natural processes and my friends there cannot cut across or retard by one iota these natural processes. Hindi will assimilate words whether you like it or not, in spite of you—perhaps because of you—from all kinds of languages ! And I regret that for some reason—it is not a logical reason, at any rate to my mind not a rational reason—you have excluded English from the list of languages from which Hindi can draw. What possible rational reason except that you were inspired again by a sense of hatred against the Britisher ? After all today if you talk to any well-informed Hindu, he will use numerous English words which have become almost part and parcel of the Hindi language. And yet for no good reason at all except a fanatical and unreasonable reason, if I may so call it, you have sought arbitarily to remove English from its place in the fourteen languages on which Hindi can draw.

I have given this amendment of Hindi in the Roman Script because I feel that looking at it objectively, if we look at it also in the larger interests of the country, we should accept it. I know that in the present temper of the country, in the present mood of the House, as a concession to sentiment and reaction and retrogressive forces, we will not adopt it. But what is there—I say it without offence—sacred in a script. Some people go about saying that this script is sacred and indulge in all kinds of hyperbole and extravaganza. If the Devanagari script is sacred to the Hindi-speaking Hindus, how can you introduce uniformity throughout India and ask other people whose mother-tongues are represented by provincial languages, to give up their script, and take to the Devanagari script.

I feel that if we do not lack courage and do not lack vision, then we will accept Hindi in the Roman Script as the national language. After all there are many reasons why it should be considered and considered favourably. Two million jawans, in the process of three or four years, during the war were made literate in Hindi through the medium of the Roman script. If we adopted the Roman script, we would strike a mighty and a decisive blow in the cause of Indian unity and national integration. I believe if we accepted the Roman script in Hindi then there would be no difficulty at all in any of the provincial language also accepting the Roman script. Immediately you would strike a blow in the cause of inter-provincial social, cultural and linguistic intercourse.

But as I say, it requires courage and vision. It requires the need to resist sentiment and reactionary forces. I do not know whether this will be done, I feel—here my friend Shankarrao Deo will not agree with me—up to a point I endorse what he said but I feel we are making undue concessions to regionalism. I know how strongly the people in the different provinces feel about their respective mother-tongue. It is inevitable. It is natural that Tamil, Telugu, Bengali and Gujarati will grow rich and to their full stature, but I can't help feeling—it is a little natural—that we mouth the slogans of Indian nationality and our sense of Indian nationality upto a point where it suits us. But when we come to a point where it does not suit us, then we argue in favour of a policy which I feel, if allowed to grow, will inevitably balkanize this country.

Only a person who is deliberately dishonest will argue that a boy who has had his primary, secondary and University education through the medium of Bengali will ever pay the slightest regard to Hindi. If we are really interested in a national language, let us all suffer an abatement of our respective vested interests. Let Madrasis, Bengalis and Gujaratis all in the cause of national integration and Hindi deliberately suffer an abatement. That is why I have moved this particular amendment. I say that the change in the medium of instruction of the Universities should not be made except with the previous sanction of Parliament and that the change in the official language or languages of the law courts should not be made except with the previous sanction of Parliament. I have moved this amendment advisedly.

I now come to the law courts. You have merely provided for the High Courts. What about the other courts? What is to happen if tomorrow a particular provincial or state language is enforced, as it is bound to be in certain provinces, overnight? What is going to happen to the Madrasi sessions judges for instance in the C.P.? Are you going to ask these men to write up profound judgments enunciating nuances of legal interpretation in Hindi? It is fantastic. They will have to be interpreted and translated into English so that the High Courts will be able to sit in judgment on those translated judgments. In the process of interpretation those judgments will lose a good deal of their strength and cohesion. If my second amendment is accepted, it will ensure that we will change over in every province by a process of evolution and natural

[Mr. Frank Anthony]

transition. It will ensure that the national language will take its rightful and proper place in every sphere not only at the Centre but in the provinces as well.

Shri Deshbandhu Gupta (Delhi) : May I know whether it is not a fact that now-a-days in the United Provinces and Bihar, judgments are given by the lower courts in Urdu and they are translated for the purposes of the High Court in English.

Mr. Frank Anthony : I am not aware of that.

Shri Deshbandhu Gupta : Now, of course, Hindi is the language, but up till now in the United Provinces, Bihar and Punjab, judgments of the lower courts were given in Urdu.

Mr. Frank Anthony : I know of Bihar; in many cases that I have argued in that province, particularly before Sessions courts English is used.

Shri Deshbandhu Gupta : I mean documents are translated for the purpose of the Sessions courts.

Mr. Frank Anthony : As I say for a number of years certain ancillary work in all courts has been done through the medium of the local or provincial language. The accused is always examined in his mother tongue. Certain documents are always kept in Hindi. I am talking about the more fundamental work that even the lower courts are required to perform for instance, the writing of a judgment by a sessions court. I feel that if a change has to be made it should not be made at this stage. The change can be made later on when we can be sure that our judges have the capacity and knowledge to be able to write in Hindi with the same finesse, with the same analytical precision and with the same strength of a language as they do at present in English.

Sir, I feel that I have made out what I regard as a not unreasonable case both for the consideration of Hindi in the Roman script being adopted as the national language and also that no change should be made in the medium of instruction of any University or in the language or languages of any courts in any province without the previous sanction of Parliament. Sir, I move.

Mr. President : I am finding great difficulty in selecting the speakers. We have got many amendments—I have counted that the movers of amendments number sixty or more. If I counted the names attached to particular amendments, probably the number will go to more than hundred. Now, in these circumstances it becomes very difficult for me to select speakers. So far I have adopted the procedure of selecting speakers whose amendments are more or less of a fundamental character. But this process will soon come to an end and then I shall be at sea as to what to do. Every Member who has given notice of an amendment thinks that his amendment must be supported and he must get a chance. Others who have taken the trouble of not giving any amendments think that they should also get a chance. As between these two classes the whole House is exhausted. I want the guidance of the House in a matter like this.

Pandit Hirday Nath Kunzru (United Provinces : General) : It only means that the discussion should go on a little longer than you intended at first.

Shri Alladi Krishnaswami Ayyar (Madras : General) : I suggest, Sir, your electing representative speakers from each of the provinces. We have got two sets of people, the Hindi speaking and the non-Hindi speaking provinces. The point of view of the one does not tally with the point of view of the other. [illegible] stage come to an agreement and I hope it will be satis- [illegible] be to select one or two people

from Madras; similarly from C.P., etc. Because after all there is great deal of unanimity in regard to the point of approach.

Mr. President: Fortunately the division is not on provincial lines.

Shri Sarangdhar Das (Orissa States): Sir, may I make the suggestion that the provinces which are non-Hindi speaking should be given more opportunity to speak. If only the Hindi-speaking people are given an opportunity to advertise their case.....

Mr. President: If the Honourable Member had been present in the House since the discussion on this question started and if he had counted the names of speakers, he would have found that Hindi-speaking people are fewer than others so far.

Shri Ram Sahai (Madhya Bharat): *[I beg to request Sir, that the States representatives be given opportunity to express their views with regard to the question of Hindi.]

Mr. President: *[Is there any difference between the Hindi used in States and that used in other places ?]

Shri Ram Sahai: *[Of course there is no difference in that respect. But the difference exists in respect of their interests, requirements, and problems.]

Mr. President: I have grasped it and shall give as much time to each speaker as is possible with due regard to each province and all other aspects of the question. But I do not think it will be possible for me to give every one a chance to express his views. I have no idea as to how long this discussion will continue.

Honourable Members: Till tomorrow.

Mr. President: I have no idea as to how long the House would like to continue discussions on this subject.

*[We had at first drawn up a time table for this, but the position has changed now. I am trying to give every speaker fifteen to twenty minutes. I may vary this time in some cases. I am, however, very particular that every speaker should confine himself to the subject and does not become irrelevant in his observations. When I find any Member talking something irrelevant I try to stop him and I do stop him. Even then, in view of the shortage of time. I do not find that course very helpful. I would, therefore, like that every Member should bear this consideration in mind.]

Pandit Lakshmi Kanta Maitra: Could you not continue the discussion till tomorrow morning because it is a very vital matter ?

Mr. President: It will depend on the House. We shall consider it at the end of the day.

Shri Deshbandhu Gupta: The discussion can go on as long as an agreed formula is not arrived at.

Shri Mahavir Tyagi (United Provinces: General): After what you have decided about the procedure in selecting the Speakers, may I know if the Members of the House have to go on seeking to catch your eye or will you yourself name them ?

*[ ] Translation of Hindustani speech.

Mr. President: Let them try to catch my eye and in that process I shall make my selection.

An honourable Member: I suggest you fix a time-limit of ten or five minutes.

Mr. President: I think we shall have to limit the speeches.

Pandit Govind Malaviya (United Provinces: General): From what you have said, namely, that you will not allow any speaker to bring in irrelevant matters, I think there should be no question of any time-limit. If you find after two minutes that a speaker is irrelevant he should be asked to come back to the point or to close.

Secondly, this is so important a matter and evreybody in the House is so keenly interested in it that I think we cannot possibly lay down whether we should spend one day or half a day or two days or even more over it. It should all depend on your discretion to let the debate go on so long as there is some fresh argument or point of view to be placed before the House in this matter. It is so vital a subject that I think, in your discretion, you should allow the debate to go on.

Mr. President: Yes, you may leave it to my discretion.

Shri V. I. Muniswami Pillay (Madras: General): The language question was put for two days and most of the Members have come from various provinces under the impression that we are going to have only a two days' debate, I therefore think it is highly necessary that this debate should close this evening and voting should take place thereafter.

Mr. President: I cannot accept that argument as sufficient for closing the discussion. Members are expected to be in their places throughout the session.

Qazi Syed Karimuddin (C. P. & Berar: Muslim): *[Mr. President. There are two amendments in my name. First is this:

"That in amendment No. 65 of fourth List, for the proposed New Part XIV-A, the following bt substituted:—

'301. A—The Parliament by law provide the National language of the Union within six months after the election of the Parliament on the basis of adult Franchise'."

My second amendment is this that in case this is not acceptable then Hindustani should be made the national language.

Sir, I cannot say whether in the present atmosphere my amendment would be accepted or not, but as poet Ghalib has said *"Tamashae ahle karam dekhte hain"*, I am not concerned whether you accept it or not. What we are to see is this: do the conditions prevailing in 1947 still prevail or have they changed? If there has been some change, then why has it come about? To-day we are told that Muslim Members present here have been elected on communal basis. With regard to this I would say that the general elections prior to 1947 were held on commercial basis. Muslim Members, as well as Congress Members, all were elected on communal basis, and it is because of that we see passions so deeply aroused here today.

Mr. Dhulekar has just said that Urdu is the mother-tongue of Muslims. At present our passions are so greatly excited, that if two years hence a demand

*[ ] Translation of Hindustani speech.

for the recognition of Urdu or Persian is made, we may accept that, but at present there is absolutely no chance for its acceptance. Sir, that is the reason why I have put in this amendment. If in the present atmosphere they are unable to concede that demand, then how could it be expected that when Hindi becomes the national language, they would concede it? Therefore, I would request that till a fresh general election is held and all members of the new House, both Hindus and Muslims, have been returned on the basis of joint electorate this question may be postponed. The decision taken by that Parliament would be just and proper. Instead of taking a decision on that question today, it would be better if it is left undecided till then. It may be that to some provinces, or to some people the decision taken today may not be agreeable and that is why this is not the proper time.

Sir, the House has adopted this attitude because Pakistan after 1947 has declared Urdu as its national language and it may be its reaction that Hindi in Devanagri is being made the national language of India.

Shri Seth Govind Das had read out names of certain Members who had affixed their signatures in support of his proposal, but who have now changed their minds. I would like to ask him whether all those supporting Hindi in Devanagri script are not Congress Members? They have suffered and sacrificed. Now, if they support Hindi in Devanagri script, are they not acting against the Congress creed? Because they have accepted that creed, so they have changed their minds now. Congress had agreed that the national language of India would be Hindustani written both in Devanagri and Urdu scripts. If Mahatma Gandhi was alive today he would have seen that on this issue Congress stood firm like a rock and Hindustani in both the scripts is adopted.

My Friend Mr. Dhulekar has said that it was by way of appeasement that Gandhiji had agreed to Hindustani in both the scripts. May I ask him, does it mean that whatever Congress does, it does only by way of appeasement? Has the secular State also been established by way of appeasement? I maintain that India belongs to the people of all sections who reside here, and they are entitled to live here. Now, to persuade you to change your minds it is being said that Gandhiji had accepted Hindustani, written both in Urdu and Devanagri scripts, as the national language of India, and the Congress had accepted that proposition by way of appeasement only. I would like to remind Seth Govind Das of his budget speech of 1945 in which he had said that he was sorry that he could not speak in Hindustani. Has he forgotten that only in three years time? In 1945, Hindustani was his language but today it is Hindi in Devanagri script. May I ask him what is his reason for that changeover? In 1947 the Indian National Congress had agreed to make Hindustani, written both in Devanagri and Urdu script as the national language of India, but today we are told that only Hindi in Devanagri script could be the national language. The reason for this change is, as I have already told you, that after partition in 1947 Pakistan declared Urdu to be its national language, and so its reaction in India has been that Hindi in Devanagri script is being adopted. In this connection what I want to say is that along with Devanagri script you should agree to keep Urdu script also.

Take the case of forty million Muslims of U.P. Bihar, and Berar. At present they are getting education through their mother tongue *i.e.*, Urdu. Now, if you make Hindi as the State language, would it ever be possible for them to enter the Government service? You have provided a time-limit—say 5 years or 10 years—to the other languages for this change-over, but why not to Urdu? I am not opposed to Hindi, but when Hindustani is our language then why so much aversion to Urdu?

You have already agreed that English shall stay here for the next 10 or 15 years; then why you are denying the Muslims their rights by banning Urdu

[Qazi Syed Karimuddin]

script? You have got a majority so you are trying to ban it completely—to finish it. Why is this happening? It is because, as I say, our passions are excited, our sentiments have gained the upper hand and finally it is the reaction.]

Pandit Govind Malaviya: [Who says that?]

Qazi Syed Karimuddin: [This is evident from the resolution.]

Pandit Govind Malaviya: [Where?]

Qazi Syed Karimuddin: [Clause (1) says that the script shall be 'Devanagri'. In U.P. there are thousands of Muslim government employees who are conversant with Urdu only; so, if you make Devanagri as the national language then it would not be possible for them to remain in service. Unless you give them ten years time to learn, they would not be able to learn Hindi. That is my request to you. I would like to tell the House that this thing was acceptable to you till 1947 and was also to Mahatmaji's liking, rather regarding which he used to say that he would fight for it: then why are his followers giving it up today and why is Urdu script being banned? For this change-over there can be no other reason than what has been stated by Mr. Dhulekar.

Seth Govind Das has said that one reason for not accepting Urdu is that it contains names of Rustom and Sohrab. For that my reply to him is that when Hindustani, written in both Devanagri and Urdu scripts, is made our national language, then would there be no mention of the names of our Indian leaders in it? If we retain English language for the next fifteen years, would it not contain stories of Lord Clive's and Warren Hastings' atrocities? Therefore, if you discard Urdu simply because it contains stories of Sohrab and Rustom, who were Parsis, than to me, it is not a sufficient reason for doing that.

He has also said that there is no country which has not got one culture and one language, and he has cited Russia as an example. I thing that Sethji has not read the history of Russia. There are sixteen languages in Russia. Those, who have cited Russia's example, have contradicted him. In Russia, all government gazettes etc., are published in all the sixteen languages. I would regard it as an act of great highhandedness, if today by sheer force of majority you pass a law making Hindi written in Devanagri script, as the national language and discarding the use of Urdu script. To cite the example of Russia in this connection is utterly misleading.

Another thing which has been pointed out by the honourable Member from Jubbalpore is that to make the present form of Hindi, both spoken and written, intelligible an interpreter would be needed. If Sir Sapru were living today, he would have repeated what he had once remarked that if Hindi-wallahs continued to trudge on this path the day is not far off when without the aid of an interpreter Hindi would not be understandable. Hence I say that only that language, in which both Hindus and Muslims easily express themselves and exchange their ideas and which has evolved through common intercourse, *i.e.* Hindustani, should be made the national language. I hope that before coming to a decision on this issue you will keep those high principles taught by Mahatmaji, before you. His photo is in front of you. He is, as it were, looking at you to see how far you are acting up to them. You should not be carried away by mere sentiments.]

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, I belong to Utkal (Orissa), yet I fully agree to the adoption of Hindi as the national language. The resolution before us has been drafted after much thought. I,

*[ ] Translation of Hindustani speech.

therefore, support it generally. While supporting it I would say a few words about the amendment tabled by me.

We should first think over the cause of the dispute. It is whether there should be a national language or not. It is the view of some people that they cannot recognise any language as the national language, though they may agree to accept one language as the official language. This, however, gives me much pain. When we regard India as a nation and are trying to make it one, that is no reason why we should call it official language. We must call it national language. If one language is accepted as the national language, that would not imply that changes will be made in the languages of the various regions. I have, therefore tabled an amendment, that after five or ten years when a Commission or Committee is set up for promoting Hindi, it should also seek to promote the interest of every provincial language. When every province and every provincial language is developed, our national language will also be developed.

Some people say that Hindi and Hindustani are different, while others say that they are not. I have to pay attention to this question of difference between the two for one reason. It is this. All of us possess a brain—a brain whose capacity to remember words, is limited and not unlimited. So every man cannot learn all the words that any dictionary may contain. Naturally we have to select some words and reject others. This happens in the case of all the languages. You should just see that Sanskrit is the mother of all the provincial languages, and it contains so many words that we can derive from it every word that we may need. But we do not always use that. I take the instance of a particular word 'Pavan' which is used in Orissa. This word is also in vogue in Sanskrit. It means 'air' but it does not get much currency, and in Bengali language no one understands this word. So I say that when we accept Hindi as national language, we should have to reject a few words.

And while accepting Hindi, we will also accept its literature. It is not possible to reject the literature while accepting the language. We should therefore accept the literature of Hindi, after we have adopted it as our official language. It cannot be possible to evolve a Hindi which only contains simple words and is easily understood by all the people of the country. This can never be the case. When we speak English, we take care to speak it rightly and not merely to speak it in any way we may care to. Hence it is not a correct idea that we can evolve our national language in any way we like. Of course, it would be right to enrich Hindi by taking words from other languages, if the vocabulary of the former is not already complete. I therefore clearly support the appointment of the commission and the Committee.

One gentleman has moved an amendment that the Bengali language should be the national language. In that way, I can also claim the same status for Oria, which is far more ancient than Bengali. The latter was not born when Oria, had taken shape as a language. Similarly, my friends from the South would claim that their language is very ancient. This is not a right approach. There is no question of ancient or medieval. When we wish to adopt Hindi written in Devanagri as the national language, which is the right thing to do, we should also keep in mind that the other provincial languages should also be allowed to develop in their own field, and their progress should not be handicapped.

Here I would like to add that some people are so much enamoured of English that they think they would lose their very existence if English is not used as the official language. It is like a drunkard saying that he would die if there is prohibition and he is not allowed to drink. If a few people die as a result of the replacement of English, what is the harm? We have to move

[Shri Lakshminarain Sahu]

forwarded in the interests of the whole nation and the country, and if a few people are inconvenienced they should put up with it.

A new dispute regarding the numerals has also cropped up and the issue is whether the numerals should be of international form or of Devanagri form. The crores of our South Indian friends are insisting that they would not yield on this point, even though they may concede other points. What should then be done ? They have become obstinate, for the world does not go by logic; sentiment also prevails. We should therefore accept the foreign numerals.

Then there is the question of accepting Sanskrit as the national language. If all the South Indian friends and others accept Sanskrit, I would have no objection and would accept it. Of course, there is the apprehension that Sanskrit is a difficult language, and it will take a long time to learn it, but this is a different matter. The Hindi speaking areas are in a majority, hence Hindi should be adopted as the national language. But the effect of this should not be the extinction of the various provincial lenguages and their literatures. Every provincial language should be protected and the Commission or the Committee formed in this connection should take care of it.

In the end I would only say that those who advocate the use of Roman script do not understand the very principles regarding the genesis of the script. The Sound of the language, which is used to express it, is formed into the script : When written in Roman script, Hindi is difficult to understand and cannot be pronounced correctly. Hence, I say, the Roman script is totally unacceptable : it is ugly and has no scientific basis. Hindi written in Devanagri script is most scientific and should be accepted.]

The Honourable Shri N. V. Gadgil (Bombay : General) : Mr. President, I do not want to make a long speech. From what I heard yesterday and this morning in this House and from what I see in the List consisting of 350 amendments, including one, to my discredit I should say, from me, I am impelled to make an appeal to the House to rise to the occasion and end this controversy.

Sir, the amendments range from the acceptance of Sanskrit as the national language to the retention of English for at least one century more. In this context, I do feel that the sense of responsibility with which we have so far carried on the deliberations on far more important topics should be appealed to.

As I analyse the proposition moved by my esteemed Friend Shri Gopalaswami Ayyangar, I think that that is the best in the circumstances. It does not mean that that is the right one under the circumstances. But let us not aspire to solve all the problems simultaneously. Let us leave some of them to the next generation to solve ten or fifteen years hence. What I find is that certain broad principles or broad facts clearly emerge from this proposition. No. 1 is that there is a fair measure of agreement on the fact that Hindi should be the official language of the Union. I think a declaration of that kind is an achievement. I find also the important fact that the script should be Devanagri. I think to have one script for the official language throughout the Union territory is also on achievement.

I further find, Sir, that there is a spirit of give-and-take in this proposition in as much as an interim period of fifteen years is contemplated during which those whose mother-tongue is not Hindi will have an opportunity to pick up Hindi and get themselves familiarised with it.

After all, the only difference that I find from the various amendments and the speeches relates to the numerals. It will be a sad tragedy if we were to

hang the unity and solidarity of this country on the cross of numerals. I therefore appeal to my Hindi friends with whom I agree in theory—but being a practical man—somebody has credited me with being a politician—I appeal to them to leave something to the next generation; Let the future solve this question of numerals. I do not think it is such an insurmountable thing that it cannot be solved, given the necessary goodwill, but in the present context where I find a good deal of emotion and passion and play of personalities also, whatever efforts we may make now, instead of bringing the parties together, they will result in something contrary. I therefore appeal in particular to my esteemed Friend, Shri Purushottam Das Tandon that like a big brother he must make a gesture. Hindi today admittedly is a provincial language.

Mr. President: I request the speaker to make no personal reference. It places the gentleman referred to in an awkward position.

The Honourable Shri N. V. Gadgil: I accept your ruling and the reference may be deleted from the proceedings. After all, Hindi is a provincial language. There are languages in which literature is far more rich, and yet we have accepted Hindi as the national language. That itself is a great achievement for the Hindi people, and if you want to persuade others, the best way is not with the strength of your voting numbers but by persuasion, by tactfully handling the situation; if in the course of the next ten or fifteen years the Hindi people were to approach the non-Hindi people through the various means of propaganda, I have not the slightest doubt that those people who have taken to English in the course of the last century and a half, will not fail to take to Hindi.

After all, there is not a single Indian who, if he is asked whether he would have English or any of the Indian languages, will vote for English, instead of any one of the Indian languages including his own mother-tongue. So, let the Hindi people go about their task with hope and faith just as they have done in the past and win over the rest by propaganda, not in an aggressive manner but in a persuasive manner. The proposition that has been moved itself provides the procedure whereby what they desire can be achieved, in a much better way than exists today.

In the course of the last three years we have not taken any important decision by going into the lobby. Let us not depart from that record. Let the world know that on all important questions, those which constitute the foundations of the Constitution, the decisions here were taken unanimously. If the decision today is taken unanimously, it will not leave any feeling of bitterness; but, as I said, if the Hindi people who constitute a majority in the country and also perhaps in this House, make that gesture, I think the judgment of history will be to their credit. I do not want to take up the time of the House further, but I do hope that what I have suggested will be acceptable to the House.

Shri T. A. Ramalingam Chettiar (Madras: General): Mr. President, Sir, this is a very difficult question for us from the South to solve. It probably means life and death for the South, unless it is going to be handled in the way in which it ought to be done. Well, Sir, for us coming from the South to go back and face our people with any decision you are going to make here, you will see what it will mean. I have been told by friends of the North that if they were to yield on the question of numerals, they will be twitted by their voters and that they will find their life difficult when they go for elections. What will it be like when we, giving up our own languages, adopt the language of the North, go back to our provinces and face our electorates? They do not seem to care for our position. Sir, I have great admiration for the Hindi people for their great patriotism and the perseverance and the pesistence with which

[Shri T. A. Ramalingam Chettiar]

they are enforcing their decisions, but at the same time they will have to realise that we too may have some patriotism like that, we may have some patriotism and love for our language, for our literature and things like that.

After all, where do we stand? We have got languages which are better cultivated and which have greater literature than Hindi in our areas. If we are going to accept Hindi, it is not on account of the excellence of the language, it is not on account of its being the richest language or on account of its being, as it has been claimed for Sanskrit, the mother of other languages and things like that. It is not that at all. It is merely on account of the existence of a large number of people speaking Hindi, not even a majority of the population of the country, but only among the languages which are spoken in India, Hindi claims probably the largest number of people. It is only on that basis that they are claiming that Hindi should be accepted as the official language of the whole country. Well, Sir, being practical, we do not claim that our languages which are better cultivated, which have got better literature, which are ancient, which have been there for millenniums, should be adopted.

Mr. President: May I make a request to the Members that we should not compare the literatures of different languages. I do not know whether any Member here knows the literature of the different languages that are prevalent in the country and when any Member says that his own language and literature is richer than that of this language or that language, he propounds a proposition which cannot be accepted, and the thing is not carried any further by that kind of argument. Let us confine ourselves to propositions which are ordinarily and generally acceptable and not enter into controversies which can be avoided.

Prof. N. G. Ranga (Madras: General): How is it possible to make out your case unless you compare one with the other.

Mr. President: You may make up your mind but do not say so.

Prof. N. G. Ranga: I do not think it is reasonable.

Shri T. A. Ramalingam Chettiar: Anyhow, I was saying that the claim of Hindi is not based on its literature, its antiquity or anything like that. Well, Sir, such being the position, I want the Hindi speaking brethren sitting here to consider whether they are justified in making the claim for everything they want and putting us, coming from the South, in the false position which we will occupy if we are going to accept all their claims. That is the things which I want them to consider and consider deeply.

Sir, on account of the realities of the situation, as I said, we have accepted Hindi in Nagari script as the official language. I however said that you cannot use the word national language, because Hindi is no more national to us than English or any other language. We have got our own languages which are national languages and for which we have got the same love as the Hindi speaking people have got for their language. We have agreed to accept Hindi and the Nagari character as the official language and script because, as I said, that language claims a larger number of people speaking it than any other language in India. If, for that reason alone, you are going to say that you ought to change over tomorrow, if you are to claim that it ought to be adopted as the official language today or tomorrow. I think it would not be accepted by the people. It would lead not only to frustration and disappointment, but something worse.

I may say that the South is feeling frustrated. If there is the feeling of having obtained liberty, freedom and all that, there is very little of it felt in

the South. Sir, coming here to the capital in the northern-most part of the country, and feeling ourselves as strangers in this land, we do not feel that we are a nation to whom the whole thing belongs, and that the whole country is ours. Unless steps are taken to make the people in the South feel that they have something to do with the country, and that there is some sort of unity in the country, I do not think the South is going to be satisfied at all. There will be a bitter feeling left behind. To what it may lead, it is not easy to say at present.

I have been saying that one of the most important questions is the question of the capital of India. The question is a very important one. People laugh at it sometimes; they do not know the seriousness of the matter. When a man has to come two thousand miles and do his things here, he naturally feels that he is not in his own land. He feels as if it is a strange country to which he has come. In the social life of Delhi, how many Madrasis have got a share, I ask the question. I have been here for the last two or three years; I know very few people in Delhi or U.P. That is the state of affairs Unless things are made easier for the South, unless the capital is taken to a place which will common ground for all people, which would not be claimed by the U.P. or the Punjab as their territory, the southerners will feel that they are going to a strange land. It has been said the other day that the Madrasis are holding positions. Does it show that there is any nationalism here? Why should not Madrasis hold position if the Punjabis and people from the U.P. are not able to fill up those positions? After all, if you claim that you have made progress within the last two years, is it not those people who are now at the helm of affairs that have contributed to that? Sir, such things are not going to lead to unity.

This question of language is much more important than even the question of capital, the question of offices and things like that. If you are going to impose anything and leave a feeling that you are going to impose it on other people, whether it is a real imposition or not, whether as a matter of fact, as somebody said, it is the natural course to which we have come and we could not avoid it, even if it is so, if there is this feeling that there is this imposition, of the North over the South, it will lead to very bitter results. I do not want to say anything by way of telling my friends in the North that things will go wrong. But at the same time, I think it is necessary for them to realise that, after all when we want to live together and form a united nation, there should be mutual adjustment and no qestion of forcing things on people who may or may not want it.

After all, what is it that we have asked for? We asked for time for preparation. That is the first thing that we wanted. It was agreed to by the leaders on the other side. They said that they will allow fifteen years for preparation. What does the draft say? The draft goes back upon it. In the first clause it says, for fifteen years English will continue. In the second clause, it says there will be appointed a Commission or a Committee after five years and the Committee will recommend for what purposes Hindi can be introduced and the President may issue orders accordingly. What does it mean? At least with reference to these matters with reference to which order will be issued, the term of fifteen years has been cut down to five. Then you say, after ten years, you are going to appoint another Commission and that Commission is to report and on that report, orders will be passed. What does this mean? You are only saying that you are allowing fifteen years; but at the end of five years, and at the end of ten years, you are going to introduce Hindi with the natural result that we who are not able to take our part in the administration, in the Government, in the legislature and elsewhere will not be in a position to take our share because we are not prepared by that time. It

[Shri T. A. Ramalingam Chettiar]

is only giving a hope in the first portion of the section and taking away that hope and giving us mere stones in the latter portion of the draft.

I do not know who is responsible for the draft. I have no doubt that Mr. Gopalaswami Ayyangar has come out to propose it. But, I for instance cannot at all accept it unless the fifteen years period is made real and not merely chimerical by the introduction of these Committees and Commissions and changes which are expected after the fifth year and the tenth year. That is the main thing with which we in the South will be concerned.

The South is the only part of the country probably which does not feel that it is going to come into line with the other provinces soon, especially my part of the country where Tamil is the language spoken. We have been priding ourseleves that we have had nothing to do with Sanskrit. We do not claim that Tamil is derived from Sanskrit, or is based on Sanskrit in any way. We have been trying to keep our vocabulary as pure as possible without the admixture of Sanskrit. Now, we have to go back upon all that. We have to take words from Sanskrit; we have to change our whole course of action. What it means to the people who have been brought up in their own language, who have been priding themselves that their language has been independent of Sanskrit, and that that is the only language which can stand against Sanskrit, you have to consider. In that position, we are to prepare ourselves first with reluctance to give up our old position and take to a study of Hindi or Sanskrit. You will have first to educate the people, I mean make them reconcile themselves to the new order of things. Then, they will have to take to the study of Hindi, to enable them to take their place here among those whose mother tongue is Hindi.

Not only that, you are permanently handicapping us. Those whose mother tongue is Hindi they learn only Hindi. But, we in the South, we have got to study not only Hindi but also our own mother tongue; we cannot give up our mother tongue. There is also the regional language; we have to study that. Permanently, for ever, you are handicapping us by this arrangement. You in the North will have to realise what sacrifice we are making.

After all, what do we ask for in return? We say, do not complicate matters by having not only the script, but also the numerals. The numerals are being used for purposes of accounts, for purposes of statistics and other things. You want to take away not only the language and the script, but also the numerals. You say that our accounts will have to be kept hereafter in the Hindi numerals if you are going to produce them before the Income-tax authorities. Sir, we have been habituated to these numerals for ever so long a time. After all, the question of numerals is not a question which concerns the South alone. It is a matter of convenience and it is a matter on which people both in India and outside are concerned; statistics have to go outside. Things have to be put in the accounts and sciences in a particular numeral. If you are going to say you have to adopt Hindi numeral, what are you going to do for other purpose? If you are to study anything from outside whether science, banking or anything else, everything will appear in other books only in the international numerals.

After all what is the objection to international numerals? It is only on the ground that we ought to have 100 per cent. Hindi, because you have agreed to adopt the Hindi language in the Hindi script, you better adopt the Hindi numerals also. You do not care what results from that. After all, the whole world is adopting international numerals. Why should you fight shy because you want to dominate the whole of India?

It is much more the spirit that actuates the people that is so difficult to meet. It is not even the things that are said—we have given up our language in favour of Hindi—but the way in which the Hindi speaking people treat us and the way in which they want to demand things that is more galling than anything which actually is done or is going to be done. That is the way in which it is said—'Of course you ought to accept'. That is the thing that exasperates us. I appeal to the North Indian people not to take up that attitude, to have a feeling that we are all living together in a common country, we have to create a nation—there is no such thing now—and that unless there is give and take, unless they are also prepared to adjust themselves and not demand everybody to adjust according to their dictates. It is only then that India can proceed and can be successful and form a united nation.

Otherwise I shudder to think what may be the future for us. There ought to be accommodation. I need not say that history has taught us that if there is trouble the outlying places will always try to take advantage of the trouble. We have the example of Burma and other countries. Supposing tomorrow there is some difficulty here, what will be the position? Unless you weld the nation and you make everybody feel that they have got a share in the country and it is their country, unless you do that, if you go on keeping the spirit of domination of one part over the other, I am sure the result is not going to be for the progress or for the safety of the country. Sir, with these words I appeal again to the Hindi speaking people to give up their attitude of domination and of dictation and to adjust themselves.

Shri Satis Chandra Samanta (West Bengal : General) : Mr. President, Sir, I have moved amendments Nos. 223 and 278. In 223 I have proposed that Bengali should be taken as the official or national language of India. As regards language, children learn language even in the laps of their mother and the language they talk is called the mother-tongue. Everybody loves his mother-tongue. Now we are in need of an official language, a national language for the administration of our country. So, there should be no controversy about the mother-tongues and languages used in different regions and so I have no grudge against any of the languages but I respectfully submit to put the case of Bengali before this august House for their favourable consideration.

Bengali is a rich language; it has a long history; it has an ancient and a brilliant literature; it has its philology and the like. So it will not be out of place to put the case of Bengali for the acceptance of House. I know most of my friends are bent upon taking up a language which will be more intelligible to the people of India. I would say that only intelligibility to the largest number should not be the criterion, other things also should be taken into consideration. We are taking a language to be our official language or a national language and we should expect which it that we should try to make it one of the international languages. So if we have that point in mind *viz.*, that we should make out national language an international language,—then we must see which of the languages of India has some place at least in the international world. I would submit that Bengali is taught in foreign Universities such as Oxford, Warsaw where Ravindrology is taught in Harvard in the U.S.A. It has also been recognised in language institution in Paris, Munich, Moscow and in Rome. So I submit that Bengali has some international connections. The vocabulary of Bengali should now be taken into consideration.

There is the question of scientific terminology, Shri P. C. Ray, Jagadanda Roy, of Santi Niketan the late Principal G. C. Bose of Banga Basi College Ramendra Sundar Trivedi and others tried their best and coined scientific terminologies in Bengali. There is a monthly magazine known as *Gyan Vigyan*

[Shri Satis Chandra Samanta]

devoted to the development of such scientific and technical terms. The Bengali language has all these things.

Over and above these, I would beg of you to consider the case of our revered poet Guru Dev, Shri Rabindranath Tagore. It was he who established the Viswabharathi and in that institution, he has made arrangements for the teaching of Bengali and all the other languages of India and even for some languages of other countries. Rabindranath's name is well-known to one and all not only in India, but all the world over. There is not a single man or woman here in this House who does not know this name. Rabindranath's lyrics and songs are learnt and sung by all. They have been translated into the various languages of the world and they have been treasured by all of them. In Calcutta University almost all the Indian languages are taught even in Post-Graduate classes.

Another thing I would draw your attention to, is this. We are now a free nation and in our freedom's struggle, we were all inspired by that great song—Bande Mataram; for this Mantram thousands have made sacrifice. For Bande Mataram thousands have sacrificed their property and all. This song inspired one and all in India and this Mantra was given to us by Bankim Chandra Chatterjee in his "Ananda Math". So I would invite your hearts and mind to this fact, when you are going to select your national and official language.

Sir, I have no quarrel with any one, language I would beg of you to see that Bengali contains Arabic, Turkish and Persian words right from 1200 A. D. Later on it has drawn on from Portugeese, French, English languages. Though originally Bengali was Prakrit, and therefore it contains a lot of Sanskrit words, it has grown by drawing from all these other languages also. I would beg of you to consider this also when you are selecting the official and national language.

Time-honoured customs, culture, literature—all these are there in Bengali.

I would also add that Bengali has advanced in another direction also. It has got Bengali typewriting machine. The Bengali Lino-type machine has been made by Shri Suresh Chandra Mazumdar of *Ananda Bazar* an honourable Friend of mine of this august House. There has been Bengali shorthand from 1915. So official work can easily be carried on in this language. It will be quite suitable for such work in India.

Sir, a lot of controversy has been going on and I do not want to enter into any of them. I put forward before you the case of Bengali and I may say that for my part I am ready to accept the language which will be accepted by the overwhelming majority of this House. But it should not be less than three-fourth of the House, because if it is less, then there will be controversy and the people will not accept that language heartily. It is true that those people who will have to learn the national language will be put to some difficulty. We Indians have suffered so much and sacrified so much for attaining freedom for our country. Can you not suffer a bit for the national language of our land We should, and everybody should, be prepared to make that little sacrifice. The responsibility lies on us. We should select that language which will be acceptable to all and for which they will be prepared to make a little sacrifice. Sanskrit has been mentioned. Hindi has been mentioned. I am not going to say anything against them, because every language should be respected. I would request friends here not to get into controversies but to put their cases safely and justly so that the language selected may be acceptable to all of us. With these words, Sir, I commend my proposition for acceptance of the House.

Shri Algu Rai Shastri (United Provinces : General) : *[Mr. President, with your permission, Sir, I beg to move a small amendment to the amendment

*[ ] Translation of Hindustani speech.

moved by Shri Gopalaswami Ayyanger and request the House kindly to accept the same. My amendment runs thus :—

"That in amendment No 65 above for the proposed new Part XIV-A, the following be substituted :

'New Part XIV-A 301(1) The official language of the Union shall be Hindi in Devanagari script.

(2) Notwithstanding anything contained in clause (1) of this article, it shall be open to the government of the Union to use English for the purpose for which it has been in use all these years, during a transition period extending over fifteen years at the most.

(3) It shall be the duty of the Government of the Union to encourage the progressive use of Hindi in Devanagari script in Government affairs in such a manner that after the end of the said transition period of 15 years Hindi may replace English completely'."

You will find that the amendment moved by Shri Gopalaswami Ayyangar is so lengthy that it constitutes a volume in itself. We are going to frame a Constitution and a Constitution should embody only fundamental principles. Article 99, as originally drafted by the Drafting Committee, briefly stated that the language of the Parliament shall be Hindi or English. The question was dealt therein in a very few words. But the amendment moved by Shri Gopalaswami Ayyangar contains many extraneous matters. When I read in the original article drafted by the Drafting Committee for the first time these few words contained in it, that the language used in Parliament shall be Hindi or English, it made me think that the whole question of language had been put in clear and definite terms.

English of course had become indispensable to us only for the reason that our country had been under the yoke of British imperialism for the last two centuries and the alien ruler imposed his language on us during that period. This imposed language dominated every aspect of the life of our country and became supreme of course in central administration. Even today it appears to be occupying a very prominent position. Till recently English held a dominating position in our country.

When we started the movement for our freedom, we had an ideal before us. What was that ideal? What was the objective for which we launched the struggle for freedom? We wanted complete freedom from the British domination. we wanted swaraj (self government). We had visualised a picture of 'Swaraj'. This word 'Swaraj' is a Sanskrit word and it has become current in Hindi also in its original sense. It has a very comprehensive meaning. It means 'self' that is one's individuality, personality are all included in this word. Politically it implies that we are one nation and one country.

We have a common and ancient history. We have a common language having a rich literature of its own. This Vedic Sanskrit—the ancient form of our language—was for long in dominant use in our country. But a language never remains stationary. Our language also underwent some changes. But this was what happened in the case of all other languages. Thus the ancient form of the English language which is being so much extolled here every day was not the same as that is today. I have just read a book from which I find that in olden days the word 'King' was spelt as 'Kynge' and was pronounced in a different way. The ancient style of English was also very much different from the modern style. There were only a limited number of words in English. Some specimens of that English can be found in what Karl Marx wrote about the Industrial Revolution in Britain. An historian has depicted the deplorable condition of the villages in England when the lands of the peasants were acquired in order to promote the trade of wool in foreign countries and farms for rearing sheep were established on them, an event on which the famous book

[Shri Algu Rai Shastri]

"Deserted Village" was written. Some extracts from the history have been taken by Karl Marx in order to give a picture of their conditions and these extracts are to found in his famous book *"Das Kapital"*.. The language in which the condition of their English village is depicted provides us with a beautiful specimen of English used in those days.

The language current in those days bears no relation to the modern English. There is a wide difference between the style of ancient English and that adopted Ruskin, Dickens, Shakespeare, and Milton. It is thus plain that language never remains static. It is changing and developing. Similarly the language which we are going to make the national language of the land has descended from the very Vedic Sanskrit which was at one time a living language and was for centuries occupying a place of honour in our country.

We had been aspiring to recapture our fundamental and real self. The rose plant of our national life had so long remained buried deep under the ice of subjugation Its leaves had withered, its flowers were dry and dead. Only one of its stems—I mean language—had some life left in it. But even in the darkest hour we knew that spring would return, we were sure that the ice of subjugation will melt and our rosy life would bloom again, and we knew that the plant of our life would send forth beautiful rose flowers of its own. Our country had remained for centuries under foreign rule. Our rich and fertile plans were invaded by foreigners many a time; ultimately we lost our freedom and became slaves of the foreigners. We have always been making an effort to throw off the yoke of foreign rule. The national movement for freedom was but an aspect of this perennial effort of our people.

The movement for liberating ourselves which our people have carried on had a long history. The last phase of our armed efforts for liberation was the battle that we were forced to fight against the British Imperialist in 1857. The movement of 1857, known as the mutiny, was but an expression of that striving of our people for freedom. While the Objectives Resolution was being discussed in this House I had said that that movement of 1857 had been fertilised by the blood of such martyrs as the Rani of Jhansi and Bahadur Shah, the Begums of the Nawab of Oudh and Tippu Sultan, Tantia Tope and Nana Farnavis.

Ultimately the leadership of Mahatma Gandhi had made it possible for us to witness that dawn of freedom in which we had assembled to pay our homage to the great departed and sing the songs of our freedom. Now that we have attained *swaraj* it should be possible for our *'swa'* (self) to manifest itself. It is a matter of deep regret that there are some people here today who say that we have no language of our own and that in fact we have nothing in common and that we have to create and develop all these things anew. But I would like to tell them that we do possess a language that is common to us, that is understood by a large number of people of this country. At least that is my experience.

In 1942 while returning from Bombay I had to rush straight to the Frontier Province. Khan brothers are not here amongst us and I may add that their absence is a source of agony to our hearts. But I had on that occasion the pleasure of meeting the Khan brothers in a camp on the bank of river Sarab. What do you think was the language in which I carried on my conversations and talks with the common volunteers in that camp ? It was not Pushto. It was in no circumstances English. Will it surprise you what I tell you that it was simple Hindi—the Hindi in which I am at present addressing the House—that I talked with the volunteers and I found that they understood my Hindi quite well. Previously in 1928 I had accompanied Lal Lajpat Rai

to Madras; I may inform you that there also I had talked to the people in Hindi, for the very simple reason that I am not accustomed to speak in English. Is it necessary for me to say that all those with whom I had occasion to talk understood my Hindi well and it may surprise some of my friends to learn that people there also talked in Hindi with me?

During the Congress session of Cocanada, the annual session of the Hindi Sahitya Sammelan was also held there under the Presidentship of the late Shri Jamanalal Bajaj. I had there the occasion to hear a recitation of Hindi poem by some local girls. Perhaps a better recitation than that cannot be given even by the people of northern India.

What I mean to convey is that Hindi is understood in every province and we are pledged to make is our national language. It was Mahatmaji who gave birth and inspiration to this idea. We wanted that we should be free and that the English should go away from our land. We had hoped that with the departure of the English people their language would also disappear from this land and that we would be able to use our language in place of English. We had not learnt English voluntarily. It was introduced here under the scheme prepared by Lord Macaulay. The alien rulers wanted cheap clerks and to this end English was taught us. Those who learnt this language at the initial stage of its introduction came in close contact with the administration and the government and this, as was natural created a love in them for English.

We had thought that with the arrival of freedom, our dress, our language, will regain their lost position and that freedom in its wake would bring new ideas, sentiments and inspiration to us. The dawn of independence has actually brought all this with it :

भाषा, भेष और भोजन, है जिसको अपना प्यारा।
उस पर कभी नही चलने को है, औरों का चारा।

One who loves his language, dress and diet will never fall into the subjection of others. There was a natural longing in the people's mind to bring the national language to its own in free India.

The question may be asked as to what is our national language. There is no doubt that Sanskrit is the mother of all the languages spoken in India. All of them are derived from Sanskrit; for their vocabulary they have drawn upon Sanskrit which is an inexhaustible source of words. But Sanskrit, the mother of the current Indian languages, cannot be enthroned today on the pedestal of the national language. Its eldest and the seniormost daughter alone can today be the national language. There are many other people, Sir, in this country, but God has bestowed upon you the ability to adorn this high office and we earnestly wish you to be the first President of the Indian Republic. Who does not aspire for this office? But everybody has not the merit to occupy this august office. If we want that the President of the first Constituent Assembly of India should be the first President of the Indian Republic, does that mean that we are making any exaggerated claims or that we are giving vent to avarice ?]

Mr. President : *[The Honourable member is talking beside the point.]

Shri Algu Rai Shastri : *[Discussion as to what should be our national language, implies our acceptance of the fact that English cannot be our national language. Now the question arises as to which one of the languages current in the country can be made the national language of our State. Hindi alone has acquired an inter-provincial status. A majority of the people of the country speak Hindi.

*[ ] Translation of Hindustani speech.

[Shri Algu Rai Shastri]

Some non-Hindi speaking friends have claimed that their literature is richer than ours. I may concede that claim, but can they honestly say that the number of the people speaking their language is greater than that of those who speak Hindi. If the answer be in the negative, I would like to ask them, which course would be more proper whether to replace English by a language and a script that is spoken and written by a majority of the people or by some other language? Hindi has rivalry with English alone. It has no rivalry with Bengali, Telugu, Tamil, Canarese or Pushto or any other language. The English Government has gone, the English Governor-General and Governors have gone. Now an Indian Governor-General and Governors have been appointed. In this context it is but fit that an Indian language should also take the place of English here.

Having due consideration for all the relevant factors relating to a language, I mean simplicity and intelligibility, etc., etc. Hindi alone can be the national language of our State. The supporters of Hindi have no quarrel or hostility with any one. They support Hindi only because Hindi alone can claim to be the most popular and widely spoken language in India. I fail to see why any one should feel in his heart that the Hindi speaking people want to impose Hindi on non-Hindi people? There is no question of imposition. It is the House or the Drafting Committee that have suggested that Hindi shall be the Official language of the State and the Parliament. If this is taken to be imposition, it is not from us rather it is from the House or the Drafting Committee.

Other Indian languages have not acquired an all-India position, they are confined to their own regions. May be that some of them are spoken by a few people outside their regions also, but no other language has acquired an all-India importance, Hindi is spoken in U.P., Bihar, C.P., Madhya Bharat, Rajputana and Peshawar. It is understood in almost every province. A language that is so widely spoken mut be made the national language of the Indian Union.

The credit for making Hindi the official language of the Union does not go to us the Hindi speaking people, but in fact it goes to others, who though they cannot speak Hindi fluently, have no command and control over Hindi and have not had any long practice in its use yet admit that Hindi is simple and intelligible.

It may not be out of place if I mention a few of the merits of Hindi script. One of my Friends here has suggested that we should adopt Roman script. He is a learned man, who can doubt the learning of my honourable Friend, Shri Anthony? But we should consider every aspect of this script. There are two kinds of script one the shorthand script and the other ordinary or longhand script. It is necessary in the longhand script that a word be written exactly in the way it is pronounced so that there may not be any mistake about its correct pronunciation. That is the most characteristic feature of the ordinary or longhand script. But in a shorthand script different devices are adopted to represent the greatest number of words with the minimum number of signs.

We begin the primary education of our children with our script (अ, आ)' etc. If we say 'ए' but use it to represent the sound of 'अ' or 'आ' it would be an unscientific method and we will be imparting a wrong training to our children, if we adopt this method. A B C D etc. are the alphabets of the Roman script. We use A & B to represent the sound of 'अ' or 'आ' or 'ब' Similarly the letter C is used to represent the sound of 'स' This is not at all scientific. Rather it is an atrocious script. This is a very serious defect in the Roman script.

The Pitman's shorthand system has also adopted, as the reporters here are well aware, a script based on phonetic system of the Hindi script. Pitman adopted the phonetic arrangement of the letters for formulating his system. The shorthand reporters have found that arrangement to be very easy and have adopted it.

Therefore, the controversy regarding the script should end. So far as script is concerned, Roman or any other script can bear no comparison to the Hindi script The Hindi script stands far superior to any other script. As I have already said the letters of a script should have a definite and intelligible phonetic basis.

From this point of view the Urdu script also is found to have the same defect that is found in Roman script There the pronunciation of letter and the sound they represent are quite different. The letter 'Alif' is used to represent the sound of 'अ' 'आ' or 'ए'; we pronounce 'Lam' but this letter represents the sound of 'ल'. If we have to write 'Lokat' we will use the letters 'Lam', 'Wav', 'Kaf', 'Alif' and 'Tey'. The pronunciation of letters, in Urdu have no relation to the sound for which they are used. In a longhand script this should not be the case : of course in a shorthand script we may do so.

On the other hand the script and the alphabets of Hindi are not only simple but can also be learnt with very great ease The pronunciation of its vowels is simple and scientific. The fact is that they can be pronounced with natural ease and they are also pronounced very clearly. Thus the vowel 'अ' occurs as the first vowel of the Hindi alphabet and possesses a simple sound unlike the vowels of the other scripts It stands for one single sound and not for any other. The other vowels also have the same scientific character and are all scientifically arranged. Moreover the Hindi alphabets are divided into certain groups according to the order of their pronunciation.

We have thus the classification that the vowel 'अ' and the 'क' consonant group and 'ह' are pronounced from the throat while the vowel 'इ', the 'च'. consonant group and 'य', 'श' are palatal in pronunciation. In this manner the other consonants and vowels are also arranged according to the part of the vocal organs through which they are pronounced. Again the different letters and the groups have also been assigned to different deities—some to 'Indra' and some to 'Varuna' and so on.

It is plain, therefore, that no student can have any difficulty in mastering this language which is entirely scientific in character. I believe that any student can very well pick up—nay, even master—its alphabets within a few weeks. I believe that the scholarly and distinguished lawyer members of the Drafting Committee also had an appreciation of this fact, for they also have in their draft provided for Hindi in Devanagari script as the official language of the Union. I add that even if only Hindi is referred to in the Draft, it would imply the use of Devanagari script as well Just as we also imply the use of the Roman script when we refer to the English language.

Under that Draft English shall continue to be our official language for the next fifteen years. None of us can deny that the use of that language is essential for carrying on our work and that we cannot totally remove it earlier All of us, therefore, agree that we shall keep English for our administrative and official purposes for the next fifteen years. But it is my belief that within this period of fifteen years, all the Government officials would be in a position to have a very good and sound knowledge of Hindi. I do not doubt in the least that they can do so with the greatest possible ease and convenience. The period of 15 years is not a small one Hindi also is not a difficult language to learn. In any case it is not such as cannot be picked up by our Government officials within this period.

[Shri Algu Rai Shastri]

I am reinforced in my belief by the consideration that the members of the I.C.S. used to pick up several Indian languages within the period of two years of their training. It cannot, therefore, be doubled that these very people would be able to learn Hindi very well within this period of fifteen years. I know that they are men of ability. I also know that they have all the facilities and opportunities for learning Hindi. I know that they are officials of an Independent Government and are men of learning and light. It is, therefore, my conviction that these people can have a very sound knowledge of Hindi within this period.

English is not a language which is the language of the people of any part of our country. Besides it is not the official language of any of these regions. So far this language had been that of the ruling class of the alien Government. It was, in other words, a language of their offices and people working in those offices for the benefit of the alien rulers. But this foreign language was mastered by our administrators and civilians through great labours. I put it, therefore, to you that if they could master of foreign language—the language which did not have its origin in this country, a language which had been brought to this country by foreigners and which had been imposed on this country by those foreigners as the official language for their own advantage and benefit—could be mastered by those of us who wanted to go in for administrative services, I put it to you, can it be said that these very people would not be able to put forth sufficient efforts to master Hindi which is a language of their own country? When you could go through such hard toil and labour for mastering English, I believe, you will have to put forth much less labour to learn Hindi which is much simpler than English and can, therefore, be learnt with much greater ease than that foreign language.

Even our children would not find any difficulty in learning this language. In this connection I cannot forget that many of the existing administrators would be retiring sooner or later. Those who would be filling their places can very easily learn the Hindi Language within the period of fifteen years which has been provided for in the Draft.

I would like in this connection to state that if we have to make Hindi our national language and to develop it for all our purposes, it is essential that every man of learning in this country should acquire a thorough knowledge of Hindi. This does not imply that Hindi would be, in any way, taking the place of the regional languages. It would not do so. Its evolution however is essential. English is a language that had been evolving from the very beginning. It has also been for centuries the national language of another country and that country has imposed it on other countries as well for its own benefit; but our children who have had to learn it under compulsion, have become denationalised. Their ideas and sentiments have been more or less anglicised and they have begun to approach the problems of life from an alien point of view. It is plain, therefore, that English cannot be our national language. Besides we have not to remain tied down to the Dominion of Britain for all time to come.

It is, therefore our duty to consider that after the advent of freedom, it is essential for our dignity and self-respect that we should have a national language. We know fully well the good and the evil that English education. It is an order that the people of this country may proudly claim Hindi as their national language and Devanagari as their national script that it is necessary that Hindi also should evolve. We should not be governed by narrow or selfish considerations and if we approach the problem of national language with that broad vision, we would succeded. But if we do not do so, instead of making any progress, our country will go down in disaster.

In this connection I would like to refer to the example of Estonia and Lithuania which had made a demand for their independence after the last Great War. Their main reason for demand of their freedom was that under the alien rulers attempts had been made completely to suppress their language and that they had to carry on an intensive struggle and undergo any amount of sufferings for protecting and maintaining the existence of their own language. These petty States are not bigger than the district of Gorakhpur in our province. These people had protected and defended their language against the attempts of the Germans to suppress them. If they could do so, it is our duty also to do the same.

I would like to make it clear that all of us here want the development and promotion of the regional languages, for all of them are very dear to Hindi. Several of these regional languages are very sweet and very well developed. Naturally I cannot and do not lay any claim to the superiority of Hindi as compared to any of the regional languages. But from the inter-provincial point of view, I can say that Hindi has a better claim for adoption as the national language, because it is not a language of any one province alone. It is the language of many provinces. I concede that there have been great poets in other languages as well and I would not like to institute any comparison between them and the poets of Hindi, such as Kabir and Tulsi. It is not necessary for me to go into this kind of comparison. I do concede that the Tamil Veda of Shri Tiruvalluvar of the Deccan is as great a composition—probably greater—than that of Kabir. I do not dispute, therefore, that great literature exists in other languages as well.

But I submit in all humility that the number of people speaking Telugu or Tamil is very much less than that of the people speaking and understanding Hindi. So far as I am concerned, the question whether a regional language has a great literature or not, is quite irrelevant to the decision of the question of the official language of India. We have to choose one language for this purpose and if we were to follow the principles of democracy and the rule of majority decision, we will have to accept Hindi, far from all points of views—it is an undisputed fact that the number of people speaking Hindi is greater than the number of people speaking other languages. Besides it is a very simple as well as a developed language.

I cannot resist the temptation of citing a few passages from the works of the great Hindi poet, Surdas, in order to give you an idea of the high level of development reached by Hindi.

"Piyabinu nagini kaladi raat,
Kabahunk yamini hoti Junahiya,
Dansi ulati hai jaat,
Mantra na footat yantra nahi lagat,
Ayu sirani jaat,
Soor Shyam bin bikul birahini,
Muri muri lahiri khaat."

"Alas, my darling is away,
The snake like night curls and curls,
The fangs of lightning pierce my heart,
Incantations or amulets—nothing avails,
While my life is ebbing away,
The separation of Shyam says Sur,
'Keeps the lady love in paroxysms of pain.'"

[Shri Algu Rai Shastri]

I would like any one here to give me a parallel passage from the literature of any other language. I may add that the Hindi literature is full of numerous gems one better than the other. Thus I may cite a passage from Tulsidas which is as follows :—

"Arun parag jalaj ani neeke
Shashi hi bhoosh ahi lobh ami ke."
"The tender and delicate Lotus
Its bosom red with passion
Rises in a waving,
Serpentine motion
To kiss the moon or sucking nectar."

The reference is to Ram applying vermillion with his hand to the moonlike face of Sita, his betrothed.]

Mr. President : *[I would like the Member to remember that this is a Constituent Assembly and not a poets' gathering.]

Shri Algu Rai Shastri : *[Sir, I was just giving an illustration in order to refute the suggestion that the Hindi language is undeveloped and does not have any literature worth the name. This assertion has been made here and I felt it necessary that something should be cited to refute it and to show that Hindi has a great and extensive literature.

But I would like to submit, Sir, that we are not demanding the adoption of Hindi as the national language on account of its literature, but because it is a language of the people and specially it is a language which, in comparison to other languages, is spoken by a larger number of people and that it is a language whose area and sphere are very wide. It is for all these reasons that we are adopting it as the official language and the fact is that it is not we who are adopting it, it is history that is compelling us to adopt it. Every one of us has to accept it as the official language, simply because every one of us desires to replace the foreign language by a language of our own country. The adoption of Hindi is unavoidable in order to remove English from its present position of official language of the Union.

When we have no other option but to adopt Hindi in this manner, I would submit that there should be no dispute about its script, for it has already its script—a script in which the 'Rigveda' was written—a script in which 'Hanuman Chalisa' is written—the script in which all the books from the Rigveda down to the Hanuman Chalisa of Tulsidas have been written, is called the Devanagari script. I doubt whether we can, even if we search the whole world, discover a script as beautiful, as scientific as the Devanagari is. The script of our national language is Devanagari and the numerals are an integral part of that script. The meaning of many. Hindi couplets would be lost if the numerals were changed. Thus Tulsidas has said :

"Jaise ghatat na ank nav (')
Nav (') ke likhat pahad."

This numeral (9) is of the Devanagari script. Again Tulsidas says :

"Jag te Rahoo chatis has (३६)
Ram Charan che teen (६३)
Tulsi dekhoo vichari keya
Hai yeh matou pravin."

"Tulsidas says that a person should have an attitude of detachment forwards the world just as the numerals 3 and 6 appear to be in the figure 36, while he should have an attachment to the feet of Ram just as the figure 6 and 3 have in the figure 63, for to do so in the best wisdom according to Tulsi."

Naturally these passages would lose all meaning if the form of numerals is changed.

I, therefore, submit, Sir, that the numerals are even today in use in Devanagari just as they were to be found in the Sanskrit Rigveda and Yajurveda. I, therefore, fail to understand the basis of this discussion about numerals here. It is insinuated against us that we are quarreling over a very minor matter and that our insistence upon the Devanagari from of Hindi numerals is, as a matter of fact, extremely unreasonable and unjustifiable. But I would like to submit very humbly that the matter which may appear to you to be very minor, may ultimately have very dangerous implications. A person may be able to take two seers of milk, but no one would like to take a small head of a fly with it, for, he can never digest that. In the same manner, I would submit, Sir, that we are unable to accept violence being done to the form of the numerals, and what is more important we see no reason why and for whom we should do violence to them.

It is being argued by some people that the change sought to be made is very minor, because a number of the numerals, more particularly (1), are similar in form. But, in this connection, Sir, I would like you to visualise the situation that is likely to arise in our province, if we agree to the adoption of international form of numerals. We have constituted in our province 'Village Panchayats' and 'Village Assemblies'. For each group of 5 Village Assemblies or Councils we have established a 'Panchayat Court'. All these are now working there. Our province has a population of 60 millions and is, therefore, in no way smaller than England—rather it is bigger than the latter. In that province, we have established these Panchayats for the villages and these bodies have been authorised to levy taxes. They will have to maintain accounts and keep records and registers. Just think of how they would be maintaining their accounts. I am sure, they cannot but use the Hindi method of accounting—that is to say—they, would write Rs. 1-4-3 in the following manner :



In it the vertical line stands for the quarter of a rupee. Now the form of 1 in English is, as a matter of fact, used for indicating ¼ of a rupee in the Hindi method of accounting. But the same symbol if drawn outside the bracket like symbol, its value is taken to be one pice.

We have thus been developing our numerals in this country. Is it your intention now to throw away all these improvements that we have made through our history for no reason or rhyme? It has been argued here, Sir, that the use of Devanagari numerals would cause any amount of dislocation in industry and chaos in our army. But I fail to understand the kind of difficulties that would arise in the industrial sphere. We can easily avoid any difficulty by specifying the design of the machinery that we seek to import from foreign countries. This is what happens usually in trade and commerce. Even the ordinary traders send their designs and the 'Saries' and other articles manufactured according to these designs are imported from foreign countries.

Moreover, Sir, will we always continue to import all our machinery from foreign countries? I believe that sooner or later, we will be casting them here and in that case it would be quite easy for us to use our own numerals. I may add that our numerals are a matter of great fortune to us. We are people

[Shri Algu Rai Shastri]

of a great culture. Our history is glorious and grand. It does not befit us to humiliate ourselves and go down on all fours before the foreigners. I am confident, we can manufacture all the articles we need and I am confident that our country has the potential capacity to do so.

I may now say a few words, Sir, to those who feel that they would have considerable difficulties in learning Hindi. I would like to assure them that they would find Hindi to be a very easy language to learn, once they make an attempt to learn it. I admit that in view of the extensive use of English for all the offical purposes and in all the branches of administration, it would not be possible for us to replace it at once by Hindi and if an attempt was made to do so, there would be considerable administrative dislocation.

I can, no doubt, speak Hindi with much greater ease and facility than many of my other friends. We have, therefore, to give some time to such friends to acquaint themselves very well with the Hindi language, so that they may be able to express themselves in idiomatic Hindi and may be able to think in it as well as to weep and sing in it. I recognise that only that language can be natural to any person in which he can sing out his joys and weep out his sorrows. I concede that time is needed by such friends to have felicity in the use of Hindi. A specified period has to be provided for them and I submit, Sir, that the period of fifteen years is more than adequate. It is my belief that we can replace English by Hindi within this period, provided we make a sincere attempt to do so. Of course, if we do not seek to do so, the position would be otherwise. But if we really make an effort, there should be no difficulty in replacing English by Hindi within this period.

I have therefore, in the second part of my amendment proposed that during this period of transition, every attempt should be made to put Hindi in place of English wherever it can be done. I visualise this process to be similar to that of erecting a new house in place of an old one. It is plain that the first has to be removed and the second has to be erected, and we have provided a period of fifteen years for effecting this change and it is my belief that this work can be completed with very great ease during that period.

But who shall be responsible for effecting this change? Obviously the Government, and I have, therefore, put in the second part of my amendment that it shall be the duty of the Government to take steps to effect this change. But in the draft that has been put before us, such details as the formation of a Committee or the appointment of a Commission have been included in regard to this matter. As we read this article, Sir, we find that the Drafting Committee has added a new clause, there was previously only one clause. In this manner the Committee want to go into minor details and they do not want to leave any possible matter for the decision of the Parliament or the Government to come.

We, have, Sir, provided for *adult franchise* in our Constitution and representatives elected on that basis shall be composing the future Parliament and I believe they shall be making their own arrangement for the entire country in their own manner. But it is really funny that we would not like to leave even such matters for their decision as the salaries to be paid to our Civilians the number of people to be employed, the facilities to be granted to them and such other matters. Probably it is feared that persons of no education may be elected to the Parliament and such persons may cause any amount of dislocation and chaos. We, in our anxiety, have included provisions with regard to the judiciary, to the type of the houses that are to be occupied by them, the salaries that are to be paid to them and the work that is to be done by them.

The same tendency appear to me behind this draft regarding language. There would be a Commission, there would be a Committee. All Acts, bye-laws,

regulations in all provinces shall be in English. All these matters are found in this draft,—notwithstanding the fact that Hindi is already in use in many provinces and is in use without any difficulty and with all the possible success with which a language can be used for official purposes. But you are bent upon putting in such provisions in spite of all these facts.

I admit that it is almost an impudence on my part to seek to improve the amendment which Shri Gopalaswami Ayyangar, who is a great thinker, a scholar, an expert, and an aged and experienced person, has moved. But I submit, Sir, would not the purpose be served if we leave to the future Government to make such arrangements as may enable Hindi to take the place of English within the period of fifteen years and to become the official language of this country? The Government is today in the hands of the representatives of the people and I submit, it is time that the language of the people should also be the language of the State and that language of the people is Hindi, simply because it is understood in almost all provinces.

Some friends have mixed up Hindustani, Urdu and such other matters with the question of Hindi. I do not understand how a couplet of Nazir who was a great poet of Agra should be considered something outside the Hindi literature. I may cite it here.

"Abra tha chaya huva aur fasal thi barsat ki,
Thi zamin pahne huve vardi hari banat ki."
"It was the season of rains and the sky was cloudy.
All around the earth was covered with green verdure."

I would submit, Sir, that this is a Hindi verse composed by him and that it is one of the Hindi styles or dialects. Again—

"Rab ka shukar ada kar bhai
Jisne hamari gaye banai."

"Oh brother render thanks to God who has created the cow for us" is a couplet which all of us read in a book written by some Moulvi Sahib of Meerut. Are we to consider it as something not belonging to the Hindi literature? I do not think so. It is but natural that to a Moulvi or a Moulana such words would very naturally occur. But we have assimilated all these words in our language and I am sure, these words would remain there. All these constituted a style of Hindi and are not beyond the purview of the Hindi language.

No doubt, some people claim Urdu to be a language. But Urdu is not a regional language, nor is it a language used or spoken in any region, or by any particular community. All of us use Urdu words. I was educated under a Moulvi. He used to teach us :

"Fakat tafavat hai nam hi ka,
Darasal sab aik hi hai yaro,
Ja ab safi ke mouj mai hai,
Usi ka jalva hubab men hai,
Kabili kurb nahi be-adabon ki sohabat,
Door rahe unse dil jinko tera pas nahi."

"The only difference or dispute is in respect to names. In substance the reality is one. The same God whose light is visible in the clear waters of the Ocean, is to be perceived in the bubbles. One should not, even for a moment, remain in the company of the disrespectful and it is desirable that our heart should be away from those who do not have the love of God in their hearts."

I submit, Sir, that these great thoughts cannot be exiled from our language.

Mr. President: *[I believe you have already given sufficient citations.]

Shri Algu Rai Shastri: *[So, Sir, all these words are of the Hindi language and we cannot exclude them from it. My submission is that the words of other languages which have become current in Hindi must be considered to be part and parcel of the Hindi language. I would go further and assert that that language alone should be termed Hindi which has this tendency of including all such words.

Before I conclude, Sir, I would like to say a few words about the content of the Hindi language. There is a great dispute about the real character of Hindi. But I would submit in this connection that Hindi is Hindi and no other definition of this language can be given. Just as I may describe myself by saying what I am, similarly Hindi is described by saying that Hindi is Hindi. Really I fail to understand what other definition can be given. Bhojpuri, Maithili, Khadi Boli and Brij Bhasha are two forms of Hindi. Thus the following passage of Brij Bhasha is part of Hindi literature.

"Ankhiya Hari darshan ki piasi"

'My eyes wishfully long for the sight of God."

Similarly the following passage in *Maithili*:

"Sar binu sarsij, sarsij binu sar
Ki sarsij binu soore".

"The Lotus with the Lake and the Lake without the Lotus have no significance." Similarly,

"Rab ka shukra ada kar bhai
Jisne hamari Gaye banai"

of Meerut is also Hindi. I do not think any one can prevent Moulana Hifzur Rahman from speaking the type of Hindi he pleases, for, there can be no dispute about its true nature since it can be taken down in Devanagari Script and it can be understood by quite a good number of people in this country.

The dispute regarding numerals I submit, Sir, is without any substance. The fact is that the numerals are but an integral part of the Devanagari script and cannot be distinguished from it and we should, therefore, accept Devanagari numerals. Such matters as the appointment of a Commission formation of a Committee for replacing English by Hindi within the period of fifteen years, should be left to the future Government for being decided in the manner it pleases.

With these words, I submit my amendment to you. I concede, Sir, that within this period of fifteen years, English should continue to be used. It is my conviction, that in our Constitution there should be an article declaring Hindi in the Devanagari script as our official language and that it should make provision that within the transitional period of fifteen years, English should continue to be in use but that after the expiry of that period, Hindi should completely replace English and within this period of fifteen years, it should be the duty of the Government to find out ways and means through which English can be completely replaced by Hindi.

I may add, Sir, that I have no ill-will towards English. I believe there would be English in our Universities even after the expiry of that period and that our students would be acquiring the knowledge of different languages. But I believe, Sir, that the signatures on our treaties etc. shall be in Hindi. Our national language shall be Hindi and our script shall be Devanagari which we

have got from the 'Rigveda' and whose words have been borrowed from that great ocean of learning. It has been fertilized by waters from that source—the source which has given life and light to the world—the source whose literature, philosophy and codes are invaluable treasures of the entire world.

With these words, Sir, I conclude my observations and I thank you, Sir, for having been kind enough to give me so much time for expressing my views.]

The Honourable Dr. Syama Prasad Mookerjee (West Bengal: General): Mr. President, Sir, we are considering a matter which is of vital importance, not to the people belonging to one or other of the provinces of India, but to the entire millions of India's population. In fact, Sir, the decision that we are about to take, even if we ignore for the time being the points of difference, vital though they may appear to some, the decision that we are about to take is something which has never been attempted in the history of India for the last thousands of years. Let us therefore at the very outset realise that we have been able to achieve something which our ancestors did not achieve.

Some Members have spoken no doubt out of the warmth of their feeling and have tried to emphasise upon the points of difference. I shall say a few words on the points of difference a little later. But I would like the House to rise to the height of the occasion and flatter itself that it is making a real contribution to the national unity of our Motherland of which we and those who come after us may be legitimately proud.

India has been a country of many languages. If we dig into the past, we will find that it has not been possible for anybody to force the acceptance of one language by all people in this country. Some of my Friends spoke eloquently that a day might come when India shall have one language and one language only. Frankly speaking, I do not share that view and when I say so, I am not ignoring the essential need for creating that national unity of India which must be the foundation stone in our future reconstruction. That unity must be achieved by allowing those elements in the national life of our country, which are today vital, to function and function in dignity, in harmony and in self-respect. Today it stands to the glory of India that we have so many languages from the north to the south, from the west to the east, each one of which in its own way, has made contributions which have made what Indian life and civilisation are today.

If it is claimed by anyone that by passing an article in the Constitution of India, one language is going to be accepted by all, by a process of coercion, I say, Sir, that that will not be possible to achieve. (*Hear, hear*). Unity in diversity is India's key-note and must be achieved by a process of understanding and consent, and for that a proper atmosphere has to be created. If I belonged to a province where Hindi is the spoken language, I would have felt proud today of the agreement to which practically all the members of this House have voluntarily submitted themselves by accepting Hindi in Devanagari script as the official language of free India. That is a solid achievement which, I hope, those friends of mine who come from the Hindi-speaking provinces should appreciate.

I am not talking about the relative claims of other languages. Left to myself, I would certainly have preferred Sanskrit. People laugh at Sanskrit today perhaps because they think it is not practicable to use it for so many purposes which a modern State has to fill. I do not want to take your time by dwelling on the claim of Sanskrit. I am not fully competent to do so, but most certainly that is a language which still is the storehouse, shall I say the unlimited and illimitable storehouse, from which all knowledge and wisdom are drawn, not so much perhaps by the present generation of the Indian people but by others who have preceded us and by all true lovers of learning

[Dr. Syama Prasad Mookerjee]

and scholarship throughout the civilised world. That is our language, the mother-language of India. We do wish, not for paying lip sympathy or homage to its genius, but in our own national interests so that we may re-discover ourselves and know the wealth and treasure that we accumulated in the past and are capable of achieving in future,—we do wish that Sanskrit will reoccupy an honoured place in the national educational system of India.

I am not similarly advocating the claims of other languages. You will not call it provincial if I say that I am proud of my own language. It is a language which has not remained as a mere language of the people of Bengal alone. It was the language enriched by many noble writers for centuries past—the language of Vande Mataram. It was our national poet Rabindra Nath Tagore who raised the status and dignity of India when he had his great thoughts and contributions in Bengali recognised at the bar of world opinion. (*Hear, hear*). That is your language. It is the language of India, (*Hear, hear*). I am sure that the languages of my friends from the South and the West, of which they are so proud, have also great records and must be protected and safeguarded in ample measure. All must feel that nothing has been done in the Constitution which may result in the destruction or liquidation or weakening of any one of these languages.

Why do we accept Hindi? Not that it is necessarily the best of Indian languages. It is for the main reason that that is the one language which is understood by the largest single majority in this country today. If 14 crores of people out of 32 today understand a particular language, and it is also capable of progressive development, we say, let us accept that language for the purposes of the whole of India, but do it in such a way that in the interim period it may not result in the deterioration of our official conduct of business or administration and at no time retard true advancement of India and her other great languages. We accept that proposition, and the scheme which Mr. Gopalaswami Ayyangar has placed before you includes certain principles which we consider, taken as a whole, meet this view-point and will be not in the interests of the people coming from the south of India, but in the interests of the people of India as a whole. (*Hear, hear*).

You have got some time, fifteen years, within which English will have to be replaced. How is it to be replaced? It will have to be replaced progressively. We will have to decide realistically whether for certain special purposes English should still be continued to be used in India. As some of my friends have already stated, we might have rid India of British rule—we had reasons for doing so—but that is no reason why you should get rid of the English language. We know fully well the good and the evil that English education has done to us. But let us judge the future use of English dispassionately and from the point of view of our country's needs. After all, it is on account of that language that the have been able to achieve many things; apart from the role that English has played in unifying India politically, and thus in our attaining political freedom, it opened to us the civilisation of large parts of the world. It opened to us knowledge, specially in the realm of science and technology which it would have been difficult to achieve otherwise. Today we are proud of what our scientists and our technical experts have done.

I say, Sir, we would be suffering from a sense of inferiority complex if we examine the role that the English language should play in this country from any narrow standpoint. There is no question of the English language being used today for political purposes or for dominating any system of national education. It will be for us, the representatives of the people of free India, to decide as to how progressively we will use Hindi and other Indian languages, how progressively we will get rid of the English language; if we feel that for

all time to come for certain purposes, we will allow English language to be used or taught we need not be ashamed of ourselves. There are certain matters which we have the courage to speak out, not in individual or sectional interest, but where we feel that such a step is to be taken in the interests of the country as a whole.

Sir, with regard to regional languages, I am now happy that the amendment proposes to include in the body of the Constitution itself a list of the principal regional languages of India. I hope we will include Sanskrit also. I shall speak here with frankness. Why is it that many people belonging to non-Hindi speaking provinces have become a bit nervous about Hindi? If the protagonists of Hindi will pardon me for saying so, had they not been perhaps so aggressive in their demands and enforcement of Hindi, they would have got whatever they wanted, perhaps more than what they expected, by spontaneous and willing co-operation of the entire population of India. But, unfortunately, a fear has been expressed, and in some areas that fear has been translated into action, where people speaking other languages, not inferior to Hindi by any means, have not been allowed the same facilities which even the much-detested foreign regime did not dare to deprive them of.

I would beg of those who represent the Hindi speaking provinces in this Constituent Assembly to remember that while we accept Hindi, they in their turn, take upon themselves a tremendous responsibility. I was glad to find that some weeks ago at a meeting of the Hindi Sahitya Sammelan, a resolution was passed that in these Hindi speaking provinces, there will be compulsory arrangements for the study of one or more of the other Indian languages. (An honourable Member : A pious resolution!). Let that not remain a pious resolution. It will depend upon leaders like Pandit Govind Ballabh Pant, Babu Purshottam Das Tandon, Babu Shri Krishna Sinha and Pandit Ravi Shankar Shukla to see to it that within the next few months, arrangements are made, if necessary by statute, for the due recognition in their areas of other important regional languages, specially if there are people speaking those languages residing in those areas. I shall watch with interest and see how these facilities are given and the resolution unanimously passed under the leadership of Babu Purushottam Das Tandon is carried into effect in provinces like Bihar and the U.P.

Sir, a lot of talk is going on about what is meant by Hindi. There cannot be any artificial political forces or forces created by statutory provisions dictating as to how a language is to be shaped. A language will be shaped in natural course of events, in spite of current controversies, in spite of individuals, however big or however eminent for the time being they may be. It is the people's will that creates changes; they come naturally and often imperceptibly. It is not a resolution of the Constituent Assembly which will decide the supremacy of a language. If you want that Hindi is to really occupy an All-India position and not merely replace English for certain official purposes, you make Hindi worthy of that position and allow it to absorb by natural process words and idioms not only from Sanskrit but also from other sister languages of India Do not obstruct the growth of Hindi. I can speak Hindi in my own Bengali way. Mahatma Gandhi spoke Hindi in his own way. Sardar Patel speakes Hindi in his own Gujarati way. If my friends from the U.P. or Bihar come and say that theirs is the standard Hindi which they have laid down and any one who cannot speak this language will be tabooed, it will be a bad thing not only for Hindi, but it will be a bad thing for the country. I am glad, therefore, that provision has been incorporated in the draft article suggesting as to how this language should develop in this country.

I do hope an Academy of Languages will be established by the Government of India and perhaps similar academies will be established in other regional areas

[Dr. Syama Prasad Mookerjee]

in India where a systematic study of Hindi and other Indian languages will take place, where comparative literatures will be studied and publications in Devanagari script of selected books in all Indian languages will be organised; where the more important task of finding out terms and terminology specially for commercial, industrial, scientific and technical purposes will be dispassionately undertaken. Let us not be narrow-minded in this respect. I played my humble part in giving to my mother-tongue its due place in my University, a work which was started by my revered father nearly sixty years ago and it was left to me to bring that work into fruition fifteen years ago. Calcutta gave ungrudging recognition to all languages in India. We selected our terms and terminology from the point of view of our future advance and not narrow sentiments. If today it is said that all technical terms and terminology are to be used in Hindi, you may do so in the provinces where Hindi is being spoken. What will happen to Bengal, Gujarat, Maharashtra and Madras? Will they also use their own technical terms in their State languages? If that is so, what will become about the inter-change of opinion and inter-change of educational facilities between one State and another? What will happen to those who go to foreign countries for their future education? These are questions I would ask you to ponder over. Let us not be carried away by mere sentiment. I am certainly proud of certain sentiments. I am anxious that there should be a language which gradually will become not only the spoken language of the entire population of India, but a language in which the official business of the Government of India will be carried, and will be capable of being used by all. We have agreed it will be Hindi. At the same time, it has to be adjusted and re-adjusted at every step in such a way that our national interests may not suffer and not injure the interests of the State languages also. If you proceed in that fashion, I have not the slightest doubt that we will not have to wait for fifteen years; more readily, it will be possible for people of all the provinces to agree to and implement our decision.

Lastly, I shall say a few words about the numerals. Much has been made about the numerals. We are having a minor war on numerals. But, this suggestion which has been made is not in the parochial interest of the people who come from South India. That is a point which must be understood by every section of this House. The continuance, until otherwise decided, of the international numerals, which really have come back to the land of their birth in a somewhat modified form, is vitally necessary in our own interests, at least for many years to come. Later on, if, on the recommendation of the Commission, the President feels that a change is to be made, that change may be made. You have got your statistics; you have got your scientific work to be done. You have your commercial undertakings, banks, accounts, audit. You have so many other things in respect of which the use of international numerals is necessary.

Some of my friends ask me, if you are taking the entire Hindi language, and when some of the numerals more or less similar, why not accept a few more? It is not a question of learning three or four numerals. I believe every one will know the Hindi numerals, which may be also used right from the beginning. Hindi numerals will also be learnt by all. But the question is regarding their use for purposes for which you consider they cannot be properly used.

Some of my Hindi-speaking friends have asked, why compel us to use the international numerals? We are not banning the use of Hindi numerals in Bihar, Central Provinces or the U.P. where Hindi will be the State language. Obviously Hindi numerals will have a large part to play. Where is the harm

if you learn the international numerals also and use them for all-India official purposes? Rather, it will be to your benefit, specially for your higher educational curriculum. I would ask Babu Purushottam Das Tandon, and appeal to him that in this matter he must rise equal to the occasion. It is not a matter which need be carried by a majority of votes. Even if some of them feel against the all-India use and recognition of the international numerals in addition to Hindi numerals, even if he feels that this is not fair and just, or is not to his liking, for the very fact that Hindi which is the language of his own province is being accepted by the entire people of India, he should have the statesmanship to get up and say that in spite of his personal feelings, he accepts the compromise and approves the resolution.

We have passed many important resolutions in this House during the past years. We have faced many crises together. It will be making a childish affair if on a matter connected with numerals, the Constituent Assembly of free India commanded by one political party divides. We shall be making a laughing stock of ourselves and the whole of India and we would be strengthening the hands of our enemies. Let us emphasise not on the differences but on the substantial achievement of our common aim. Let us tell the whole world that we have done so without rancour and with unanimity. Let us not look at the matter from a political angle.

It pains to find that in some areas, acceptance of international numerals may become a first class political issue. It depends on the leaders of those provinces to take courage in both hands, get up here and say that they have accepted this compromise for the good of India and that they are going to stand together. If the leaders say so, I have not the slightest doubt that the people also will accept it. We have not banned the circulation of Hindi or Devanagari numerals in any province where the State legislature so decides or even for all-India purposes. All that we have recommended is the acceptance of a formula which we feel will be fair and just to all. I hope that before the debate concludes it will be possible for the representatives of the different view-points to meet together and come forward before the House with the declaration that the proposition of Mr. N. Gopalaswami Ayyangar is going to be unanimously accepted.

Mr. President: The House stands adjourned till 4 O'clock.

The Assembly then adjourned for Lunch till Four of the Clock in the afternoon.

The Assembly re-assembled after Lunch at Four P.M., Mr. President (the Honourable Dr. Rajendra Prasad), in the Chair.

Mr. President: We shall now continue the discussion. Mr. Chacko.

Shri P. T. Chacko (United State of Travancore & Cochin): Sir, my position is that English should continue to be used for a period to be fixed and the question of a national language should be left to the future Parliament. A national language has to evolve itself and is not to be created artificially. The national language for a great country like India should have certain minimum requirements. It should be capable of expressing all the needs of modern civilisation. To be capable of meeting all modern demands, it should have a lore of scientific literature. Language as the vehicle of thought determines to a large extent our mental make-up. The capacity for thought, and for thought development, to a great degree is limited by the thinker's language of expression. Each language has a vocabulary, a method of construction and a scheme of thought process distinctly all its own.

A person who knows only a primitive language cannot, of course, think in the same lines as one who speaks a well-developed language. The national language of a great country like India should also be great. Some of our languages in India are really rich in literature. But, Sir, I do not think that any of our languages contain a good scientific literature. It would be almost impossible to teach Chemistry, Physics and such other sciences in any of our languages in India. A language cannot be artificially moulded for ready use. It has to develop itself and that takes time. The adoption of a language from the languages which we are having in India will most probably retard our national progress. It may prevent our higher studies. It may prevent scientific researches which we need. Therefore, I believe we will have to wait till the time when a language in India develops itself and matures to that stage when we can make it our official language and our national language.

To replace an international language like English, very expressive, rich in vocabulary, easy and simple in construction, and one which is recommended to be the international auxiliary language, is almost impossible. Probably Shakespeare decided the national language of England once for all, and for Italy probably Dante decided it. Like that, some literary genius will in future, according to me, decide the national language for India.

A national language can be decided upon only by mutual agreement. It cannot be done by taking votes; that is what I believe. No language can be imposed upon an unwilling people. No nation has ever succeeded in imposing the language of the majority upon the minority. In the day of Czarist Russia, speaking Lithuanian language was absolutely forbidden and the penalty for breaking this law was very severe, sometimes amounting to death. Nevertheless, when after two centuries, Lithuania declared itself independent, it was found that about 93 per cent. of the people still spoke the Lithuanian language. Likewise, in Spain, the Catalan language was prohibited in 1923, but after a strenuous struggle which ensued in 1932, the State had to recognise that language.

On the other hand, we know what happened in Britain. Even now there are about six spoken languages in the British Isles. English evolved itself as a national language and the people willingly recognised it. The result was that Welsh in Wales and Gaelic in Scotland slowly were abandoned by the people. Likewise we will also have to wait for some time till a language emerges from among the languages which exist in India. We will have to wait till it matures and reaches that position when we can make it our *lingua franca.*

Before deciding upon the official language, to me it appears that we have to decide one or two very important questions. Firstly, Sir, the question is

whether we should have one language or more languages as our official language. In Switzerland, for example, there are four languages spoken by the people. In schools the medium of instruction is that language which is spoken by the people in the locality where the school is located. In higher classes a second national language is compulsory and later on a third language. All the four languages are recognised as official languages.

In pre-war Czechoslovakia, though there were about twelve languages, besides some dialects spoken by the people, two languages were recognised as official. In public offices the language of the region in which the office was situated was used. In many other countries also more than one language is recognised as official language.

Therefore it is a question to be decided whether we should have one single language as the official language of India or we should have more than one—for example Bengalee, Tamil, Hindi and even English. If we decide on one national language, we will again have to decide whether we should allow the Union Government to use any other language than the official language. In the U.S.S.R., for example, in European Russia itself there are about 76 languages spoken besides innumerable dialects and only one language is the official language of the U.S.S.R. But in offices the language of the region is also officially used. Where many languages are spoken and there are many other dialects also the question is to decide whether we should permit the Union to use only the official language or other languages also in public offices situated in particular regions.

I wish to point out that in Eire even now the English language is used for all official purposes. During the days of the Irish struggle for independence they were almost resisting the use of English. In 1893 a Gailic League was formed which played a most predominant part in the Irish struggle for freedom. In their schools now Irish is taught as a compulsory language. Though the Irish people want Irish to be their only official language yet they find it very difficult to replace English by Irish.

We are all almost agreed that English should continue for a period of fifteen years. So this is not an urgent question, though it is a very important question. It is a sound principle in democracy to know the wishes of the people and to respect the wishes of the people when there is doubt among the representatives themselves as regards the decision which may be taken by them. Though it is an important question, since it is not an urgent question I would request that we take time to go back to the people to get a mandate from the people and for that we should leave the question to be decided by the future Parliament.

Why should we worry ourselves with the problem when we are faced with several very urgent problems which affect the life of the millions of people of the country? When people who valiantly fought for the freedom of the country are dying for want of food and shelter, when trade and commerce is becoming duller day by day, when unemployment is rampant, especially in the South, when in the North we are having the Kashmir problem and in the South the menace of the Communist hooliganism—even today I got a telegram from my country that the son of a Congress worker who devoted twenty years in the service of the country was stabbed by a communist on Sunday last—and when the future of the very nation itself is hanging on the solution we might find for the food problem I ask why should this august Body waste its time over this question, the solution of which we intend to implement only after fifteen years, according to the agreement almost reached by every one in the House.

After having seen a sort of fanaticism in action in the matter of a comparatively smaller question of the numerals and after having heard a section of the people of this House speak as if all that mattered in life was the Devanagari system of numerals, I feel that it would be better for us to leave the decision on

[Shri P. T. Chacko]

this question to soberer men. We can hope that our posterity will be more tolerant and wiser and hence they may be able to find an agreed solution for this problem. Our intolerance has already divided India. Let it not divide it again. Instead of imposing a language on posterity I believe it will be better for us if we leave this problem to be decided by posterity themselves.

Shri B. Das (Orissa : General) : Sir, this question of Hindi as the *lingua franca* has caused us a lot of misgivings. I will not be true to myself, my conscience and my God if I do not express my feelings. I will not be true to my great leader, Mahatma Gandhi, who is in Heaven, if I do not express truly and correctly the apprehensions that I have come to entertain during the last three weeks, and which have been aggravated more and more by the dominating attitude of my friends from U.P. and C.P.

As we want a *lingua franca* I do accept Hindi as the official language, but that does not mean that we have no apprehensions, we have no suspicions or that we have no fears. My Friend Dr. Syama Prasad Mookerji this morning indicated some of the fears and suspicions that non-Hindi speaking provinces including those in the South do harbour. This morning when Pandit Lakshmi Kanta Maitra was speaking I was almost persuaded to accept Sanskrit as the official language of the State, so that everybody will start with an even keel in that mother of all languages. There will then be no rivalry between the sons and daughters of the leaders of U.P. and C.P. that are present here and the sons and daughters of leaders of Orissa or Madras. They will all learn Sanskrit.

The fears and suspicions that we harbour today were harboured by us till a couple of years ago, when the officialdom was manned by the Britishers and the civil service examinations were conducted in London. Naturally the Englishmen preponderated in service. Now that the civil services and other examinations are being held in Delhi, naturally hereafter the Hindi-speaking provinces (I am not talking of the immediate future but of fifteen years hence) the people of the Hindi-speaking provinces such as U.P. and C.P. will preponderate in the civil and other services of our country.

What shall be the standard or ideal of education and examination in Hindi language? I do not know much of Hindi. I know a little of what is called Hindustani which the ordinary people use, that inferior Hindustani in which official folks talk to the servants and ordinary workmen. That much Hindustani I know. According to my investigation Hindi is the only language in the world which requires its verbs to have different inflections according to the gender.

An honourable Member : What about German?

Shri B. Das : I am sorry I tried to learn German but with the advent of first war I gave it up. However, in my old age, I am not prepared to start speaking Hindi—all the time labouring under the dread that I might make a mistake, in the proper gender of the verbs I used and the nervousness that I may not be laughed at by Hindi-speaking ladies and gentlemen over mistakes, I have made.

But that is not the problem. Our children will have to learn a language so like the German where they will have to see that they do not make mistakes in their sentences by using wrong verbs. That is a misgiving, yet I am willing to overlook it. But I am not willing to reconcile myself to the position that for the next fifteen, twenty or thirty years the sons of the Hindi-speaking people, whether they belong to U.P. or to the C.P., will preponderate in the all-India services.

I have watched during the last twenty-one years the spread of Rashtrabhasha Hindi throughout the country. I do say, that very little has been done to

train up Hindi speakers: excepting for the efforts of my Friends Mr. Satyanarayana and Shrimati Durgabai there, very little has been done, so that those who are today capable of a smattering of Hindi reading in Orissa or Madras, can they hope to compete with the Hindi-speaking people or can they compose music or songs like my Friend Pandit Balkrishna Sharma or write beautiful stories like my Friend Shrimati Kamala Chaudhri? That may not count for my generation but it will count in later generations and affect them.

We know we must have a *lingua franca.* We accept Hindi. Why is it that the leaders of U.P. and C.P. are so intolerant? I found leader after leader coming from those benches and talking in Hindi knowing that they are not appealing to the Members of U.P. or C.P. or even in Bihar. They are raising their voices to speak to the people of South India and even to the people of Orissa like me or to the Members from Bengal who talk just a smattering of Hindi. Everybody knows that the Bengali is a little bit conservative: he seldom learns an Indian language gracefully although he masters the English language. Sir, I do hope that when the next speakers rise from the benches of U.P., C.P. or Bihar let them address in English those Members of South India and those like me who cannot understand Hindi so very well. If they are so fond of their mother tongue, let them reserve it for other occasions. Let their arguments show that they have spirit of tolerance, that they want to concede and that they are not in that aggressive mood of, "You must have Hindi as *lingua franca,* we care a rap what happens to you, your sons or grandsons".

We are not going to allow that sort of attitude in speakers from U.P. or C.P. That way you will not make us co-operate in future or even now. Sir, that is what is agitating me and if I speak out my mind I do so in obedience to the dictates of my conscience.

Shri H. J. Khandekar (C.P. & Berar: General): I would like to tell the honourable Member that C.P. is not a purely Hindi-speaking Province; it speaks Marathi as well as Hindi.

Shri B. Das: All right, Sir. I accept my Friend's correction. It is the Jubbulpore district which I have in mind which gave birth to the President of the Hindi Sahitya Sammelan, my Friend Seth Govind Das.

Sir, I have said already that we are human beings and the problems of loaves and fishes affect us as much as the problems of higher national ideology. Let the leaders of U.P. that will speak hereafter tell us how they are solving that problem so that they do not get an overriding weightage on the other Provinces like Orissa, Assam, Bengal, or the Southern Provinces and States like Madras, part of Bombay, Mysore and Travancore. That is a problem they will have to solve.

They will have to tell us how they are going to teach Hindi to the thirty odd crores of people of this sovereign India. Nobody has told us that. Simply passing the Resolution and making Hindi the *lingua franca* does not solve the problem Even during the last 21 years how many teachers had U.P. sent out to the other Provinces? Not more than 100. Do they expect that every village school teacher of U.P. will go to Orissa, Bengal, Assam and Madras and sufficiently teach Hindi so that our sons and daughters could equally compete with the sons and daughters of U.P. and North C.P.? If my friends of U.P. had tolerance they would not have caused us these heartburns for the last three or four weeks.

The question of numerals has loomed so much in the horizon that they do not appreciate the concession when the United India, in a spirit of co-operation, agreed to accept Hindi as the *lingua franca* of India. Why do they not yield? The world is not stationary. What we may incorporate in the Constitution today may be a dead issue five or ten years hence. We, Hindus, know how the world is changing; we know how our conception of God has been changing from

[Shri B. Das]

time immemorial From the days of Rigveda down through the Vistas of Upanishads, Puranas and the Bhagvatam to the present concept, we are changing all the time. Why are my friends from U.P. so insistent that only the Devanagari numerals be used and not also the Indian numerals of international character as many of us want? I have supported the proposition to have these international numerals along with the numerals; our fears might prove to be wrong, ten or twenty years hence it might be proved that it was a wrong thing to have introduced international numerals, but at present the fear does exist and hence both the numerals the House should accept.

We do not want to fight over this small issue of numerals. Why should not my friends of U.P. and North C.P. agree that both the numerals will be allowed for another fifteen years?—then most of us will not be here, at least I won't be in this world fifteen years hence. Then those who succeed, with the resurgence of the spirit of independence and after working the independent Constitution for fifteen years, let them meet together and solve the problem whether the international numerals should continue along with the Devanagari numerals.

With the advancement of science as Dr. Mookerjee rightly pointed out this morning, and with more and more international co-operation, more and more contact with outside world, more and more of the spirit of one world, we should have recourse to international numerals at least in the scientific and technical fields. What is right or wrong it is not for me to judge; it is for me to see that we evolve a common formula whereby all of us unanimously pass these articles which shall be incorporated in our Constitution. Let there be no bickerings. Let not South resent the discussions of the North. Let not North be overbearing to the South when they want the numerals of ancient times to be brought back in modern administration. If some of us who revere the memory of him who brought us this independence and was incarcerated and out of that memory we try to co-operate and not hurt the feelings of each other, it is expected of the leaders of U.P. who have pressed this question of language and numerals to show a spirit of tolerance which is expected of them.

Dr. P. Subbarayan (Madras: General): Mr. President, Sir, this is the first time I venture to address this august Assembly and I feel rather overcome by that sensation. My amendment is a very simple one and all the other amendments actually follow in its wake.

My amendment is that the language of the Union should be Hindustani in Roman script. I feel that we ought to get akin to the world. The world is getting narrower today and we ought not to think in narrow terms of our own provinces but more with the idea of a "One World". If you do really believe in One World and peace, as Mahatma Gandhi preached to the world, then I am sure most of you, if you search your hearts, will be inclined to vote for the proposition I have propounded today.

Shri R. K. Sidhva (C.P. and Berar: General): Mahatma Gandhi did not say Hindustani in Roman script.

Dr. P. Subbarayan: Hindustani in Roman script, what I advocate, as two scripts are a difficulty and may be an acceptable solution.

There is also another thing which I would like to touch upon. Why all this awkwardness about English? All this hatred against English? With the coming of freedom I thought we had abandoned hatred altogether, and we had become friendly with the English people. I would like to quote the American example. Today, if you take the American population, about 20 per cent. only belong to the British Isles. The very nature of the men who represent them in sporting contests, of which alone I am well aware, come of races which cannot be described as Anglo-Saxon by any stretch of imagination. In the last

Davis Cup against Australia the two representatives who did battle for America and won were Schroeder and Gonzales. Can you think of more strange names than Schroeder and Gonzales—the one a German and the other a Portuguese ?

Therefore, all these people who come of different nationalities residing in the United States have agreed to adopt the English language as their own. I would far rather that we were bold enough to say that English which has been with us for nearly a century and a half, and we who have imbibed as much of the heritage of the English language as anyone else, adopted as our common language.

But unfortunately we are not placed in such circumstances because there is still, in spite of all that has been said, the spirit of hatred, the spirit that feels that we should not touch the language of the conquerer though he has ceased to be the conquerer and willingly left our country without the firing of a shot merely because he felt the time had come when he ought to accept the decision of a whole nation. But still I am willing to give in to national sentiment.

I would, however, like honourable Members to take their minds back to Mahatma Gandhi. I have been told that we should not utter the name of Mahatma Gandhi in this controversy about language. Why not, I ask. Because day in and day out honourable Members mention the sacred name and only run quite counter to what he taught us. When that is the case, Mr. President, why should I not appeal to Gandhiji's name for Hindustani being adopted as the language of the nation ?

Shri R. K. Sidhva : Quite right. He should be quoted correctly. Not for Hindustani in Roman script.

Dr. P. Subbarayan : Mr. Sidhva, if you will have a little patience and hear me develop my argument you will know what I am driving at—I was not quoting him for the Roman script; I was quoting him for the name Hindustani. Well, Sir, to proceed with my argument, English being out of the way, then the next best thing we can adopt is Hindustani in the Roman script, because it keeps us akin to the world.

What is all this nonsense about numerals, I say. Do you want to be archaic and go back to things which have been forgotten for a long time, which you have revived today because you think it is your own ? May I tell you, Sir, that these numerals are older than the numerals you so fondly hug to today.

Pandit Balkrishna Sharma : Question !

Dr. P. Subbarayan : There is no question of questioning that. It is a fact.

Pandit Balkrishna Sharma : It is not a fact.

Dr. P. Subbarayan : You may say what you like. I have my own opinion about it.

Pandit Balkrishna Sharma : Your opinion is not what matters.

Dr. P. Subbarayan : It is not my opinion. It is a fact and not an opinion. Yours is an opinion with which you want to change the fact. Well, Sir, to go back to this question of numerals, it has been said in the Encyclopaedia Brittanica—it is merely to prove facts I am reading it, Mr. Sharma, for your edification.

Pandit Balkrishna Sharma : Say for your enlightenment.

Dr. P. Subbarayan : I am enlightened enough.

> "Several different claims, each having a certain amount of justification, have been made with respect to the origin of our present numerals, commonly spoken of as Arabic, but preferably as Hindu-Arabic. These include the assertion that the origin is to be found among the Arabs, the Persians, the Egyptians and the Hindus. Intercourse between traders served to carry such symbols from country to country, so that our numerals may be a conglomeration from different sources. The country, however, which first used, so far as we know, the largest number of our numeral forms is India....."

[Dr. P. Subbarayan]

One, four and six are found in the Asoka inscriptions of the third century B.C., long before your numerals were thought of. Two, four, six, seven and nine appear in the Nana Ghat inscriptions a century later.

Pandit Balkrishna Sharma: Is Nana Ghat situated in Europe?

Dr. P. Subbarayan: That is why I say they are our numerals, which you do not unfortunately accept. I am only proving that these numerals originated in India and nowhere else. Two, three four, five, six, seven and nine in the Nasik caves of the first and second century of our era.

Pandit Balkrishna Sharma: Have you seen these numerals on caves in the Nasik? Can you enlighten the House whether these numerals are exactly like the ones now in use?

Dr. P. Subbarayan: I am not going to enter into an argument with the honourable Member. He will have his turn to make his observations. For the moment he may kindly bear with me in patience. Two, three, four, five, six and nine there are in the Nasik caves of the first and second century of our era. They bear considerable resemblance to our numerals. If the Honourable Member had waited in patience he would have understood my point. Those numerals have considerable resemblance to our own, our two and three being well recognised derivations from two and three.

None of these early Indian inscriptions gave any evidence of place value or of a zero. That would make our place value possible. Hindu literature gives some evidence that the zero might have been known before our era. But we have no actual inscriptions containing such symbols before the ninth century. The first definite external reference to the Hindu numerals is contained in a note of Severus Sebokht, a bishop who lived in Mesopotamia about 650. Since he speaks of nine signs the zero seems to have been known to him.

Mr. President: Are you going to decide this question on the basis of his verdict?

Dr. P. Subbarayan: Not on the basis of that but on the basis of their being Indian in origin. I am only proving that these are our own numerals and that we need not fight shy of them.

Mr. President: We need not go into those details any more. The question is to be decided on broader grounds.

Dr. P. Subbarayan: Sir, all that I want to say is that we need not fight shy of these numerals. They are our own and we are only taking back to ourselves what was our own and what are commonly known all over the world. In this way we can be more akin to the world also, because today more than 60 per cent. of the people of the world use these numerals. There is no harm in this. As this is so, I do not know why we should introduce archaic connotations and give up something well-known to us and which we have been using all these years.

I have already referred to the Roman script. (*Interruption.*) Mr. T. T. Krishnamachari is a constitutional expert. I do not pretend to be an expert. But what I say is this: When the script is well-known all over the world, and as the world is getting narrower and narrower, it will keep us akin to the world and we shall be able to get our own scientists talk to the scientists of the world through the medium of our own language if we adopt the Roman script. It will be easily read by the rest of the world and therefore it will get us akin to the wide world. I hope Shri T. T. Krishnamachari is now satisfied.

Well, coming now to the rest of my amendments, I want that the Commission to be appointed under the Resolution as proposed by Shri N. Gopalaswami Ayyangar should not come after five years. Five years is too short a period

for that. It should come only after ten years are over and until those ten years we should keep the English language as the medium. My friends from the United Provinces laugh at this. If they had the experience I had to go through during the Hindi controversy, they will understand why I am pleading for this gesture on their part. We from the south, wanting a national language, wanting to be in tune with all of you from the North of India, agreed to swallow almost 95 per cent. of what you wanted. And yet, you want the other 5 per cent. also, because you believe in the Tamil proverb : 'The hare you have got has only three legs'.

I am also reminded of the other Tamil proverb which says, if a man comes and asks for a little place on the verandah and if you grant it, he will next ask for entry into the house itself. That is the position of most of you gentlemen, today.

I feel, Sir, that it is very important that you should understand the South Indian position. If I tell you what exactly happened for three months when I was holding charge of the portfolio of education in Madras and Hindi was introduced as a compulsory subject in the first three forms of the High Schools, you will understand my anxiety that I should go back from here with something done, something accomplished. For three whole months, every morning when I got out of my house I heard nothing but cries of "Let Hindi die and let Tamil live. Let Subbarayan die and Rajagopalachari die". That was the cry that went up for three months and what is more, we were constrained to use even the Criminal Law Amendment Act which we railed against previously.

Shri T. T. Krishnamachari (Madras : General) : Hear, hear.

Dr. P. Subbarayan : Mr. Krishnamachari says : 'Hear, hear'. I remember his criticism on the floor of the House. If he had been in power at that time he would have used worse instruments.

Sir, I will give another information for the edification of my colleagues from the United Provinces. The Congress Bulletin is published both in English and in Hindi. If you compare the number of subscribers for these two editions you will be surprised. Only about 1/40th of those who subscribe for the English edition, subscribe for the Hindi edition. This shows that in spite of Gandhiji's attempts and in spite of everything that has been done, we have not been able to make even those who seem to be jealous of Hindi language buy the Hindi edition of the Congress Bulletin. My honourable friend the Secretary of the Congress (Shri Kala Venkata Rao) wants me to give the number. For reasons best known to him I do not want to give the numbers.

There is another amendment which I would like the House to accept and that is that English should be the fourteenth language in the Schedule. I think my Friend Mr. Anthony has explained the reasons for this, and correctly so. They may be an infinitesimal part of our population, but the Anglo-Indian community is as much Indian as anyone of us is. If we regard them as our kith and kin, their language ought to find a place in the Schedule as any of the other languages. Therefore I feel that 14th should be the English language.

Our Friend Shri Lakshmi Kanta Maitra wants also his amendment to be accepted. I am in favour of putting Sanskrit as the fifteenth language, because Sanskrit is our ancient language and we want also to have it mentioned in our Constitution. This is the one place where we could include it.

Considering everything I feel that it would be correct if we adopt Hindustani written in the Roman script as the national language of the country.

Shri Kuladhar Chaliha (Assam : General) : Mr. President, Sir, after the speech of Dr. Subbarayan which was one of the most rational speeches ever

[Shri Kuladhar Chaliha]

made here in this House, if I come forward to support Sanskrit, I shall be taken as archaic or as an archaeological curiosity. I personally feel that we should have Sanskrit as our national language. Sanskrit and India are co-extensive. However much you can try, you cannot get away from Sanskrit. Our institutions are interwoven with it and values of our lives have been created out of its philosophy. All that is good and all that is valuable and all that we fight for and all that we hold precious have come from Sanskrit literature. The great personalities of Sri Krishna, the Buddha and the Father of the Nation—why do we follow them? But for the heritage that we have in Sanskrit, we would not be following them. It is in Sanskrit that we have got the most beautiful literature, the most profound philosophy and the most intricate of sciences. Can we ever conceive of anything more beautiful than Kalidasa's Shakuntala or his Megadhuta? Can we have any better things in the world or can you imagine any better culture in the world? As regards philosophy, we have the rational philosophy of Sankhya, the philosophy that Swami Vivekananda took to Chicago, where he had it recognised that ours was one of the finest of religions. This was due to his deep knowledge of Sanskrit. Because of his volcanic energy, he was able to galvanise the world with his ideas.

I cannot be as sentimental or as expressive as my Friend, Pandit Lakshmi Kanta Maitra. I have not got the extensive knowledge of Sanskrit as he has, otherwise I would have given you all that we have in Sanskrit by way of science music, architecture, economics, political science and even surgery which will be surprising. It is there for us to draw upon. Sanskrit is such a vast storehouse that all the provincial languages, when they could not find the proper word for anything, have always gone to Sanskrit to draw upon. Even good Hindi is nothing but Sanskrit. Sir, from birth to death, we perform ceremonies in Sanskrit mantras. Our whole life is so interwoven with Sanskrit that you cannot get away from Sanskrit. May be today only a few people understand Sanskrit, but what about English? Only one per cent. or two per cent. of the people speak English.

As regards the proposition put forward by the Honourable Shri Gopalaswami Ayyangar, I accept it because it is a compromise solution, and because it is good for India, not because Hindi is a better language. As a matter of fact, when I heard people like the Maulana Saheb speaking in Hindustani, I was struck by the dignity, flexibility, refinement of style, sweet intonations of that language, and I thought that Hindustani would be a better substitute for Hindi. You do not ask me why; I do not know. I do not know how to read and write it, but the dignity of the language of Hindustani is such that, when I heard it, I thought it was very attractive. I heard speakers after speakers speaking in Hindi as well as in Hindustani, but I was struck only by the dignity, beauty of expression and the flexibility of the Hindustani language, and I thought it was very attractive.

Now coming again to Sanskrit, it is the mother of all our provincial languages. We will become better Indians by adopting Sanskrit, because Sanskrit and India are co-extensive. Even if we adopt Hindi or Hindustani, we shall not be able to get away from Sanskrit, which has given us our philosophy and all the beautiful things of the world.

Then as regards the numerals, the heavens would not tumble down if we adopt the international numerals. If we have used it for 150 years and more, we can use it even now, and nothing will be lost. I cannot follow the argument that the international numerals should not be used, for after all it is our own numerals. If we do not adopt the international numerals, we will not be able to adopt ourselves to the changing circumstances of the world. We should try

to be a little more modern and a little more progressive in our outlook. With these words, I conclude.

Rev. Jerome D'Souza (Madras : General) : Mr. President, I venture to take a few minutes of this House, although I must confess that the points that I wish to bring before you have already been touched upon by various distinguished speakers. If, nevertheless, I crave the indulgence of the House for a few minutes, it is because with so many others in this House I feel the immense gravity and the vital importance of the topic on which we are engaged.

Sir, time and again during the last two years and more that we have gathered in this House, when questions of a controversial nature have engaged our attention and when sometimes passions were roused, some of us who have watched the political scene of our country with a certain detachment, not having been in the rough and tumble of it like stalwart fighters, asked ourselves whether the time would come when before the end of the discussion, our traditional spirit of adjustment and conciliation would assert itself and enable us to come to an agreed solution. And again and again to the deep satisfaction of those who have watched it, to the satisfaction of the friends of this country, possibly also to the deep chagrin of those who do not love us—I would not call them our enemies—that spirit of compromise and understanding has asserted itself and we have come to some consensus of opinion.

Only at this point, to the grief of those of us who have wished to see this question also treated in the same spirit of compromise and understanding, I say only on this question, feelings have been embittered or excited to a degree which has not happened before. Now, I am not saying that as a matter of criticism —I may even say that it was inevitable—because apart from perhaps religious convictions and in some cases even more than religious convictions, there is nothing inhuman activity which touches the springs of man's action and man's life more than language and all that language implies.

After all, when we come to think of it, there is nothing that proclaims our superiority to the rest of creation than this divine power of language and speech. Because, after all, a world, when the world is really good and sincere, is the flowing out of the very soul of man, is the very counter-part of his innermost being. Therefore, there is nothing that flows out of human life and the human heart more beautiful than beautiful words, nothing more detestable than harsh, hateful, insincere words. When words come out from the depth of the soul and express the innermost sincerity of that soul, the man who speaks in that manner gains a power over his fellowmen, with which nothing else on earth can compare.

How, may I ask you, did our incomparable Mahatma Gandhi hold us as it were in the palm of his hand, if it were not by the supreme force of sincere, crystalline, vibrating speech which was his own and which was incommunicable? And whenever we find that a language which we claim as our own, a language which we think is the truest expression of our being is in some way denied to us, our passions are stirred as nothing else stirs them. That explains the passion of those who want a particular form of Hindi: that explains, my friends, the passion of those who, like me, wish to see that all the currents of Indian culture, including those of Muslim India, those of Christian India, those of the different parts of India should find a place within the hospitable limits of that language, which will be the official and which will ultimately become the national language of India.

Sir, what physical and geographical climate is to man's physical being language, its spirit, its genius, its vocabulary, are to the spirit of man, as intellectual climate in which the soul and culture of a people live. If that intellectual

[Rev. Jerome D'Souza]

climate is not acceptable to any section, if the meaning, resonance, associations of ideas, historical and cultural implications of a very wide vocabulary do not give satisfaction to all the different elements of this varied and extraordinary nation of ours, in which so many different cultures have to find an expression, there will be great unhappiness. I say, if we do not, find some kind of contentment in the cultural climate, of our land as expressed by the spirit, the genius, the music and the rhythm, and variety of vocabulary, of the national language, then, we shall not feel at home, we shall feel we are strangers, as it were under a decree of banishment imposed upon us, not physically, but in the intellectual and cultural sense. That is the meaning of the stand we have taken; that is the reason why we with all the strength of our soul, plead for this larger-hearted treatment of the vocabulary of this language.

I rejoice that our friends have accepted this. On this most fundamental issue, those who have championed the cause of Hindi have assured us that they accept the explanation which has now been made a part of the proposals of Mr. Gopalaswami Ayyangar, that Hindi shall include the form of speech known as Hindustani as well as other cognate styles and forms. This gives us the assurance that in course of time, with the evolution of this language all the different elements that make up this nation will find in it a congenial, intellectual and cultural atmosphere. On this point, therefore, let me in all sincerity express a profound satisfaction that we have come to an agreement about the language in general, about the content and spirit of it, and finally about the script that has to be used for it.

Having come thus far, shall a minor thing, a small thing, now dash away that cup of unity that has been offered to our lips? Shall our friends say that here again was one of great might-have-beens of our history? In the brief course of recent history in the evolution of events during the past 10 to 15 years, there came a stage when the majority of our people said that division of the country was inevitable. Still, it is possible to say, judging after the passage of time, and with the detachment of a historian, that perhaps at such and such a point, if we had acted in a different way, or if the other party or such and such a person had acted slightly differently, the course of events in our history might have been entirely different.

It is difficult when we are so near to the events, when we are, as it were lost in them, to cultivate that distance and detachment and to pass judgment and to discern all that a particular action or gesture, or decision implies. As apparently insignificant action may have very great explosive possibilities, may contain germs that will develop in a manner which we cannot foresee at all. I feel Sir, that some of us here, whether we belong to one section of the House or another, are saying things performing actions, and aligning ourselves in the course of these discussions in a manner the full significance, the ultimate implications of which, we ourselves are not aware, and which time alone can show.

While therefore rejoicing that there has been basic agreement on this question, let me say in a spirit of prayerfulness and earnest desire that as regards the points that remain unsettled, God Himself may guide our steps and decisions, and ultimately move us to a solution which will ensure the preservation of that unity which we have got at such a price, for which such tremendous sacrifices have been made. I hope and pray therefore that on the minor points on which we are still divided, the unity of this country may not be shattered upon this rock of linguistic consciousness. I will not use the word fanaticism, it is feeling, and passion nurtured by ignorance rather than fanaticism, ignorance of all the implications of the decision which we are called upon to make.

Nevertheless, I venture to plead for the acceptance in its broad outline of the proposal submitted by Mr. Gopalaswami Ayyangar, not because I think that in every detail it is acceptable but because it embodies the widest common measure of agreement. I agree with Dr. Subbarayan that reopening the matter within five years though it is asked for and has been conceded, is not a satisfactory arrangement; in five years we shall not be in a position to satisfy the commission which is envisaged that the time has come for a radical and important change. I hope means may be found to evolve a satisfactory formula on this point also, which will be universally acceptable.

The logic of events will convince all that the time is not enough for the mastery of this language by many sections of our people in a manner in which the official language, should be mastered, mastered so that it may become not merely the official language, but ultimately the national language. I may assure those that may think that we are rather lukewarm in giving our support to this, that we wish to see Hindi not only as the official language, but we wish to see it evolving, developing, gaining the hearts of all our people to such an extent that from an official language, it may become a truly national language, nay as Mr. Dhulekar said this morning, with all the sincerity which we recognise in him, that it may become an international language. We do want it. But if it is to be an international language, its international spirit, and outlook must be maintained. If we close our doors against words, ideas, ways and currents of thought, manners of expression and historical association which are implied in this, then, it will not have the international spirit; the spirit which will naturally and inevitably spread out beyond our country and enable it to become one of the preferred languages of strangers and foreigners.

Cultured people have preferences in the matter of foreign languages. The French people, proud of their language, have a fine statement: I do not know whether national self-love has inspired them to say so, but it expresses their pride in their language. All men have two languages, they say, their own and then the sweet French tongue:

"Tout homme a deaux langues, la sienne et puis le francais"

Perhaps, a day may come when the whole civilised world may say, "All men have two languages, their own and then sweet language of India." But, if it is to be that, the capacity to spread and conquer the hearts of men should be there; a truly international spirit as manifested in the way that it has developed in many parts of our country, gathering spoils as we may say of many an age and culture, many a race and many an epoch in our history, should be stamped upon it.

It is for this spirit of universality that I would plead with my friends who have till now stood out on the question of numerals to accept the compromise, putting aside for the moment the merits of the question. Personally I believe that on rights and merits, international numerals have an indisputable superiority. I say as a teacher, as a student of science and literature, as a student proud of our contribution of the concept of zero and its associated numerals to the world culture, that on the merits of the case, it is better to have the international numerals. But even if it were not so, this question of numerals has now come to be a kind of symbol for many of us: Symbol on the one hand of the spirit of adjustment among the differing elements within our country, and on the other, symbol of the spirit of universalism and so we want this point to be conceded. However I should not call it a "concession," rather let me say an agreement on that point, as an affirmation of the spirit of universality from those who have not so far shown themselves willing to make it.

[Rev. Jerome D'Souza]

This language of India has to be learnt not only by the 350 millions of our brothers and sisters. Remember that it has to be learnt by the army of foreigners who come to our country, to study our culture, to take part in our commerce, to take part in foreign diplomatic representation. It is not merely Indians who have to learn a language, for which they have a natural affinity; it is foreigners also who have to learn this language which will be entirely foreign to them. When we ask for fifteen years it is also because the commercial interests of India are mixed up with this question. Foreign countries which need the knowledge of the Indian language require a fairly wide period for its study. Moreover this universal outlook is required not only in the interests of India but for the good of the world at large.

We wish to carry to the world the message of India's spirit, the message of her firm belief in the primacy of spiritual values, the message of love and *Ahimsa* which Mahatma Gandhi preached. We wish to communicate to others the literary and artistic treasures which we have inherited from our past, and unless we keep our windows and doors open, unless we make matters easy for those friends to share our cultural heritage, unless we leave—as it were—bridges by which they will easily recognise that it is not an entirely strange land from which we are going out and into which they will be stepping it will not be easy for us to carry out our mission.

I say the acceptance of these international numerals will be a symbol of the spirit of India which wants not merely a narrow nationalism but according to the spirit of Mahatma Gandhi, and Rabindranath Tagore and of our own great Prime Minister wants the spirit of universal brotherhood. I say that for the sake of this we should not permit anything which would stand in the way of universal understanding and mastery of our language.

So, on all these grounds I should like to make a fervent and earnest appeal that these divisions which have caused so much distress of heart to the lovers of this country may be closed now, that the power and cohesion and the unity which led a mighty political party to win independence might not at this last stage of the deliberations of our great Assembly break down and be dissipated to the satisfaction of those who do not love us and to the deep distress of those who love us. I, therefore, most earnestly and humbly make this supreme appeal through you, Sir, that we may close our ranks; that on this question of language there may be the grace of general and universal acceptance; and that as we rise from this discussion, we may rise, not as separated into camps, but as brothers, and children of one Mother—our Motherland, India. (*Loud Cheers.*)

Shri B. M. Gupte (Bombay : General) : Mr. President, I have tabled amendment No. 281. It is a humble attempt at a compromise. The honourable Father D'Souza has just put in a very strong plea for a compromise but he has not put forward any specific formula. My amendment is an effort in that direction. I of course know the fate of those who venture to try their hand at compromise making. Very often they displease both parties rather than please both parties. But in the interest of unity and harmony I have taken that risk.

In my opinion the amendment 65—the Munshi-Ayyangar formula—is itself a very admirable compromise between the two schools of thought. It holds the scales evenly. The name of the language is accepted as Hindi but the protagonists of Hindustani are comforted with a directive clause. In that clause

itself those who are the Champions of Sanskritised Hindi are appeased because it is said down that Sanskrit shall be the primary source of vocabulary, but at the same time the advocates of the other school are also placated by providing that the words from other languages shall not be boycotted. So it is an admirable compromise, it is a very balanced provision and but for one exception, I would have been tempted to describe it as a very fine feat of tight-rope walking. Only in one exception that is in the case of numerals there is unbalance and my amendment seeks to correct that unbalance. It is very unfortunate when there is so much unanimity on all other points only in this small matter there should be such a very serious difference of opinion but unfortunately it is there.

If we compare both these drafts we find that there is substantial agreement even on this point. Under both, the numerals will remain in official use for fifteen years. Under both, the language commission and the Parliamentary Committee will have full power to decide the question of numerals in the five-yearly reviews of the situation. So this is common to both the drafts. The only difference is that in the Munshi-Ayyangar draft the international form of numerals alone is mentioned as the official form of numerals and there our Hindi friends feel aggrieved. They think that though their language is honoured, their numerals are torn from that language and all of a sudden in one thrust the foreign numerals are foisted upon them and we must sympathise with their sentiment.

Whether those numerals are really of Indian origin or not—some people contest it—I do not want to go into that controversy—it has to be admitted that they have today an appearance of being foreign, at least to Hindi language. I therefore submit that in this matter we should try to respect the sentiments of our Hindi friends. It is no use trying to thrust these numerals all of a sudden :— let them be gradually and peacefully assimilated in the Hindi language. I have therefore proposed in my amendment that both these numerals should be mentioned in the first clause. That is a concession I should like to make to that school of thought. I therefore would plead with my Southern friends that even if according to you the Hindi numerals are to be in official use for such a long period as 15 years, then why not mention them in the clause ? Why are you so chary about it ?

But at the same time our Mr. Ayyangar has insisted and rightly insisted that our ultimate aim should be that international form of numerals shall be the permanent form of numeral. There I agree with that school of thought and I have therefore provided that after fifteen years subject of course to the right of the Language Commission and the Parliamentary Committee to decide the question in any way they like, the international form of numerals shall be the only form of numerals.

Now I plead with my Hindi friends that they should yield on this point and there are very good reasons for it. It had been admitted by them that the question of language had been solved 95 per cent. to their satisfaction and I do not see why in the interest of unity and harmony they should not yield that 5 per cent. with good grace. Of course there is the other well-known argument about the utility and the progressiveness of using international forms as far as possible especially when they belong to us in their origin, but I will not emphasise that. I will emphasise this that if you have 95 per cent. of your demand, why create this strife, why this disharmony and bitterness only for 5 per cent ?

I therefore beg of my Hindi friends that they should gratefully yield this five per cent. It is a small matter and we have solved much greater problems by agreement and good-will and amity. If we take a decision on this by a vote of majority, then it will leave a trial of bitterness and rancour behind it,

[Shri B. M. Gupte]

By our action now we may jeopardise the normal working of our new Constitution, even before it is passed. The party that is defeated may start an agitation for the amendment of the Constitution and the reaction of the other side also may be equally violent. Thus the members of controversy, will remain alive for long time. So, I appeal to the honourable House. Let us take care that the verdict of history, the verdict of posterity on our labours on this matter, may not be that they set out to find a language to unite them, but ultimately ended in allowing the numerals to divide them. Therefore I appeal to all for a compromise. I am not keen about my own formula. But I am keen on a compromise. I only want that there should be no division in this House on this matter, where there is so much substantial agreement.

With these words I leave this point and proceed to make certain observations with regard to another topic, a topic of more enduring interest and more enduring importance, and that is about the characteristic of the future development of the language. There are on the Order Paper certain amendments which advocate Sanskritised Hindi as the official language. And even apart from those amendments, there is a strong tendency in certain influential quarters that Hindi should be over-sanskritised, and perhaps owing to that tendency, there has been some difficulty about the adoption of this language as the official language. Of course, those advocates will take advantage of the provision, in the directive clause that Sanskrit would be the predominant source of vocabulary. I have no quarrel with that provision. But I feel that no one should take undue advantage of that. It is a compromise and it should be worked in the spirit of a compromise. I am not against Sanskrit; most of us cannot be, it is in our blood. It is the fountain head of our mother tongues and the storehouse of our culture. Not only that I am not against Sanskrit, but I am an admirer of Sanskrit literature. The most ennobling philosophy the subtlest thought and some of the most enchanting poetry of the world, are enshrined in the Sanskrit language.

But with all its grandeur, and with all my admiration for that grandeur, I have to admit that Sanskrit cannot be the language of the masses; and equally certainly over-Sanskritised Hindi also cannot be the language of the masses. In these days of democracy and adult suffrage, it is the masses that must be uppermost in our minds when we decide such questions. It is the language of the masses that we must be able to speak. Otherwise, as far as we Congressmen are concerned, and most of us here are Congressmen, we shall be kicking the ladder by which we rose. We are here because of the support of the masses to the great organisation to which we have the honour to belong,—the Indian National Congress, and it is the support of the masses that gave it the power to govern the whole country. I submit therefore, let us not create an artificial barrier between us and the common man by artificially Sanskritising Hindi. Thus easy intelligibility to the common man should be the characteristics of the future development of our language. I appeal to my Hindi friends, do not dwarf your ambition. Do not be satisfied with making Hindi only the official language, but try to make it the national language embracing the entire nation. I admit that Sanskrit must predominate in the literary forms of Hindi. I also admit that Sanskrit must predominate in the scientific terms. Sanskrit also has a place in the language of the common man. But let us not force the pace; let us not force the content. Let things grow spontaneously, and I am sure a day will soon dawn when Hindi will not only be the official language, but a national language easily spoken and easily understood throughout this great country.

The Honourable Shri Jawaharlal Nehru: Mr. President, there has been a great deal of debate here and elsewhere, and much argument over this question. Personally I do not regret the time spent on it, or even the feeling raised by it. Some times I may not agree with that feeling; but after all, the question before us is a very vital question, and it is right that vital people should feel vitally about it.

We have had learned speeches, and speeches that were perhaps merely enthusiastic. Now, I do not know in which category to place myself. (*Laughter*). Neither the first nor the second suits me or is appropriate for me. So perhaps, you will put me in some third category. But I am interested vastly in this question from a variety of points of view; and I have listened to the arguments here and elsewhere, and sometimes I regret to say, I have got rather excited myself over it. And these scores and hundreds of amendments have also been perused by me, and yet I have felt that the matter is not one for verbal amendments here and there, but goes down somewhere deeper.

I rise to support the amendment that my Friend and Colleague Mr. Gopalaswami Ayyangar has placed before the House, (*Cheers*). I support that amendment, not because I think it is perfect in every way; perhaps if I had my way, I would like to change it here and there. But I know that this is the result of continuous effort and endeavour, and thought and consultation, and as a result of all that consultation and thought, some integrated thing took shape. Now it is a difficult matter to alter or vary somethnig that is an integrated whole, which displays a certain strain of thought. You may change it here and there but I do not think that will do justice either to the original amendment or the person who wants to change it. It would be far better if some other integrated solution was found if the first one was not liked or approved of. Therefore, although I would have liked, perhaps if I had a chance, to lay greater emphasis on some aspects of that amendment, nevertheless after all that has happened I think that amendment displays not only the largest measure of agreement but also, I think, a thought-out approach to this difficult problem.

Now I am not going to talk about any of the various amendments that are before you or even analyse the amendments that I am supporting. Rather I wish to draw your attention to certain other aspects, certain basic things which perhaps are presented by this conflict on the issue either in the House or in the country. After all it is not a conflict of words, though words may represent that conflict here. It is a conflict of different approaches, of looking perhaps in somewhat different directions.

We stand—it is a platitude to say it—on the threshold of a new age, for each age is always dying and giving birth to another. But in the present context of events all over the world and more so perhaps in India than elsewhere, we are participating both in a death and in a birth and when these two events are put together then great problems present themselves and those who have to solve them have to think of the basic issues and not be swept away by superficial considerations. Whether all the honourable Members of this House have thought much of these basic issues or not I do not know. Surely many of them must have done so. But there are those basic issues. What is our objective? What are we going to do? Where do we want to go to?

Language is a most intimate thing. It is perhaps the most important thing which society has evolved, out of which other things have taken growth. Now language is a very big thing. It makes us aware of ourselves. First, when language is developed it makes us aware of our neighbour, it makes us aware of our society, it makes us aware of other societies also. It is a unifying factor and it is also a factor promoting disunity. It is an integrating factor and it is a

[The Honourable Shri Jawaharlal Nehru]

it has both those aspects and when therefore you think in terms of a common language here you have to think of both those facts.

All of us here, I have no doubt, wish to promote the integrity of India. There are no two opinions about it. Yet in the analysis of this very question of language and in the approaches to it one set of people may think that this is going to be a unifying factor, another may think that if approached wrongly it may be a disintegrating factor and a disruptive one. So I want this House to consider this question and therefore it has become essential for us to view it in this larger context and not merely be swept away by our looking for this or that.

A very wise man, the Father of our Nation, thought of this question, as he thought of so many important questions affecting our national future. He paid a great deal of attention to it and throughout his career he went on repeating his advice in regard to it. Now that showed that, as with other things, he always chose the fundamentals of our national existence. Almost every thing he touched, you will remember, was a basic thing, was fundamental thing. He did not waste time, thought or energy over the superficial aspects of our existence. Therefore he took up this subject in his own inimitable way, thinking of it always not as a literary man, though he was a very great literary figure, possibly unknown to himself, but always thinking in terms of the future of the Indian people and the Indian nation, how to build it up brick by brick, so that we can get rid of the evils that pursued us. Whether those evils were foreign domination or poverty, or inequality or discrimination amongst ourselves, or untouchability or the like, he put this question on that same high level and looked upon it from the point of view of a step which might either help us to build a powerful and enlightened India or be a disintegrating or weakening factor.

Now the first thing he taught us was this : that while English is a great language—and I think it is perfectly right to say that English has done us a lot of good and we have learnt much from it and progressed much—nevertheless no nation can become great on the basis of a foreign language. Why ? Because a foreign language can never be the language of the people, for you will have two strata or more—those who live in thought and action of a foreign tongue and those who live in naother world. So he taught us that we must do our work more and more in our own language.

Partly he succeeded in that, only partly, possibly because of the inherent difficulties of the situation. For it is a fact that in spite of all his teaching and in spite of the efforts of many of the honourable Members present here who are keen and anxious to push up our own languages the fact is that we continue to do a great deal of our political and other work in the English language. Nevertheless, this is true that we cannot go far or take our people by the million in a foreign language. Therefore, however great the English language may be—and it is great—we have to think in doing our national work, our public and our private work as far as possible, in our own various languages and more particularly in the language that you may choose for all India use.

Secondly, he laid stress on the fact that that language should be more or less a language of the people, not a language of a learned coterie—not that is not valuable or to be respected, we must have learning, we must have poets, great writers and all that; nevertheless, in the modern context, even more than in the past, no language can be great which is divorced from the language of the people. Ultimately a language grows in greatness and strength if there is a proper marriage between those who are learned and the masses of the people. In India—though I am unlearned in those languages—we have two

examples : one of Rabindranath Tagore who brought about that marriage in the Bengali language and thereby made that language even greater than it was and more powerful, the other the example of Gandhiji himself in the Gujerati language. There are, no doubt, others, but these are outstanding figures.

Now, in any language that we seek to adopt as an all-India language, or for the matter of that in any language whether it is all-India or not, we have to keep in mind that we dare not live in an ivory tower of purists and precisionists. Though purists and precisionists in the matter of language have their place and should be there, it is a dangerous thing to allow a language to become the pet child of purists and such like people because then it is cut off from the common people. So you have to have both : certainly a certain precision, a certain profundity and a certain all-embraciveness in language and at the same time contacts with the people, drawing its sustenance from the common people.

The last thing in this matter to which the Father of the Nation drew our attention was this, that this language should represent the composite culture of India. In so far as it was the Hindi language it should represent that composite culture which grew up in Northern India where the Hindi language specially held away; it should also represent that composite culture which it drew from other parts of India. Therefore he used the word 'Hindustani', not in any technical sense, but in that broad sense representing that composite language which is both the language of the people and the language of various groups and others in Northern India, and to the last he drew the attention of the people and the nation to that. I am a small man and it is rather presumptuous of me to say that I agree with him or do not agree with him, but for the last thirty years or so, in my own humble way, I stood by that creed in regard to language and it would be hard for me if this House asked me to reject that thing by which I have stood nearly all my political life.

Not only that, but I do think that in the interests of India, in the interests of the development of a powerful Indian nation, not an exclusive nation, not a nation trying to isolate itself from the rest of the world but nevertheless aware of itself, conscious of itself, living its own life in conformity and in cooperation with the rest of the world, that approach of Mahatmaji was the right approach. I should have liked to see somewhat greater emphasis on that in this Resolution, but because of all that has happened, when ultimately this Resolution took shape I accepted it as at any rate in a certain part of it attention is drawn to this fact that I have mentioned. As I have said, I wish it had been more pointedly drawn, nevertheless it is drawn, so I accepted the Resolution. If unfortunately that attention had not been drawn there, then it would have been very difficult for me to accept this Resolution.

Now, we stand on the threshold of many things and this Resolution itself is the beginning of what might be termed a linguistic revolution in India, a very big revolution of far-reaching effects, and we have to be careful that we give it the right direction, the right shape, the right mould lest it go wrongly and betray us in wrong directions. Men shape a language, but then that language itself shapes those men and society. It is a question of action and interaction and it may well be said that if a language is a feeble language or an unprecise language, if a language is just an ornate language, you will find those characteristics reflected in the people who use that language. If the language is feeble those people will be rather feeble; if it is just ornate and nothing else they will tend to ornateness. So it is important what direction you give to it. If a language is exclusive those people become exclusive in thought and mind and action.

[The Honourable Shri Jawaharlal Nehru]

That is what I meant when I said at the beginning that perhaps behind all this argument and debate there are these different approaches. Which way do you look? As you stand on the threshold of this new age, do you twist your neck and back and look backwards all the time, or do you look forward? It is an important question for each one of us to answer because there is, inevitably perhaps, a tendency in this country today to look back far too much. There is no question of our cutting ourselves away from our past. That would be an absurdity and a disaster because all that we are we have been fashioned by that past. We have our roots in that past. If we pull ourselves out of that past, we are rootless. We cannot go far merely by imitating others, but there is such a thing as having your roots in the soil but growing up to the sky above and not always looking down to the soil where your roots are. There is such a thing as marching forward and not turning back all the time. In any event, whether you want it or not, world forces and currents will push you forward but if you are looking back you will stumble and fall repeatedly.

Therefore, that is the fundamental thing in approaching this problem: which way are you looking, backward or forward? People talk about culture, about Sanskriti etc., and rightly, because a nation must have a sound basis of culture to rest itself, and as I have said that culture must inevitably have its roots in the genius of the people and in their past. No amount of copying and imitation, however good the other culture may be, will make you truly cultured because you will always be a copy of somebody else. That is admitted. Have your roots in that powerful and tremendous culture that took shape thousands and thousands of years ago and took shape so powerfully that in spite of every attack upon it inside and outside, even in spite of our own failings and decay and degradation, yet it has subsisted and given us some strength? Obviously that must continue. Nevertheless, when you are on the threshold of a new age, to talk always of the past and the past, is not a good preparation for entering that portal. Language is one of these issues, there are many others.

There are many types of culture. There is the culture of a nation and of a people which is important for it, there is also the culture of an age, the *yuga dharma,* and if you do not align yourself with that culture of the age you are out of step with it. It does not matter how great your culture is if you do not keep step with the culture of the age. That has been the teaching of all the wise men of our country as well as of other countries. There is a national culture. There is an international culture. There is a culture which may be said to be—if you like—absolute, unchanging, with certain unchanging ideals about it which must be adhered to. There is a certain changing culture which has no great significance except at the moment or at that particular period or generation or age but it changes and if you stick on to it even though the ages change, then you are backward and you fall out of step with changing humanity. There is the culture of time and the culture of various nations.

Now, whatever might have been the case in the past, in the present—today—there can be no doubt whatever that there is a powerful international culture dominating the world. Call it, if you like, a culture emanating from the machine age, from industry and all the developments of science that have taken place. Is there any Honourable Member present here who thinks that if we do not accept that culture,—adapt it if you like, but accept it fundamentally—that we can make much progress merely by repeating old creeds? If I may venture to say, it is because at a previous period of our history we cut ourselves off from the culture of the rest of the world—and in this culture I include everything including the art of war—we became backward and we were overborne by others

who were not better than us but who were more in step with the culture of the time. They came and swept us away and dominated us repeatedly. The British came and dominated over us. Why? Because in spite of our ancient *Sanskriti* and culture they represented a higher culture of the day—not in those fundamental and basic things which may be considered eternal, if you like—but in other things, the culture of the age, they were superior to us. They came and swept us away and dominated over us for all this long period.

They have gone. Are we going to think of going back in mind, thought and action to that type of culture which once brought us to slavery? Of course, every honourable Member will say 'No'. Yet I say this line of thought is intimately related to what I say. It leads you to that. If you look backward, if you talk in the terms in which some honourable Members have talked today and yesterday, I say it inevitably leads to that conclusion, and I for one not only hesitate to reach that conclusion but I want to oppose it, because I think it is bad for India. You have—and I have—supreme faith in the Indian people and in the Indian nation. I am convinced that India, in spite of our present difficulties, is going to make progress and go ahead at a fast pace, but if we shackle the feet of India with outworn forms and customs, then who is to blame if India cannot go fast, if India stumbles and falls? That is the fundamental question before us.

Again, look at this language problem from another point of view. Till very recently—in fact, I would say a generation ago—French was the recognised diplomatic and cultural language of Europe and large parts of the earth's surface. There were other great languages—there was English, there was German, there was Italian, there was Spanish—in Europe alone, apart from the Asian languages. Yet French was the language in Europe, certainly of culture and diplomacy. Today it has not got that proud place. But even today, French is most important in diplomacy and public affairs. Nobody objected to French. No Englishman, or Russian, or German or Pole objected to French. So all those other languages were growing and today it might be said that English is perhaps replacing French from that proud place of diplomatic eminence.

Before French, in Europe the language of diplomacy was Latin just as in India the language of culture and diplomacy for a vast period of time was Sanskrit, not the language of the common people but the language of the learned and the cultured and the language of diplomacy etc. And not only in India, but the effect of that, if you go back to a thousand years, you find in almost all the South-East Asia, not to the same extent as in India, but still Sanskrit was the language of the learned even in South-East Asia and to some extent even in parts of Central Asia. The House probably knows that the most ancient Sanskrit plays that exist have been found not in India but in Turfan on the edge of the Gobi desert.

After Sanskrit Persian became the language of culture and diplomacy in India and over large parts of Asia,—in India due to the fact of changing rule but apart from that, Persian was the diplomatic language of culture over vast parts of Asia. It was called—and it is still called—the "French of the East" because of that. These changes took place while other languages were developing, because of the fact that French in Europe and Persian in Asia were peculiarly suited for this purpose. Therefore, they were adopted by other countries and nations too. India may have adopted it partly because of a certain dominating influence of the new rulers, but in other countries which were not so dominated, they adopted Persian when it was not their language because it was considered as suitable for that purpose. Their languages grew.

We took to English obviously because it was the conqueror's language, not so much because at that time it was such an important language, although

[The Honourable Shri Jawaharlal Nehru]

it was very important even then,—we took to it simply because we were dominated by the British here, and it opened the doors and windows of foreign thought, foreign science etc., and we learnt much by it. And let us be grateful to the English language for what it has taught us. But at the same time, it created a great gulf between us who knew English and those who did not know English and that was fatal for the progress of a nation. That is a thing which certainly we cannot possibly tolerate today. Hence this problem.

However good, however important, English may be, we cannot tolerate that there should be an English knowing elite and a large mass of our people not knowing English. Therefore, we must have our own language. But English—whether you call it official or whatever you please, it does not matter whether you mention it in the legislation or not—but English must continue to be a most important language in India which large numbers of people learn and perhaps learn compulsorily. Why? Well, English today is far more important in the world than it was when the British came here. It is undoubtedly today the nearest approach to an international language. It is not the international language certainly but it is the biggest and the most widespread language in the world today, and if we want to have contacts with the world as we must, then how are we to have those contacts unless we know foreign languages? I hope many of us will learn other foreign languages, *e.g.*, the Russian language which is a magnificent language, very rich; the Spanish language which may not be quite so important today but is going to be very important tomorrow in the context of a growing South America; the French language which of course always has been and is still important; the German etc. We will learn all of them no doubt, I hope. But the fact remains that both from the point of view of convenience and from the point of view of utility. English is obviously the most important language for us and many of us know it. It is absurd for us to try to forget what we know or not take advantage of what we have learnt. But it will have to be inevitably a secondary language meant for a relatively restricted number of people.

All these factors have been borne in mind in this amendment that Shri N. Gopalaswami Ayyangar has placed before the House. I do not know what the future will be for this language. But I am quite sure that if we proceed wisely with this Hindi language, if we proceed wisely in two ways, by making it an inclusive language and not an exclusive one, and include in it all the language elements in India which have gone to build it up with a streak of Urdu or a mixture of Hindustani—not by statute, remember, but by allowing it to grow normally as it should grow and if, secondly, it is not, if I may say so, forced down upon an unwilling people, I have no doubt it will grow and become a very great language. How far it will push out the use of the English language I do not know; but even if it pushes our English completely from our normal work, nevertheless English will remain important for us in our world contacts and in the international sphere.

So, to come back to the basic approach to this problem : Is your approach going to be a democratic approach or what might be termed and authoritarian approach? I venture to put this question to the enthusiasts for Hindi, because some of the speeches I have listened here and elsewhere there is very much a tone of authoritarianism, very much a tone of the Hindi-speaking area being the centre of things in India, the centre of gravity, and others being just appendages to India. That is not only an incorrect approach, but it is a dangerous approach. If you consider the question with wisdom, this approach will do more injury to the development of the Hindi language than the other approach. You just cannot force any language down the people or group who resist that.

You cannot do it successfully. You know that it is conceivably possible that a foreign conqueror with the strength of the sword might try to do so, but history shows that even he has failed. Certainly in the democratic context of India it is an impossibility. You have to win through the goodwill of those people, those groups in India in the various provinces whose mother tongue is not Hindi. You have to win the goddwill of those groups who speak, let us say, some variation of Hindi, Urdu or Hindustani. If you try, whether you win or not, if you do something which appears to the others as an authoritarian attempt to dominate and to force down something then you will fail in your endeavour.

Now may I say a word or two about this business of Hindustani and Urdu and Hindi. We have accepted in this amendment the word 'Hindi', I have no objection to the word 'Hindi'. I like it. I was a little afraid that it might signify some constricted and restricted meaning to the others. I was afraid about this. I thought the word 'Hindi', which I like, might appeal to others also. I know, many honourable Members here know, and persons coming from the United Provinces know, that they can with a fair measure of facility speak in what might be called Urdu and can speak with equal facility and flow in what might be called fairly pure Hindi. They can do both. It is rather interesting and it is right that we should know both, with the result that they have got a rich and fine vocabulary. I do not know whether your experience has been the same or not. We find that in a particular subject or type of subjects we speak better in Hindi than in Urdu and in another type of subjects Urdu suits us better; it suits the genius of that subject a little better. My point is that I want both these instruments which strengthen Hindi that is going to be developed as our official and national language of the country. Let us keep in touch with the people. That is a good practice. If you do that, then you will keep all the other avenues open. Then the language develops. Without any sense of pressure from anybody, without any sense of coercion, it takes shape in the minds of millions of people. They gradually mould it and give it shape.

Take the question of numerals. I shall be very frank with you. I have never before looked into this question. But when it did come up before me and when I did give thought to it, I was immediately convinced that the right approach was to keep these numerals, Indian in origin but which have taken a certain form, which are used internationally. I was quite convinced of that. But mind you, nobody is banning the use of Hindi numerals. They can be used whenever anybody wants them, but in official use where all kinds of statistics on banking and auditing and census and other columns of figures come in, it is not only an undoubted advantage that these international numerals should be used, but there are also other advantages. These numerals remove at least one major barrier between you and the other countries. That is a very important thing in these days when numerals count for so much in the development of science and the application of science. As I said, you can use Hindi numerals. Anyone who learns can read the Hindi numerals and write them whenever he likes. But officially if you try to think in terms of limiting the use of these international numerals for official purposes, as I have mentioned, you will land yourself in difficulty.

Now what is your objection to this? Do you want India to progress rapidly in the sciences and art of the modern day? I can say with conviction that if we do not use these international numerals for these purposes we would fall back. We would put a tremendous burden on the children's minds and the grown-up's minds and our work will increase tremendously in our offices and elsewhere, and that work will be cut off from the rest of the world. So, from every practical point of view, and it is desirable even from the sentimental point of view—

[The Honourable Shri Jawaharlal Nehru]

we are not adopting anything foreign; we are adopting something of our own which is slightly varied—and from the point of view of printing, it helps. Perhaps many honourable Members here have something to do with newspapers and printing. I ask you, is it not a fact that it is far easier from the point of view of composing and printing to use these numerals than the Hindi numerals?

I submit that the fact that we have got rather stuck over the numerals issue has certain importance, again from that basic fundamental point of view of which way we are looking. For my part, I know the Hindi numerals, I can read and write them quite easily and so there is no difficulty so far as I am concerned. But from the way this controversy has developed, this argument has developed, here and elsewhere, more and more I have been made to think that behind this controversy is this different approach. This is the approach of looking back on science, on everything that science and the modern world signify. It is backward looking. It is an approach which, I think, is fatal to India. It is an approach which will prevent us from becoming a great nation for which we have worked and dreamt.

We stand on the threshold of a new age. Therefore it is important that we should have this picture of India clearly in our minds. What sort of India do we want? Do we want a modern India—with its roots steeped in the past certainly in so far as it inspires us—do we want a modern India with modern science and all the rest of it, or do we want to live in some ancient age, in some other age which has no relation to the present? You have to choose between the two. It is a question of approach. You have to choose whether you look forward or backward.

The Honourable Pandit Ravi Shankar Shukla (C.P. & Berar : General) : We have heard just now and before we dispersed at 1 o'clock speeches of very eminent honourable Members of this House. It is sometimes embarrassing to oppose such array of distinguished countrymen of ours, but there are occasions in the history of nations when there is no alternative left to us but to have our say. I am not opposing for opposition's sake. I stand here before you to give my view on this historic occasion.

There are two approaches to this question. One approach is of those who wish the English language to continue in this country as long as and as far as possible, and the other approach is of those who wish to bring an Indian language in place of English as early as possible. With these two viewpoints, we look at the resolution which has been moved by the Honourable Shri Gopalaswami Ayyangar. All the amendments that I have given are given from the last viewpoint. Had I found that the articles which comprise Chapter XIV-A are all of a nature which do not injure our cause, I would never have come here to speak. It is all right that we have raised to a very high pedestal the Hindi language and the Devanagari script. As far as numerals are concerned, I will speak later.

in our way are very great. When you come to that part of the Chapter which refers to the Commission and the Committee there is a provision which says more or less that for five years in the Centre as well as in the provinces, you have to go on with English as your official language, and there are also other barriers which have been created hereafter in other parts of this Chapter. You find that in provinces it would be difficult for us to bring about the use of Hindi as early as possible.

Many honourable Members of this House have said that it is a proposition which must be looked at from their point of view. We in the provinces find it difficult. How shall we substitute Hindi for English? That is the proposition before us. Whatever may be done in the Centre, it is a task which we have to face in the provinces. Difficulties in our way are very great. When we took the reins of Government in our hands, we tried to establish departments which will bring about the use of Hindi as early as possible. In my province, I have established a Department called the Loke Bhasha Prasar Vibhag (लोक भाषा प्रसार विभाग) That is to say, we have appointed people who will translate books. There is a collection of vocabulary of twenty-four thousand words, technical words, which are needed for all scientific purposes. We have got scientific books translated into Hindi and Marathi, the two languages that are recognised in my province up to the Intermediate standard and materials have been collected whereby we can translate scientific books on Physics, Chemistry and all those subjects which are so difficult and technical into Hindi and Marathi up to the B.A. standard. Everything is there, but it would not be possible to bring them to use because of the article that has been proposed here.

The other point which I may say in that in my province there are two Universities. One of them has resolved that the medium of instruction in the colleges will be Marathi and Hindi from this year or from the next year. The other has decided that it shall bring into use Hindi as the medium of instruction from 1952. In our province we have altogether stopped English as the medium of instruction and from 1946 onwards, our high-schools are teaching through the medium of Hindi and Marathi. Both are recognised languages in our province. If there are schools and high schools where the medium of instruction is Bengali or Urdu or any other language, they are given grants by us. Therefore, in my province after three years, when the graduates come out from my Universities, unless they are conversant with the English language, they will not be utilised by the nation, and the province will be thrown into a very awkward position.

I consider that it is up to us to make provision in this Constitution so that we may be able to progress further as far as possible. My point is that the province must be left to itself to develop and come into line with the article which provides that Hindi shall be the national language or the official language with Devanagari as the script.

Shri B. P. Jhunjhunwala (Bihar: General): Can you say that the provinces are not at liberty? Provinces are at full liberty to pass any law. (*Interruption*).

The Honourable Pandit Ravi Shankar Shukla: If you read carefully the

[The Honourable Pandit Ravi Shankar Shukla]

should be the official language for communication between such States, that language may be used for such communication." So far as that part is concerned, it is an improvement upon the original draft, but so far as the official language is concerned, in a State, it is governed by article 301-D. For that purpose, the official language shall be the language of communication between one State and another and between the State and the Union. For all purposes, you have to use the English language. Provision has been made that where both the States agree to use the Hindi language, then only it can be used. But, as far as the other States are concerned, and communication between one State and another State, and between the State and the Union is concerned, it is only the English language that can be used. Therefore, I say that our liberty in the use of the language is being curtailed. To that extent, I object to this provision.

The most dangerous provision which I consider in this draft is the use of the English language in courts and the High Courts particularly in the provinces. So long as the language in the courts does not change....

An honourable Member : High Courts.

The Honourable Pandit Ravi Shankar Shukla : Yes, High Courts there is little hope for us so far as the subordinate courts are concerned, we are having Hindi and Marathi as our court languages; these are recognised languages of the court. But, what happens, what is happening today is that so far as the courts are concerned, no doubt it is open to us to present our plaints and written statements in Hindi or Marathi, Judges have been recording all the evidence in English and judgments are delivered in English. Therefore, for all practical purposes, the language which is being used is English and so long as we do not get people who will replace these persons, it is very difficult for us to adopt Hindi as our language in our province.

Therefore, I am looking at all the provisions from this point of view. We should be able to introduce Hindi in all departments and at all stages as early as possible. With that point of view, I say the restrictions placed upon us should be removed. So far as the Centre is concerned, there is already provision made and there is no restriction placed in its way. In one article they have put down so far as the States are concerned, that they are bound to have all their Acts, Bills, rules, bye-laws and everything in the language of the Union. That is to say, so long as English is there, we must have all these things in the English language. I submit that the provinces should be left free in this respect. Parliament may decide so far as the Union is concerned. But, if the State legislature decides to have these things in the language of the State, they should be at liberty to do so. I have provided in my amendment that these Bills and other things which are to be passed by the legislature should be passed in the language of the State, but at the same time, an authentic and authoritative translation of the text should accompany them.

I would like to bring to the notice of the House a parallel case. There is one parallel only in the history of the world in this respect. It is found in Ireland. In 1921 after the treaty which the Irish entered into with the British Government the first thing they put in the Constitution was that Irish shall be the national language and they also said English shall be their second official language. The reasons for this I will point out. In Ireland the British Government prohibited the use and the learning of Irish language so long as they were rulers of that land and the result was that from the primary stage onwards upto the colleges, English was the language which was being taught and in a century from the beginning of the 19th century to the end of the 19th century, the Irish language was almost gone from the country and every Irishman was speaking English. In 1910 when the census was taken, out of the 3 to 4 millions popula-

tion of that little Island only 21,000 knew Irish. In 1921 after the treaty the first provision they made in their Constiution was that Irish shall be the national language of that land and that was made by those Irishmen who did not know the Irish language then. Only 21,000 knew Irish and the rest were more English than the English themselves. These were the people who decided at once that the national language of Ireland should be the Irish language.

An honourable Member : With what result ?

The Honourable Pandit Ravi Shankar Shukla : For mere expediency, because it was not possible for them to throw away English downright, they had to keep English as second language, but bills that were to be introduced were to be introduced in the language of the land, *i.e.,* Irish and there was to be a translation of it or you may call it a counterpart in English. If a conflict arose between the two, the Irish text was to be considered authentic and authoritative. So in my amendment I have provided for allowing us to make our laws in the language of the State, whether it is Hindi or Marathi and there should be an authentic English text along with the original which we pass into law and in case of conflict where English is required English text may be considered as authentic, but for all other purposes Hindi or the State language text should be considered as authentic. I therefore consider that we should be left free. The provinces should not be hampered in using their language for this purpose. If we want to have Hindi, let us have it. Do not curtail our liberty.

With respect to numerals there has been high feeling running throughout this House for some time we have heard from no less a person than Panditji that so far as these international numerals are concerned they are required for very many purposes—some of them he mentioned. Some of the Members including myself thought that that was necessary also. So we have given an amendment to that effect that for certain purposes the English numeral shall continue to be used, *i.e.,* for purposes of accounting, banking and other business matters and official purposes for which they may be required. If that is admitted by the mover of this chapter 14-A, then our difficulties ought to be solved. They should not be confused with the language question at all. We all understand it is not difficult to understand. Let Hindi numeral be used as integral parts of the Hindi language and for purposes for which English numerals are required, let them be used independently. There is no trouble about them and I have framed my amendment with that view. I say that they may be used for purposes as the President may by order direct. Therefore if you take away the English numerals from Hindi, then there would be no confusion and I think everybody here will come to an agreement on that point. The question will be avoided; but what is running into the minds of all is that English numerals are being brought in as an integral part of the State language—Hindi. This is not the intention of this House. We may use the English numerals for purposes for which they are required—we have no quarrel and such provinces where English numerals are used in their language we have no quarrel with them—they can continue to use them; but even if it is insisted by them that English numerals should be used in the official language of the Union, *i.e.,* in Hindi, I have made a provision that if there are official communications and correspondence for which English numerals are required, then those communications sent to those provinces should be with the English numerals but for the rest of India where they are not wanted, they should not be thrust upon them. So far as Hindi Provinces are concerned there the Hindi forms of numerals shall go along with all communications but so far as those parts of the country are concerned where English numerals are used in the language, let the Hindi that goes to them have English numerals. I have no quarrel because it does not concern us.

An honourable Member: If one province does not want Hindi, will you give it freedom?

The Honourable Pandit Ravi Shankar Shukla: It is for the all-India Union to say whether you want it or not. If you say that Hindi is to be the language of the Union with Devanagari script and if the Centre decides or if the Parliament decides that Hindi shall be the language communicated to you, you will have that language communicated by the Centre. So far as we in the provinces are concerned, there is nothing between us and you. You can settle your accounts with the Centre. We say, have the English numerals if you like or Hindi if you like and those of us who want both can have both, but so far as the Hindi language provinces are concerned let them not be compelled to have English numerals where Hindi is being used as provincial language or as a State language, so long as these provinces do not decide to have English numerals as an integral part of their language.

Therefore, I have in my amendment put in two clauses saying that so far as English numerals are concerned, they can be used in this way. The question of numerals will be settled if this amendment is accepted by the mover of the amendment. The solution is there and there is no conflict between the North and the South. I want to bring to the notice of the House that this question of language should not be looked upon from the position of the North or the South. Hindi language, so long as it is not adopted by the Centre or by the Union, is a provincial language. Any language you can adopt as your national or official language, it may be Hindi or if you like, Hindustani or Bengali or Marathi—and all these languages have been proposed, but once you adopt it as a national language, do not call it a provincial language. I appeal to you that once you raise that language to the pedestal of a Union language, then it is your language as well as my language and it is no longer a provincial language. It ceases to be a provincial language, and it will be your duty as well as mine to enrich it as best as we can.

A number of honourable Members have said that there are different words used for the same meaning. They say that Pandit Sundar Lal uses this word and my friend of the Hindi Sahitya Sammelan—Seth Govind Das, uses another word for the same thing and so on. There is no end to words. If you were to turn to the pages of a dictionary, of any language, you will find numerous words conveying the same meaning, and people are at liberty to make use of any word they like. In Sanskrit too, you have got *Amar Kosh* which gives synonyms for so many words. Similarly for the same meaning there may be a Sanskrit word, a Hindi word or a Persian word or a Bengali word. But all these can be part and parcel of the same language and when they are put in the dictionary or Kosh, they can be used by you and by all of us.

Therefore, my request is that you should not think that we are imposing this language upon any one. It is open to the House to choose any language, and once you have chosen that language, do not regard it that it is an imposition upon you by us. It is a language which you have accepted as your own and it becomes your own language as it is my language. After this, no question and no controversy can be raised. As has been pointed out and I am also certain about it, this House will accept Hindi as the language of the Union with Devanagari script. International numerals may be used for all purposes for which the Union requires, independently of the Hindi language. But if it is found necessary at all to satisfy some provinces, let the English numerals be used for their purposes by the Union. But for the rest of India where Hindi is the language used and where they do not require these numerals, let Hindi continue unalloyed, quite independent of English numerals altogether.

We have got the time limit, fifteen years, I can say to my friends from the South that so far as they are concerned, it would be in their best inter-

ests to learn Hindi as early as possible, because if they do not learn Hindi quickly enough, they might be left behind. I say, so far as my South Indian friends are concerned—I am speaking frankly—they are very intelligent people. They are very industrious people as well, and I have found that in my province there are Departments in which Madrasi friends are working, and they are working as well, and sometimes even more efficiently than those whose mother tongue is Hindi. That is the position. I am speaking from my own experience as an administrator of long standing, and I think I can speak with responsibility. In my province there are so many of them. Here is a friend who belonged to my provincial service once and he can speak Hindi and also Sanskrit as well as anybody can do. And I say that I have got Madrasi civilian officers, I have got Madrasi provincial officers and I may tell you that there is one Department in my province in which work is carried on in Hindi in all places, whether it is a Marathi district or a Hindi district, and in that Department there are Marathi-speaking people, there are Telugu-speaking people, there are Punjabis and Bengalees and all sorts of people, and all of them from the rank and file to the officers are there for the last 25 years and that is the Department of Police. It has been run as efficiently as we want by these officers and men, belonging to different regions using Hindi as the language of that Department. I do not see why our friends here should be afraid of learning Hindi.

An honourable Member: No fear at all.

The Honourable Pandit Ravi Shankar Shukla: The hesitation is because of the fear that hurdles may be created for them. So I say, the earlier you learn Hindi the better it is for you, the better it is for us and for the country, because then there would be no difficulty in your way and you will be with us as you have been so long. Do not think for ever that it is our intention in any way to put any barriers by bringing Hindi as early as possible.

I have here a pamphlet which a friend of mine who is a Member of this House has given me and it says that that great social reformer of Bengal Keshab Chandra Sen wrote in 1874—and it appeared in a Bengali pice-weekly called "Sulabh Samachar". It asks that when without one vernacular language unity is not possible for India, what is the solution? The only solution is to use one single language throughout India. Many of the languages now in use in India have Hindi in them, and Hindi is prevalent almost everywhere. If Hindi is made the common language throughout India, the question may be solved easily. I may say, the text is in Bengali and I have given the English translation. This was written in 1874 and was a sort of a prophecy, because we are today discussing the same thing.

To talk of Hindustani or Sanskrit or any other language is out of the question. So far as Hindi is concerned. I can say only one word that the framers of this chapter realised that Hindustani was only a form and style of the Hindi language. Indeed, in the Schedule that they have given, they have not included Hindustani as a language. They have put it down in the directive clause as a form and style known as Hindustani and we have no quarrel with it. We shall adopt it and use it by all means possible. As has been asserted a language is made not by passing a constitution. It is the people devoted to it who form it. We do not form it here, but it is people outside the House who will form it, whatever the Constitution we may pass.

I therefore submit that on these four grounds my amendments may be accepted. First, on the question of language and secondly, my amendments are aimed at the solution of the numerals. Let the provinces evolve their own destiny and not be hampered by 'ifs' and 'buts', subject to this or that. Leave out the 'ifs' and 'buts' and other provisos and give us freedom to develop. We shall show you that our South Indian friends in my province will learn Hindi

[The Honourable Pandit Ravi Shankar Shukla]

as easily as anybody within five years. I have got the material and friends, even Madrasi friends are working in that department which I have opened in my province. I therefore say that the High Court language should also be the State language and even if it is English elsewhere we should be allowed in our legislature to pass our Bills as we like in the State language. These are the four points on which I have given amendments and I hope they will be accepted by the House.

As regards numerals so far as accounting is concerned I have as a last resort, as a matter of compromise accepted that English numerals may be allowed for specific purposes even after fifteen years. But my original amendment is that clause (3) of article 301-A should be deleted.

We who are Members of the House and are members of the Congress have been following the Congress. The Congress has decided that fifteen years should be the deadline and beyond that we need not go. Therefore we should not think what will happen after fifteen years. Let us not make provision for posterity and bind them. When our representatives meet after fifteen years they will decide what to do. So far as we are concerned we decide for fifteen years. The Congress has ordered the progressive use of Hindi and it can be done by the amendments I have suggested and within fifteen years we can do it. My proposal is that in ten years we should finish all the commissions and committees. Parliament shall determine the ways and means by which Hindi is adopted, in years not exceeding fifteen. Following strictly the language of the resolution of the Congress Working Committee I have framed the amendments and I hope the House will accept them.

Shri L. Krishnaswami Bharathi (Madras : General) : Has not the Congress passed a resolution that Hindustani shall be the official language ?

The Honourable Pandit Ravi Shankar Shukla : So far as the Working Committee's resolution is concerned I do not think the word 'Hindustani' is used. It says Hindi shall be the official language in the Devanagari script. If some Member has the resolution he may give it to the honourable Member.

Shri Ram Sahai : *[Mr. President, I support the motion moved by Shri Gopalaswami Ayyangar. But I may be permitted to submit, Sir, that I fail to understand the rason or the significance of inclusion of Chapter III in the part relating to language. When Hindi in Devanagari script has been accepted as the official language and an interim period of fifteen years has also been provided for, to replace English by Hindi I do not see why a separate provision on different lines should have been embodied, in respect of Supreme Court and High Courts in this part. It is for this reason that I have sent in three amendments : the first is to the effect that Chapter III of this part be deleted. My second amendment is to the effect that in article 301-F, the Period of fifteen years must be specifically mentioned as has been done in article 301-A. My third amendment seeks that the courts of the States where Hindi has already been adopted as the official language should be exempted from the operation of the article relating to them in this part. All the three amendments of which I have given notice have the one and the same object, that is, that on the commencement of this Constitution Hindi must continue to be used for all official purposes in the States where it has already been accepted as the State language. When our ultimate object is the establishment of Hindi as the official language for the whole of the country, I fail to understand why the States, where Hindi is in use and has already made considerable advance should be asked to replace Hindi by English for fifteen years. This proposition appears to me very strange. I would

*[ ] Translation of Hindustani Speech

therefore, request Shri Gopalaswami Ayyangar to consider over difficulties in this respect and not to force the States, where Hindi has already made considerable progress, to learn English afresh.

The argument may be advanced that the judges of the Supreme Court being unacquainted with Hindi, may be faced with some difficulty in regard to the judgment of High Courts that go up to that court in appeal. In this connection I may submit that the arrangement for the supply of the English version of the Judgment can be made. Or at the most, the High Court Judges may be asked to write the judgments in English. But it will never be proper to direct the High Courts to conduct all the proceedings in English. In Madhya Bharat the language of the Legislature is Hindi. All the Bills, resolutions and amendments are drafted in Hindi and the proceedings of the House are conducted in Hindi. So it will have no meaning, rather it will be an anachronism, to introduce English in these States for fifteen years and again to replace the later by the former on the expiry of that period. The Constitution that we framed for our High Court lays down that Hindi shall be the language of the High Court of Madhya Bharat. In view of this I do not find any reason why we should be forced to unlearn Hindi which we have learnt and developed with great pains and to use English in its place for fifteen years and then again to go back to Hindi, after the end of that period. I may particularly mention that in Gwalior Hindi was adopted in 1901 and from 1902 all maps and documents etc. were begun to be prepared in Hindi. By 1919 all the correspondence save the correspondence with foreign countries and with the Resident has been carried on in Hindi and now everything is being done in Hindi. Since the Union of Madhya Bharat has been formed, many of the other States of this Union also, where Urdu had till then been in use, have adopted Hindi. There is no justification, therefore, in asking these States to adopt English. All these factors deserve thorough consideration.

Honourable Pandit Shukla has just informed us that he has constituted a committee in his province for translation purposes. This committee has been formed only recently. I may be permitted to inform the House that in Gwalior such a committee has been in existence for the last ten years and it has already prepared the Hindi version of almost all the laws of the Central Government such as the Evidence Act, the Contract Act, the Criminal Procedure Code, the Transfer of Property Act, etc., etc. The language used in the translation is very very simple. I wish I could read out to honourable Members certain translations just to give them an idea of it and I am sure the House would appreciate the same, but since the time at our disposal is very short I am not doing so. It would be improper to use English for all official purposes, in my State where for the last fifty years constant efforts were being made for making Hindi the official language of the State and where in point of fact all laws have already been translated into Hindi within the period of the last ten years.

Recently there were three sittings of the Legislature of Madhya Bharat and sixty-eight Bills were passed and those were in Hindi. Of course we give English version also along with the original Hindi version. But authenticity is given to the Hindi versions, and not to the English one. At the most the States, where Hindi is already in use, may be asked to supply an authentic English versions of laws etc. for the purpose of the Union. But it can never be fair to ask them to adopt all their Bill etc. in English.

I have come to know from the talks I had with some friends that Hindi, in their opinion, is not yet well developed to give accurate expression to thoughts, I beg to submit that this motion is wrong. Not only Hindi has been the official

[Shri Ram Sahai]

language for the last fifty years of the Gwalior State, but for the last twenty-five years, even the 'Law Reports' which publishes important Judgements of the High Court, is also being published in Hindi. Apart from this journal, another monthly Law journal is also being published for the last ten years and it too publishes the judgements of the High Court. Hindi has fully developed there during the last fifty years, and it will not be proper now to replace it by English.

The controversy at present is raging about numerals. I would like to make one thing clear in regard to this question. Of course it looks odd to introduce the English form of numerals in Hindi script, but in view of the situation obtaining at present, we should have no objection at all in accepting it. If our friends from South India want to introduce international numerals, which in fact belong to us, I must appeal to the Chair as also to the House to accept them. It will not be proper for us to reject their proposal. That is why I have not put in any amendment in regard to numerals.

While fully supporting Shri Gopalaswami Ayyangar's proposal, except Chapter III contained in it, I would request him to embody some provision, in it, so that it may be possible that Hindi is retained in the States; where it is in use and has made considerable progress. I would like to impress upon him the fact that the progress that Hindi has made in our State will be very helpful in adopting Hindi in the Union. But if he wants that even in these States also English should take the place of Hindi for all official purposes for fifteen years, I can only say that it will take us back and retard the development of Hindi.

Therefore, my humble submission to him is that he should thoroughly consider this problem and propose a measure, whether by accepting my amendment or the amendment of any other friend or by accepting a new amendment, to bring about a situation whereby Hindi might not be banished from the States where it is fully in vogue and where for the last fifty years every business including all the works of the offices, is being carried on in Hindi, and all the laws have been framed in Hindi. For no reason can it be proper to stop the progress of Hindi in those States.

Therefore, without taking more time of the House, I want to submit in regard to my amendment that it may be accepted in some form or other so that this object may be fulfilled.]

The Assembly then adjourned till Nine of the Clock on Wednesday, the 14th September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 14th September, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

Mr. President : The first item on the Order Paper today is notice of a motion by Dr. Ambedkar to introduce a Bill to abolish the jurisdiction of His Majesty in Council.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, I move for leave to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions.

Mr. President : The question is :

"That leave be granted to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, I introduce the Bill.

DRAFT CONSTITUTION—(*Contd.*)

NEW PART XIV-A (LANGUAGE)—(*Contd.*)

(Several Honourable Members rose to speak)

Mr. President : Shrimati Durgabai.

Sardar Hukam Singh (East Punjab : Sikh) : May I know, Sir, whether we have to stand up every time to catch your eye or is there some other method so that those who have amendments would get chances ?

Mr. President : I shall try to give a chance to as many Members as possible, but it is difficult for me to promise that every Member will get a chance. I may just explain the position. Yesterday, I calculated the number of speeches and the time that was spent on them, and the average comes to 22 minutes per speech. Today I do not know how long the House would like to sit. Originally we had fixed two days or rather 14 hours, out of which we have already spent 10 hours. We have got only 4 hours, from now till 1 o'clock. If the House would like to finish by 1 o'clock then it will be necessary. . . .

Shri Jainarain Vyas (United State of Rajasthan) : On a point of information, what about those amendments which not come up before the House ?

Mr. President : Every amendment is before the House.

Shri Jainarain Vyas : But they have not been discussed.

Mr. President : Now, after the discussion is finished the mere act of putting all the 300 amendments to vote will take at least one hour. That has also to be taken out of the 4 hours if we have to finish by 1 o'clock and then probably there may be reply.

Seth Govind Das (C.P. & Berar : General) : I propose that we should extend the time for speeches and voting should take place in the evening between 6 and 7.

Mr. President : If that is the wish of the House, I do not mind. I would not stand in the way. I would like to know the wish of the House in the matter.

Sardar Hukam Singh : There are several amendments which have not been moved at all. Would they get any time ?

Mr. President : Just as I have said, I have been trying to give a chance to representatives of every school of thought here, but if there are some who have been left out, they might remind me and I will give them a chance.

Seth Govind Das : The matter is so important that I would again request you to extend to time to the evening.

Mr. President : I personally would have no objection if that was the wish of the House. May I know if the House wishes the time to extended till the evening ? (*Several Honourable Members : Yes.*) I think the 'Ayes' have it. Shrimati Durgabai—May I request you that the point of view which you have to represent has been represented by other speakers and there may be others also. So I would request you to confine yourself to the most important points.

Shrimati G Durgabai (Madras : General) : Mr. President, the question of national language for India which was an almost agreed proposition until recently has suddenly become a highly controversial issue. Whether rightly or wrongly, the people of non-Hindi speaking areas have been made to feel that this fight or this attitude on behalf of the Hindi speaking areas is a fight for effectively preventing the natural influence of other powerful languages of India on the composite culture of this nation. I have heard some honourable Members who are supporters of Hindi with Hindi numerals say, "You have accepted nearly 90 per cent. of our thesis; therefore, why hesitate to accept the other 10 per cent. ?" May I ask them with what sacrifices we have accepted this ? Some friends said : 'Absolutely there is no sacrifice on your part. You have to accept. You must'. This is the attitude in approaching the people of the non-Hindi speaking areas for asking them to accept their proposition in its entirety.

Sir, the National language of India should not be and cannot be any other than Hindustani which is Hindi *plus* Urdu. For the sake of satisfying the sentiments of our friends we have accepted Hindi in Devanagari script. It is no less sacrifice for us to have had to depart from a principle, which we have all along fought for and lived for. This departure means a very serious inconvenience to us and it is not without a pang that we have agreed to this departure from the tolerant Gandhian ideology, the Gandhian philosophy and the Gandhian propositoin, namely, that the official language of India should be only that which is commonly understood and easily spoken and learnt. Sir, this is the sacrifice that we have made.

Perhaps Tandonji, Seth Govind Dasji and others do not know this and are not aware of the powerful opposition in the South against the Hindi language. The opponents feel perhaps justly that this propaganda for Hindi cuts at the very root of the provincial languages and is a serious obstacle to the growth of the provincial languages and provincial culture. Sir, the anti-Hindi agitation in the south is very powerful. My Friend Dr. Subbaroyan dealt at some length on this point yesterday. But, Sir, what did we do we the supporters of Hindi ? We braved that fierce agitation and propagated Hindi in the South. Long before the Pandits of Hindi Sahitya Sammelan realised the importance of having

a national language for India. We all in the South obeyed the call of Mahatma Gandhi and carried on Hindi propaganda in the South. We started schools and conducted classes in Hindi. Thus with great inconvenience we dedicated ourselves very long ago to the propagation and learning of Hindi.

Sir, leaving alone the efforts of the Dakshina Bharat Hindi Pracharak Sabha, I must in this connection pay a glowing tribute to the women and children of the south who have taken with great zeal and earnestness to the learning of Hindi. Sir, Gandhiji's effosts and influence worked tremendously on the students of colleges who, after putting in hard work in their colleges, used to come in the evenings to the Hindi classes to learn this language. Not only the students, even the lawyers after their court hours, officers after finishing their office work, instead of going in the evenings to the recreation clubs, attended Hindi classes and learnt Hindi. I am impressing this fact upon you just to show how genuinely and honestly we took to this propagation of Hindi as a result of Mahatmaji's call and appeal to us.

My friends will do well to note that all this was a voluntary effort on our part to fall in line with the national sentiment. In this connection I may refer to a visit which was paid to by the late Seth Jamnalal Bajaj in 1923. In that year, when Sethji visited Cocanada for the Congress Session he visited some ladies' institutions where he found some hundreds of women learning Hindi. Remember, Sir, that this was in the year 1923, some two and a half decades ago. Sethji was so happy to see the ladies learning Hindi that he offered a very handsome donation to the Hindi institution then working. But, the organisers declined the donation saying: "We also feel that we should have a national language. We are therefore conducting the school in Hindi with our own efforts." That is the spirit with which we worked.

Now what is the result of it all? I am shocked to see this agitation against that enthusiasm of ours with which we took to Hindi in the early years of this century. Sir, this attitude on your part to give a national character to what is purely a provincial language is responsible for embittering the feelings of the non-Hindi speaking people. I am afraid this would certainly adversely affect the sentiments and the feelings of those who have already accepted Hindi with Devanagari script. In short, Sir, this overdone and misused propaganda on their part is responsible and would be responsible for losing the support of people who know and who are supporters on Hindi like me.

I have already said that in the interests of national unity, Hindustani alone could be the national language of India. We urge caution and an accommodating spirit on their part, in the interests of the minorities here who, like the Muslims, need time and sympathy to adjust themselves. Sir, they have all displayed large-hearted readiness to fall in line with the predominant sentiment. Purely from the point of view of excellence of literature and international reputation, Bengali is worthy of adoption as the national language. From the point of view of sweetness and also from the fact that it is the second largest of the languages spoken in India, Telugu could be worthy of adoption as the national language. Sir, we have given up our claims for Telugu. We have not spoken one word in favour of it. We have not advocated it. We have not suggested that one of these provincial languages should be accepted as the national language of our country.

Now, Sir, when we have made this sacrifice, you come out and say, sacrifice another point and swallow the other five per cent. remaining out of the hundred per cent. and adopt the Hindi numerals. I should say that is the height—I hesitate to put it that way but I must say it—of language tyranny and intolerance. We have agreed to adopt Hindi in the Devanagari script, but I must remind the House that we have agreed to the adoption of Hindi in the Devana-

[Shrimati G. Durgabai]

gari script, subject to certain conditions. Condition No. 1 is, whatever be the name of the language—I do not propose to speak about the controversy about Hindi *versus* Hindustani—whatever name you may give it, it must be all inclusive and therefore the clause concerned in Shri Gopalaswami Ayyangar's draft should commend itself to the House and the House should unhesitatingly and unanimously agree to that clause. That language should be capable of absorbing the words which are already in use, whether of Urdu or any other regional language. It is only then you will convince us that you are asking us to accept it as a national language and not the special brand of C.P. or U.P. Hindi.

Another condition which is equally important is that the *status quo* should be maintained at least for a period of fifteen years, which would enable us to learn and to speak and also to adjust ourselves to the new environment. People from the Hindi areas are not even willing to concede this point. They say, "some of you can speak Hindi and so bring it into effect from tomorrow or at least in the shortest possible time." I have heard some people say—

तमारी जिन्दगी में हिन्दी कभी नहीं राष्ट्र भाषा बनेगी

I ask you, Sir, are we going to have this Constitution only for ourselves and our lives? What about our children and the generations to come? Are they not to follow this? I am speaking from my own personal experience. I learnt Hindi, I taught Hindi to some hundreds of women at least, in the South. My experience is this: Those who have passed the highest examinations in Hindi can read and write, but it is impossible for them to speak, because for speaking there must be some kind of environment, some kind of atmosphere. In the South, where do we find this atmosphere? Nowhere in the South have we opportunities of speaking what we have learnt. You will only realise this difficulty when you come to the South and you have to speak one of the provincial languages there. Therefore, be patient and cultivate the spirit of accommodation and tolerance. This is the thing that we ask of you to show to us.

The third condition which is not clear from Shri Gopalaswami Ayyangar's draft is that there is some obligation placed on the non-Hindi speaking people to speak Hindi. There should be equally an obligation on your part to learn one of the provincial languages. It does not matter whether it is Bengali, Tamil, Telugu or Kannada or any other language for that matter. Dr. Syama Prasad Mookerjee, while speaking on this subject yesterday, dwelt on this point sufficiently and on the resolution which the Sahitya Sammelan passed recently in their conference in Delhi. We will carefully wait and watch and see how that resolution would be implemented by the premiers of provinces who were parties to that resolution.

On the question of numerals, I do not want to say anything because sufficient has already been said. You have already understood the gravity of the situation. Suffice it to say, let there be no sentiment or let there be no question of its being a religion with anybody. If that is religion with you, it would be a powerful religious force with us, not to have adopted a language which is not our own, which is only a provincial language, which is not sufficiently developed. Therefore let not anybody say that it is religion with him or her.

Sir, the other question which I wanted to speak about is that in the non-Hindi speaking areas we have got to learn Hindi which we have raised to the position of an official language. Our purse is very meagre and we are already

the provinces which are non-Hindi speaking areas to develop and also to propagate this Hindi.

Sir, you have given me an opportunity to speak and I should not take much time of the House. Please remember that we are accepting Hindi only with these conditions which I have stated. For your part, you should have no hesitation to accept Shri Gopalaswami Ayyangar's draft. Even we do not agree with some of the provisions there, but we have accepted it, and therefore you should have no hesitation in accepting it and supporting it. Thank you, Sir.

Shri Shankarrao Deo (Bombay : General) : Mr. President, Sir, I would like to make clear at the outset that I stand here to support the amendment moved by my friend, Shri Gopalaswami Ayyangar, not that I agree with every detail and every clause of that amendment—which is not possible, because in the very nature of things, it is a compromise formula, and when we come to a compromise, we cannot have hundred per cent. of what we want.

The Honourable Shri Ravi Shankar Shukla (C.P. & Berar : General) : It is not a compromise formula. Nobody has agreed to it.

Shri Shankarrao Deo : There may be a few who do not agree, but I understand that many have agreed. According to me, there are many things in it which I do not like or do not appreciate. Still, I think it is the best solution of this problem in the present state of things. Therefore, as I have said, I stand to support that amendment. I myself have moved some amendments and I would request the House to accept them, because without changing the fundamental structure of the amendment, they will improve it and it will help some of us to accept that amendment more willingly.

Sir, as you have yourself said, this question of language has agitated our minds most, in my opinion, next only to freedom, because this question is most vital for the future development and growth of this nation. Those who have preceded me have already spoken much about the importance of language in the building and the growth of an individual or nation. To me, next to my mother, it is the language which is dear, because, my mother has given me birth, no doubt, but it is the language which has made me what I am today. That is why though many of us do not like it, this controversy has stirred our passions to their depth and sentiments have been roused and many a time, it blurs our judgment. I would request my friends from the South as well as from the North not to look at this question from an emotional or from a sentimental point of view. Let us be as objective as possible; let us bring reason to work on this issue.

What is it that we are out to achieve ? We are told that we are going to choose a language for our country. The next question is what is it that this language is expected to do for us and what are its functions ? We are told that we must have one language to take the place of English. Everybody is agreed that English cannot hold the same position that it used to do during the last one century or more when the Englishmen were ruling over this country. I need not go into the importance of that language or whether in the future that language must have a good and proper place in this country's education, administration, various branches of science, advancement and so on. But everybody is agreed that English is to be replaced by some other language; the difference of opinion is about what is that language which should take the place of English and what should be its functions.

They appeal to us in the name of unity, in the name of culture, that this country must have one language. They say unless this country has one language, there cannot be unity and one culture and if there is no unity, and one culture, then, this country has no future. In the same breath we are

[Shri Shankarrao Deo]

told that the regional languages must be enriched. The Working Committee Resolution says that though English may be replaced by some other language, as far as the regional languages are concerned, they must not only be maintained, kept intact, but they must be enriched. The Working Committee Resolution which was recently passed says "In the provinces or States where more than one language is spoken, many of these languages are rich and have valuable literature of theirs. They should not only be preserved, but further developed and enriched and nothing should be done to act as a handicap to their growth."

I cannot understand how these two things can go together. I think we are speaking with two minds. We cannot hope to have one language for the whole country and at the same time work for the enrichment of the regional languages and assert that they must be maintained, and they must have a permanent place in the national structure or life. I have tried my best to understand how these two things can go together but failed. If you sincerely believe that this country requires one language, all the regional languages, whatever may be their past, whatever may be their present position, they must go. Those who have their regional languages will know at least where they stand and what they have gained by attaining freedom. If you really mean, if you are sincere and honest when you say that these regional languages must be enriched and nothing should be done to harm them, you cannot appeal in the name of unity or culture for one language. If in the course of things this country evolves one language, and the other regional languages disappear, if that is to be the future, who am I, who are you, to stop it? But, I will not allow any group, any region or any Government, however powerful it may be, to do anything consciously or deliberately which will result in the disappearance of these languages from India. If they have to die, let them die a natural death when no tear will be shed.

Mr. President: Nobody has suggested that.

Shri Shankarrao Deo: I know it, Sir; though the suggestion is not there, the actions are such that there is a suspicion or a feeling to that effect. You will excuse me for that feeling if I have it; because, after all, an appeal from this House goes to the country, to the people and to the world that for unity, for culture we must have on language. If it is not so, then, let us be definite. What are to be the functions of this language which will replace English? In that matter also, the Working Committee Resolution is quite clear.

Mr. President: I suppose the same functions as English performed.

Shri Shankarrao Deo: No; not that also.

Mr. President: That is the Resolution I think, so far as I can judge.

Shri Shankarrao Deo: English was performing many functions which I would not like it to do now. I will show, Sir, if you will bear with me for some time. The language that will take the place of English has to perform some definite functions. These are enumerated as I said in the Working Committee Resolution. "For all India purposes, there will be a State language in which the business of the Union will be conducted. That will be the language of correspondence with the Provincial and State Governments. All the records of the Centre will be kept and maintained in that language and it will serve as the language for inter-provincial, inter-state commerce and correspondence."

This is exactly how the functions have been defined, of the language that will replace English. There is no mention of culture, there is no mention of unity: not that I am against this country evolving a common culture. I would

like to point out that the cry, namely, 'one culture' has dangerous implications. The very word 'culture' has dangerous meaning. One does not know exactly what it means. The Chief of the R.S.S. organisation appeals in the name of culture. Some Congressmen also appeal in the name of culture. Nobody tells us what exactly this word 'culture' means. Today, as it is interpreted and understood, it only means the domination of the few over the many. Therefore, in the Working Committee Resolution, there is no mention of culture, there is no mention of unity. Not that we do not want a culture for this country. But we should call it rather a composite culture; then the different varieties of Indian culture must have an equal opportunity of contributing to the moulding, evolving of this composite culture. If you appeal to this country and insist upon having one culture, then, to me it means the killing of the soul of India.

As I have tried to understand Indian culture, *Sanskriti,* Indian religion and Indian spiritual traditions, it is not uniformity but unity in diversity. It is *Vividhata* that India stands for. That is our richness; that is the contribution that India can make to the world-culture and world progress. I would like to maintain the variety of cultures, the different languages, each without obstructing, hindering or killing the unity of the country. Therefore when people use the term 'national language' my heart does not respond to it. I admit India is a nation and I am an Indian, but if you will ask me "what is your language", Sir, you will excuse me if I sav 'My language is Marathi'. I am one of those who have been insisting that this language which will replace English should not be called the national language. If you mean by national language one language for the whole country, then I am against it. I must make it quite clear. India is a nation and I am an Indian but my language is Marathi.

An Honourable Member : My Friend is harping against an imaginary purpose.

Shri Shankarrao Deo : Some people even lack imagination.

Mr. President : I hope the honourable Member will not take the House on an imaginary discussion.

Shri Shankarrao Deo : Therefore this language and its function should be made clear. This language is either a State language or Union language or a federal language because we have accepted a Federation for our country. We have got autonomous States and therefore the States are expected to have their own languages, and as I have already said the Working Committee has made it clear what are to be the functions of the State language.

Now I come to the next point. Many of my friends here know when this question was first discussed somewhere else I was one of those who pleaded that this State language should be called Hindustani instead of Hindi. Not that we had anything particularly against Hindi, but as Congressmen we have been accustomed, we have been taught by Mahatma Gandhi and we were ourselves convinced that if the masses were to enjoy the freedom, the country must have a language which they will understand. Then alone the freedom can be translated in their daily life and they can contribute to the building of the nation. Therefore the Congress accepted Hindustani as its language and it wanted the State to accept the same nomenclature and not only nomenclature but the content and the implications. As I have already said one cannot have everything in an Assembly or in a society, that is why I have agreed to the word Hindi with its contents defined, as has been done now. I wanted Hindustani because I felt that in that case there would be no restrictions and there will be no special privileged class in building the new language.

[Shri Shankarrao Deo]

Those who have followed the discussion during the las two days minutely must have understood how the difficulty has arisen in accepting the international numerals. Why are they objecting to them? One of the reasons according to them is that they are not Hindi. As you are accepting Hindi they argue that you must also accept the Hindi numerals. They have not only taken for granted that we have accepted Hindi but also we have accepted Hindi of the pattern followed in U.P. and Bihar, and therefore they will dictate to us what is Hindi.

I want to free myself from such restrictions and I do not want to be dictated what is Hindi or Hindustani. What will be our choice will be decided by this Assembly. Nobody can come and say you cannot do that. This Assembly cannot be dictate to by anybody. We are going to choose our language and its name. You cannot say "this is not Hindi." U.P., C.P., Bihar, Rajasthan, Madhyabharat etc. may have Hindi and Hindi numerals. They may evolve their language according to their genius. Because U.P. and Bihar do not use these international numerals, it cannot mean that the Central Government will not use them.

I would remind my friends that they are living under an illusion if they think that we have accepted their language and we are going to build it according to their pattern. That is why there is a special directive about the content of the Hindi language to be adopted by the State. I know my friends from the North were not very enthusiastic about it. They said that if you want it you may have it. They were not as anxious as we were to define the contents of this language. They said "if you want it we are ready to satisfy you" but then they kept it not in the chapter of the language but in the chapter of the Directives.

Pandit Balkrishna Sharma (United Provinces: General): Will you permit me to inform the honourable Member who is speaking that it was not we but the Drafting Committee who gave the Directive?

Shri Shankarrao Deo: I am glad to say and I must be obliged to Pandit Nehru because it was he who suggested that this Directive or this definition must find a place in the chapter of the language.

Pandit Balkrishna Sharma: Certainly not.

Shri Shankarrao Deo: But for him the thing would not have been so easily done. That is my opinion—I may be wrong. But I wanted to draw specially the attention of the House to this fact. This Directive says:

"It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India"

The word 'composite culture' of India is a very fine word there. But my fear is—and fears are not rational, generally they are irrational but they play an important part in the life of a man that these words imply that we must evolve a language in which all these varied cultures of India will find expression. What I feel is that ultimately you want us to evolve such a language in which the whole culture, religion and our life's business will be expressed. If this has to come it must come so naturally that we will not feel the pangs or pain.

Let my friends of U.P. and Bihar realise what we have been asked to do. I do not want to appeal to you on bended knees—I am not one of those who are accustomed to do that. But I would appeal to your reason. It is not we who are asking anything from you, but it is the nation which is demanding

... coming from ... And we are willing to give it. After all when the time comes we will have to accept one language and other languages may go to the background. I will be ready if and when it comes. But if you want to allay my fears, if you want my whole-hearted support, you must not do now anything which may raise my suspicions and which will strengthen my fears.

I do not want to take any more time of the House. I only wanted to draw the attention of the House to the fact that we must act wisely. We should not give ground for suspicion or fear. For, suspicions and fears though irrational have a place in deciding our action. So I would appeal to my friends who are the protagonists of Hindi, to see clearly the position. Let us be definite that we are not accepting any particular culture or language. We are making a free choice of a language.

After all, what is the claim that is now put forward? The claim is that this language is spoken by a majority—I am not sure about that even I know when I go to Rajen Babu and when people from Bihar come to him they do not speak Hindi. If I am not wrong, neither Tandonji speaks Hindi at home. So when you say that Hindi is spoken by the majority of the country I doubt it. I can only concede that it is perhaps understood by the majority, and that too, not the present high-flown Sanskritised Hindi which is understood by Pandits only. As Gandhiji said it should be a simple language which could be understood by the people in the villages of the North. Just as we speak Marathi, others speak Tamil or Telugu. Hindi is not spoken by 14 crores.

If to-morrow it so happens that the capital is transferred from here to Madura or to Trivandrum, I am not sure after fifty years the language spoken by the majority in this country will not be Tamil or Telugu. After all, people from the South come to the North, not for the language, not for the culture that Hindi gives but to earn their livelihood. I do not want to belittle the culture or the richness of Hindi, but as far as culture goes, I can receive it from my own language, Marathi and Sanskrit, the grandmother of all languages. They are rich enough to do that.

Our forefathers accepted the English language not only because it was the language of the rulers but they believed as Jawaharlalji pointed out that it opened a new world for them. They thought that it brought us into close touch with the outside world, and its various activities. Even today no Indian language can put forward the same claim. Some of our languages may do that to-morrow. Thus, rightly or wrongly our forefathers accepted English for its superiority.

People come from the South and they speak Hindi because they come here for bread. After all, it is for bread that people quarrel. Why this dispute about having English for fifteen for ten years more? Apart from the difficulty of learning a language, people are afraid that in the Secretariat and in the offices, they may be pushed out, not by superior men, but because they are backward in a particular language. My Freind Pandit Shukla has given lot of praise to the friends from the South therefore I need not put in any claims on their behalf.

An Honourable Member: Pleose speak in the mike. We cannot hear you.

Shri Shankarrao Deo: I am sorry, I will do so. I am not accustomed to the mike.

Sir I was saying that today it is not a question of culture or of religion or of tradition, but it is a question of bread and jobs. And if today Hindi is so much valued and people prefer it to any other language, it is not because it is superior to other languages but it is a means to get a job. When I come

[Shri Shankarrao Deo]

here, I cannot speak in Marathi, except in the Maharashtra Club but it cannot give me a job.

People come to us and say "Why are you fighting for such small things? After all, you have given 95 per cent Why not yield 5 per cent. more?" I want to make the position perfectly clear. I have not given anything to anybody. That is a wrong notion that some people seem to have that we have yielded 95 per cent. and so we should yield another 5 per cent; I have accepted this language because I feel I will have full liberty and full opportunity to mould this language which is going to mould me. I am one of those who would like to support the suggestion that even English should be one of those languages to be mentioned in the Schedule.

Sir, in the list of regional languages, if you look at it, you will see Hindi mentioned. So Hindi is accepted as a regional language today. To that we have no objection. But please appreciate our difficulty. You want to keep Hindi as a regional language and at the same time make it the Union or State language. That gives you a superior position. You will excuse me, for I know you do not want it; still it comes to you, and you cannot help it. You must admit that however much a person may learn Hindi or Hindustani or any other language, unless it is his mother-tongue, unless he uses it all the 24 hours, he cannot master it. And unless he masters it, he cannot have a superior or a high position in the Secretariat or in any other field. I know the difficulty of the friends from the South. Since the English language lost its prestige in our national organisation, they are practically only witness to its proceedings and are obliged to raise their hands. I have learned English, but I know what that learning means. It only enables me to utter a few words of that language. But if I have to administer the country, and to maintain a position, then learning must mean command over the language; for that a long number of years are necessary.

Honourable Members: Let the Honourable Member address the right side also. We cannot hear him.

Mr. President: He has now finished.

Shri Shankarrao Deo: I am sorry. I speak here for the first time, I will learn the lesson and will make it a point to come here often.

As far as the international numerals and period are concerned, I will only say, let no Member of this House have the feeling that he is giving something, and we are accepting something. It is not charity. We are not beggars in this House. Everybody must have equal right and equal position. We are all together trying to build something which is so vital to us. Therefore, when we say, let international numerals be there, please do not misunderstand us. Do you know what is happening and what havoc is being done with the *Nagari* script by a few friends who know and who say that it is for facility of printing, for typing and composing that it must be changed. Do you know how Vinoba Bhave writes Devanagari? If some of my Hindi friends would see it they would weep: they would not recognise their mother tongue! I myself feel the pang of it. When I read Vinoba Bhave's writing, I ask: Is this Devanagari?

The protagonists of this change say that Devanagari will go and Roman script will come. I do not know which is better or superior. But today you are fighting for the numerals: To-morrow you will fight for the script, and you will say this is our script and no one will change it. Then what shall we do? Shall we appeal to you and beg of you and say, "will you allow us to make this change?" No, Sir. If you are labouring under the wrong idea that

this is something which you are giving to us and we are in duty bound to maintain it as you gave it to us, and yours will be the last word as to the correctness or wrongness about it, then please remove that idea.

Pandit Balkrishna Sharma: (Vehemently) Who has said all this?

Mr. President: I would appeal to the honourable Member to keep his temper. It is no use losing one's temper in a matter like this.

Pandit Balkrishna Sharma (More vehemently): I would like to protest against the allegations which are purely imaginary. Mr. Shankarrao Deo is creating imaginary ghosts and slaying them. I can admire his swordmanship but he cannot in this way inspire any respect for his logic.

Mr. President: Even that is no reason.

Shri Shankarrao Deo: My honourable Friend can allow a fool to play with his imagination. No harm will be done. If it is so imaginary, and if it does not touch him, why is he so angry. The very fact that he is so angry and he has lost his temper, shows that what I have said touches him.

Pandit Balkrishna Sharma: (Very vehemently): I must protest....

Mr. President: I am afraid this is not right and the honourable Member must keep his temper if he wishes to sit in this House.

Pandit Balkrishna Sharma: I can walk out if you so wish.

Mr. President: No one has the right to lose his temper.

Shri Shankarrao Deo: I am sorry that one friend has to lose his temper for what I have said. We must have freedom even to use our imagination unless it is unparliamentary. I do not want to go further. According to me these are not imaginary things. I have been carefully following this controversy and I am one of those who want this House to come to some unanimous decision and I feel that unless the ground is cleared and people are not left under any illusion, the unanimity which is so necessary and which everyone longs for, will not come. It must be made clear that this Constituent Assembly is making the choice of a language for the State, for the Union, which does not belong to any group or any region.

Mr. President: You have made that point clear more than once.

Shri Shankarrao Deo: I shall now refer to my amendments. I hope my friends will appreciate that one of my amendments says that after fifteen years English must be replaced by Hindi or any other language which we will choose as the State-language automatically. But that does not preclude or prevent us from using English for some specific purposes.

There are some friends from the South who do not agree with me. I can appreciate that also. But that is my feeling and here I would like my friends to listen to the voice which we have been accustomed to listen for the last thirty years. That voice says: "Unless the Governments and their Secretariats take care, the English language is likely to usurp the place of Hindustani" (of course Gandhiji wanted Hindustani). "This must do infinite harm to the millions of Indians who would never be able to understand English. Surely, it must be quite easy for the Provincial Governments to have a provincial language and the inter-provincial language, which in my opinion can only be Hidustani, written in Nagari or Urdu script".

I want this position to be accepted by this Assembly.

Shri Satish Chandra (United Provinces: General): Please read the complete sentence.

Shri Shankarrao Deo : I have gone to the end of the para. If I have done anything wrong you may correct me when your turn comes. What was relevant to my point I have read.....

Shri Satish Chandra : You may read another paragraph from this very article where Gandhiji has envisaged the possibility of Hindi in Nagri script alone being adopted as the State language of India.

Shri Shankarrao Deo : I have read the first paragraph completely because I have the paper in front of me. That is what I take my stand on. After fifteen years English will cease automatically to be the language of the State. That does not mean that we are precluded or prevented from allowing English to be used further or to serve a definite specific purpose.

I have finished, except for one last sentence which I would like to utter here with all the seriousness that I can command. As I have said, I am not an accomplished speaker. I have come for the first time here to speak. I am sincerely sorry and my friends may accept this apology if I have uttered words or sentiments which they have not liked. I also extend my appeal to the whole House, that as far as possible let us avoid a division. Let us not divide this House on this issue because it is a most vital issue, and if we are divided and if we go from this House with our hearts weeping or sorry, I am afraid that the implementation of the Constitution and the translating of freedom in the terms and the needs of the masses will be a very difficult task. Therefore, I would appeal to all my friends, irrespective of the fact whether they are from the South, or the North, or the East or the West or the Centre. My appeal is to all. Let us be unanimous. I admit that the amendment of the Honourable Shri Gopalaswami Ayyangar is not an ideal one; still it is the only formula on which unanimity is possible.

Sir, I have done.

Sardar Hukam Singh : Sir, the atmosphere has been very tense and voices have been very loud and I hope I will bring the atmosphere down by my mild tone, though I am afraid that in view of the fact that Mr. Shankarrao Deo has not been heard so patiently I might also be interrupted. But I hope that I will have greater indulgence, because even if I enter into some controversial points my mild tone would be subdued further. There are several amendments but I will confine myself to 323 and 330.

My amendment No. 323 is that instead of Hindi in Devanagari script it should be Hindustani in the Roman script. That has already been moved by a very distinguished scholar and an eminent Member like Dr. Subbaroyan. I would not go over the ground again that has been covered already but I must say something about it.

I may make it clear in the beginning that when I passed my primary standard and had the option to elect Sanskrit or Persian as one of my elective subjects I chose Sanskrit and I developed a liking for it. I read it up to the matriculation. Even after I was elected a Member of this House and when this question arose here for the first time I was consulted by several Members and I gave my unreserved support for Hindi in the Devanagari script. I might emphasise here that I took it for granted that there could be no other language which could be accepted as the *lingua franca* or *Rashtra Bhasha* of our country.

As the days have passed I have changed my mind. The most enthusiastic protagonists of this Hindi have alienated my sympathy and I must say that I agree with Mr. Anthony. I am one of those who have withdrawn their support from Hindi in Devanagari script simply because of the fanaticism and

intolerance of those who support it. When I supported Hindi I understood that it was the language of the common people that could be spoken and understood by the ordinary man and that might sing sweet to his ears. Certainly I am for that language even now.

But when I have heard the ardent supporters of Hindi delivering their speeches on public platforms and in this House I am afraid that they are trying not to leave the language open to enrich itself from all other languages and let it grow as our common language, but they are trying to Sanskritise it and make it a close preserve. I do again make it clear that I am not against Sanskrit, and if that is taken up straightaway I would support it. But as I find that it is not the intention of the House to take that up, therefore I say that we should be honest and say whether we are going to have a classical language and call it Hindi or whether we are going to adopt that language which is commonly understood and spoken by a majority of the population.

There was a keen contest before partition between Urdu and Hindi to become the *Rashtra Bhasha.* There were two fanaticisms, if I were permitted to say so. Urdu used to draw from Persian and Arabic and Hindi from Sanskrit. So there was antagonism. So far as I believe, it was on this account that a common language was sought to be evolved and that was named Hindustani. The fear again was in the minds of some of our Members and people outside that Hindustani might be a synonym for Urdu. In my humble opinion that fear is no longer there. After the partition there is no chance that any language that we adopt would draw so freely from Persian and Arabic. Of course they would not be excluded but there is no fear now that they will be the chief sources now. But if that fear is gone the other fear is there. If there is no danger of the language being Persianised or Arbicised the other danger is there that the language might be termed Hindi but may be Sanskritised. So we desire to exclude that fear as well, and that we can only do if we call our language Hindustani, which will be commonly understood by most of our people and not call it Hindi which has those associations. This is my reason for moving that it should be Hindustani.

Then I come to the script. I would not repeat those grounds that have already been covered but I will only give four or five reasons in favour of Hindustani in the Roman script :

(1) Hindustani in the Roman script is compulsory in all the armed forces and all people, whether from the North or South, find it equally convenient to learn it.

(2) There is a larger section of the population who are more proficient in the Roman script.

(3) Unless modified very radically, the Devanagari script would be an unsuitable medium for printing.

(4) The Roman script can be modified a little to suit our purpose by adding a few dots or dashes. The names of places, the railway time-table, the telegraph code, etc., will not be thrown into a confusion.

(5) The most important reason is that this will link us up with the world outside and I borrow in this connection the name of Mr. Subash Chandra Bose who also advocated it.

(6) My last ground is that this will remove the antagonism that is apparent in this House and will enable our Southern friends as well to learn the language more easily.

Then I come to my second amendment No. 330.

[Sardar Hukam Singh]

So far as regional languages are concerned, it has been laid down that—

"subject to the provisions of 301D and 301E, a State may by law adopt any of the languages in use in the State or Hindi as the language or languages to be used for all official purposes of that State."

My amendment says that—

"subject to the provisions of 301D and 301E, a State shall by law adopt the language spoken, according to the last census figures available for the purpose by the majority of the population as the language to be used for all official purposes of that State."

This might seem queer to some of our honourable Members, but the Punjab is a peculiar province. It is not an inter-provincial or inter-territorial question in the Punjab, but a communal question. This is a legacy of the pre-partition days. If we look at the census reports of 1931 and 1941, it would be clear that the Census Commissioners of those reports pointed out that persons, very respectable and honourable, gave wrong answers in their enthusiasm to choose one language or the other. People who wanted Urdu to be their language, while they actually spoke Punjabi, replied to the question that their mother-tongue was Urdu. Similarly, to counteract it, the answer from the other side was that their mother-tongue was Hindi while they spoke and were conversant only with Punjabi Under these circumstances the figures that were collected were wrong and the Census Commissioner had to give up that attempt which he recommended might be dropped altogether.

That was the reason why in the 1941 census these figures were not collected at all. My submission is this that this communalism about giving wrong answers and denying the mother-tongue is a legacy of the past and it has stayed even after Partition. If it is left to the States—I am talking of the Punjab particularly—to choose any language there which the State legislature likes, the danger is that the majority of a section of our people who deny that Punjabi is their mother-tongue might adopt a language which is not the main language as the official language of the State. I might also say here that Hindi has no fears from Punjabi if the (Hindi) is adopted as *Rashtrabhasha.*

If that is going to be the *lingua franca,* certainly every member of the community, whether he is a Hindu or a Sikh, whether he belongs to a majority community or minority community, will have to read it and write it and learn it in higher studies as well, because without it he would not be considered anywhere in this country. Therefore, Hindi's future even in States is safeguarded and guaranteed, but my fears are that Punjabi could not have its own status if it is left to the State Legislature. Communalism has not been correctly defined anywhere, but a convenient definition may be that whatever is said and done by the majority in a democratic country or at least in India is pure nationalism and whatever is said by a minority community is communalism. This is the basis on which we are proceeding. As there were fears in the minds of the minority that Punjabi might be swept away altogether, they advocated its adoption as one of their demands to the majority community, but I fear that just as the protagonists of Hindi have done a disservice to that language, so have the Sikhs by taking up the cause of Punjabi done it a great disservice because this demand has been dubbed as a communal demand.

But there was no other choice for them, as the majority community denied it to be their mother-tongue, so it was left to the minority community to advocate it and when they did so, the reply came that it was a communal demand. Certainly, that was a perplexing answer. The Press carried on a vigorous propaganda. They said the Sikhs were out to have a separate State; they were separatists they were disruptionists. With this fear in mind that Punjabi was going to be ousted, the minority community wanted the adjustment of bounda-

nes to be taken up and wanted that linguistic provinces may be demarcated. That too was again decried as a communal demand. It was not communal in other parts of the country, but it is communal so far as the cry of the minority community in the Punjab is concerned. I might also mention here that the Commission also has ruled out that so far as Punjab is concerned, it is not going to be considered. These boundaries would remain as they are. When the minority community wanted that the Punjabi language might be conceded as the official language of the State, the result was that they said it was no language at all, it was only a dialect of the Hindi language That surprised them most, because in 1932 the Punjab University had appointed a Commission and that had made a clear report that it was one of the richest languages of this country.

Another method has now been adopted. "Why should there be coercion on anybody? Everybody should be free to choose what medium of instruction he wants. Nobody should be compelled to give instruction to his child in any language which he does not know". Now that is the state of affairs that is prevalent in the Punjab. I may here submit in all humility that we have been snubbed as communalists. I might make it clear that now, after Partition no minority can be communal. It could be said that when the third party was there the minority communities were communalists and were looking to the third party for support—But now the minority has to look to the majority for everything that it wants. It has to look to the majority for favours, for rights or for concessions. It does not pay any minority to be communal now. What the minorities say or do now is not communalism. Their outlook has changed absolutely. They want pure democracy, because it is only in democracy that they can thrive and flourish. It would be to their disadvantage and would not pay them if they persist in communalism. But what they are afraid of is not the democracy of the majority, but the communalism of the majority. And Punjab is suffering from that. I request you and I appeal to this House to note that what I want is that I should be saved from the communalism of the majority and therefore I commend this amendment of mine to the House.

Shri Jaipal Singh (Bihar : General) : Mr. President, Sir, I feel that I would not be discharging my duty properly if I did not plead with the House that in Schedule VIIA some of the Adibasi languages that are spoken, not by a few, but, literally, by millions, should also be included. My amendment No. 272 says :

"That in amendment No 65 of Fourth List, in the proposed new Schedule VIIA, the following new items be added :—

'14 Mundari,

15. Gondi,

16. Oraon'"

Sir, if you look at the list of Scheduled Tribes in the last Census, you will find there enumerated 176 of them. Of course there are not 176 languages. There may be dialects, in patois form, and the same language may be a shade different in different areas. You might ask me why I have singled out only three out of 176. Sir, I do not wish that the Schedule should be overburdened with numerous languages and that is why I have selected only three important ones. To deal first with the Mundari language, the first in my amendment, I may say that I have not mentioned Santhali because Mundari is the generic term given to the family of languages sometimes called Austric and at other times called Mon-Khmer. I find that in the last census, forty lakhs of people have been recorded as speaking the Mundari language. In the list or the Schedule as it is, I find that there are included in it languages spoken by fewer people than the Mundaris.

[Shri Jaipal Singh]

Similarly my reason for including Oraons is that the Oraons are not a small group in our country. There are as many as eleven lakhs of Oraons. Of course, this language finds a place in the Schedule under the language called Kanarese; So, actually, if Kanarese were to embrace Oraon, and if my Friend Mr. Boniface Lakra who speaks that language is satisfied that it does, I would withdraw item 16 Oraon.

I have asked also that Gondi should be one of the languages, as it is spoken by 32 lakhs of people. My main reason for asking the House to accept these three languages is that I feel that by accepting them we will be encouraging the cause of unearthing ancient history.

The House, somehow or other, finds itself divided into two groups—the Hindi purists and others who are generous enough to accept that it should be left to time to evolve a language. Let me confess that I am prepared to accept whatever the House decides. But I do feel very strongly opposed to the puritancial fanaticism that has gripped many people. What is a language? A language is that which is spoken. I think we are taking a retrograde step in trying to think that we can enrich the language that is spoken to-day by sanskritising it one hundred per cent for sentimental reasons. I am a great admirer of Sanskrit. I do speak Hindi as it is spoken in my province of Bihar, but that is not the Hindi which my friends want me to accept here. Let Hindi be the language as it is spoken everywhere. Let it enrich itself by taking words from other languages. Let us not think that, if other words are brought into Hindi or Hindustani, we shall be impoverishing it. A language grows and is enriched because it has the courage to borrow words from other languages. I do not mind whether you call it Hindustani or Hindi. Whatever you decide I will readily learn. The Adibasis will learn it. They are bi-lingual or tri-lingual. In West Bengal, the Santhals speak Bengali as well as their mother-tongue. Wherever you go you find that the Adibasi has accepted the language of the area in addition to his mother-tongue.

There is not a single Member here from Bihar who has had to learn an Adibasi language. Does my Friend Pandit Ravi Shankar Shukla tell me that although there are 32 lakhs of Gonds in the Central Provinces he has tried to learn the Gondi language? Has any Bihari tried to learn Santhali though the Adibasis are asked to learn the other languages? It is a matter of pride with us that we can talk in other languages also.

I think there should be some reciprocity. There should be some spirit of accommodation, and the provinces that speak Hindi should make it a point to learn another language. That is the spirit that should be shown by us. We should not move in a groove and say that the rest of the country must learn our language because we ourselves shall not learn anything else.

Sir, as I said, we have yet to unearth the hoary antiquity of India. We know very little of ancient India and there is only one way of learning about ancient India and that is by learning the languages that existed in this country before the Indo-Aryan hordes came into this country. Then alone shall we know what India in ancient days was like. I know my Friend, Mr. Munshi, has the idea that everytime I use the word "Adibasis" I think in terms of Adibasi republics. He thinks perhaps that by this amendment I am trying to create three linguistic republics. Sir, that is not the case. Take Santhali. If my amendment is accepted, it is going to affect West Bengal, Assam, certainly Bihar and Orissa. Take the case of Gondi. Gondi exists mainly in the C.P., but it stretches to Hyderabad, a little bit to Madras and a little bit to Bombay also. Not one of these is an isolated area. They spread over distant provinces. All that I want is that these languages should be encouraged

and developed so that they themselves can become enriched and by their enrichment they enrich the *Rashtrabasha* of the country. I do not want that linguistic imperialism should get the better of us. Wherever I have been, it has been a pleasure to learn the language of the place I have had to live in.

So far as the script is concerned, I have very strong views and for practical reasons. I feel that we are making a wrong choice in accepting Devanagari. I belong to that school of thought which has been led, for the last thirty years, by Dr. Suniti Kumar Chatterjee who has advocated international phonetics for all the Indian languages. By international phonetics, I can pronounce Tamil as a Tamilian speaks it. I can speak Kanarese as a Kanarese speaks it. Without knowing a language, I can read and pronounce it as a person whose language it is pronounces it, but I know that the House is not in a mood to accept it. So long as my friends suffer from a complex, the fear complex, I am afraid it is useless to appeal to them to have a script that is practical not only for the purpose of teaching others or teaching oneself.

There is the commercial aspect of it also. It is a well-known fact that the Devanagari script has given headache to all the producers of printing machinery. In the time you can print something like fifteen thousand copies or twenty thousand copies in English, you cannot print even one-tenth of this number in Devanagari. Now, that is the commercial and practical aspect of it. I am not being sentimental. I think the country would have been wise to have done nothing which would retard its progress. By accepting Devanagari, we are impeding ourselves; we shall not be able to move fast enough, until such time as my freinds can produce machinery that will move as fast as the international alphabet or something which is only slightly less speedy.

Sir, there is not very much more that I want to say. All that I plead is that the languages of the most ancient peoples of this country should find a place of honour in the Schedule. I need not say more. I want to assure the Members on both sides that I do not wish to be drawn into this quarrel about language and script. Whatever the House accepts, I and my people will readily accept, and it is in that spirit that I ask the House also to show a spirit of accommodation in accepting my amendment.

The Honourable Shri Purushottam Das Tandon (United Provinces: General) :—Mr. President. Sir, I do not propose to traverse the wide grounds which have been covered by some of the speakers who have preceded me. I have moved certain amendments to the amendments proposed by Shri Gopalaswami Ayyangar and in whatever I have to say. I shall try to keep as close as possible to the object of my proposals.

The speech which Shri Gopalaswami Ayyangar made reflects the spirit of the proposals made by him. According to him, it was on the strength of the English language that freedom was achieved, and it is therefore necessary to maintain English for administrative purposes for—to quote his words—many many years to come, in fact for a much longer period than the fifteen years during which under his own proposals, English should continue to be the language of the Union. His second predominent idea is that none of the provincial languages, and Hindi along with the rest, is sufficiently developed to meet the requirements of a language which has to carry the burden of administration in all its various phases, particularly in the realm of legal concepts and complexities. The whole scheme of his proposals is based on and coloured by these two dominent notions.

There is a third novel idea too in his proposals, namely that whatever may happen in course of time to the English language in India, the numerals which we have learnt from the English language and which are designated in his draft as international forms of Indian numerals, must, in any event, stay and

[The Honourable Shri Purushottam Das Tandon]

become an intrinsic part of the *Nagari* script, taking the place of our Devanagari-Sanskrit numerals, wherever and whenever the Devanagari script is to be used for purposes of the Union.

I would, in all humility, request the honourable Members of this House to examine these three ideas a little closely, remembering that whatever we do today concerns not merely ourselves or those few men and women in the different provinces who are educated in the English way and nurtured and fed on the English language, but that our decisions will affect, influence and shape the lives of those millions of men and women who have no contact with the English language, for whom any contact with the English language is impossible and who have to be lifted up from their present state and trained in the ways of democracy and administration. We have also to remember, Sir, that the decisions we take here today will affect not merely the present generation, but will shape the destinies of the generations yet unborn.

The Prime Minister has, in his own manner warned us against looking backward, taking any steps which might lead us backward. I have always entirely agreed with the view, and have myself put it forward on many occasions, that we cannot rest content with what we have achieved in the past, and that we cannot entirely mould ourselves on the pattern that existed in the past.

समय भेदेन धर्म भेदः

अवस्था भेदेन धर्म भेदः ।

"Samaya bhedena Dharma Bhedah

Avastha bhedena Dharma Bhedah

are the mottos which I have placed before the people. With times and conditions our dharma, our duties change : these are ancient mottos. We have to remember that our little systems have their day and then cease to be. The world moves on. The systems of today yield place to new systems, new manners, new ways of thought. There is always a fresh perfection treading on the heels of the old. We cannot, even if we would, get out of that great fundamental fact of existence

At the same time, Sir, we have to remember, as was said by the Prime Minister, that we are all rooted in the past, and that we cannot cut ourselves away from it. In a way, we are bound to the past by a strong but invisible chain, an *Akashik* chain, which is ever lengthening with time, but which remains unbroken and unbreakable. Therefore, in whatever we attempt to do, we have to take care that while we move forward to our destiny, the long, strong chain that binds us to the past is not weakened, but strengthened at every step. That, Sir, I submit, should be our basic political philosophy not to live in the past, but to live in the present which connects us with the past.

I stand for taking in the fullest measure the good that the West can give us. But I ask every one present here to remember that all that glitters in the West is not gold, that what is Western is not necessarily good, that our own country has produced concepts and traditions of a high order which are likely with the passage of time to influence more and more the destinies of the whole race of mankind.

It is in the light of these principles that I wish Honourable Members to examine the draft which has been placed for acceptance by our Friend Shri Gopalaswami Ayyangar. I shall not read it out. I take it that you are familiar with every important clause in it. This draft visualises the existence

of the English language for at least fifteen years, and not merely the existence but the predominance of that language in all that concerns the Union. I had imagined that—although it would be necessary that for some time to come English should be retained for our official purposes that that time would not be so long. I had thought that within a much shorter time we might be able to go near the people and work in a language understandable by them. I do not forget that for our brethren who are here from the South Hindi which is proposed to be the official language will not be very easy to learn. At the same time I submit that the people in the South are not strangers to Hindi Under the direction of the Father of the Nation, whose name always strikes a sensitive chord in our hearts, the work of Hindi began in 1918 in South India and during this period several lakhs of men and women have learnt Hindi and, as my Friend Shri Moturi Satyanarayana sitting here can tell you better, every year there are about 55 to 60 thousand examinees sitting in Hindi examinations held by the Dakshina Bharat Hindi, recently named Hindustani Prachar Sabha.

An Honourable Member: They can only read and write but they cannot express themselves.

The Honourable Shri Purushottam Das Tandon: That may be. All that I say is that that shows that the Hindi language will not be a new thing in South India. I was under the impression that such a long time as fifteen years would not be required to bring Hindi near to the young generation of Madras but, as Pantji said, it is for our brethren in the South to say as to what time they require and I entirely agree with the view that it is not for us to force their hands in the matter. We will offer our services, we can tender advice but we leave it to them to say how long they want and within what time they will make their people ready to use Hindi for purposes of the Union.

It is in that spirit that we agreed to the fifteen years time. We had begun with five, then we went upto ten and then we saw that our brethren from the South wanted fifteen years' and we agreed to that. But in Shri Ayyangar's draft there is a hard provision in regard to Hindi not being used at all except in addition to English for five years and more, till a commission makes a recommendation and that recommendation is accepted by the President. That seems to me a rather hard provision. It might have been somewhat softer. Why is it necessary to keep out Hindi entirely from those official purposes for which Hindi can be used without any inconvience to our friends of the South? Under the present clauses a Minister of the Union cannot write a letter in Hindi on any official business to anyone unless that letter is accompanied by an English translation. Obviously, then, Hindi is not likely to be used at all. So it comes to this that for five years and more, so long as the Commission does not make a recommendation and that is not accepted by the President, no work can be done in Hindi except in the shape of translation from English. You may publish a book in English and you may translate it into Hindi also. That is all the work that will be done for five years and more. That is rather hard. Nevertheless I agree even to this—that nothing is to be done for five years in Hindi except when it is in addition to English.

But I ask you to give thought to what comes after five years. Under Shri Ayyangar's proposal, at the expiration of five years, a Commission is to be appointed to go into the question of language. This will necessarily mean an extension of the period of five years by another two years or so, because the Commission after its appointment will meet and probably wander about in the country and then make a report. After that a Parliamentary Committee will sit and examine the Commission's proposals and then make its own final report. Let the appointment of the Commission be *before* the expiry of five years. I do not fix any time. All that my amendment says is "substitute *'before'* for *'at'*, so that the report may be ready and Government may be in a position to

[The Honourable Shri Purushottam Das Tandon]

direct that after the expiry of five years some changes which may be thought necessary in regard to the use of Hindi, may come into effect. This is a small amendment which I have suggested and I hope it will be accepted. It simply means that before five years have expired, the Commission will be appointed. But I make it clear in my amendment that whatever recommendations are adopted, will be brought into effect only after the expiry of five years. And I shall be content that within five years, only that work will be done in Hindi which is a translation of English.

Similarly, in some other clauses I have proposed some modifications. As the President has directed, these amendments have been taken as moved. So I shall not read them. I shall only mention the general purpose. A Parliamentary Committee has been suggested and it has been said that it will report on the recommendations of the Commission. I have added a small clause to the effect that this committee may make its own recommendations also—"such recommendations as it may deem fit". These are the few words that I have added to that particular clause about the appointment of the Committee and its report on the recommendations of the Commission. All that I ask is, let this Parliamentary Committee also, if it thinks fit, make some recommendations, and let the Government decide on the recommendations of the Committee as well as of the Commission.

These are the amendments which I have proposed in 301-B.

I now come to Chapter II on Regional Languages—301 C of Sri Ayyangar's draft. It is stated here that

"... a State may by Law adopt any of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State."

I agree with that. It is the proviso to which I take exception. It says—

"Provided that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the States for which it was being used at the commencement of the constitution."

I fail to understand why it should be at all necessary to encourage the use of English in States. It may be that at the commencement of the Constitution, they may be partially using English but they may want to change it. I know you provide that they may change it by law. But they may be using not only English, but other languages. So I would like to put in this sentence in place of the proviso—

"Provided that until the Legislature of the State otherwise provides by law, the English or languages which were being used for official purposes within the State at the commencement of the Constitution shall continue to be so used."

In my own province, we are now using Hindi for official purposes. Bihar and C.P. also, I think, are using it. Why should it be necessary for us to pass a new law accepting Hindi? We are using Hindi at present under the direction of the Government, and therefore, the words that I have suggested would be more suitable.

Then in article 301-E it is said that where the President is satisfied that a substantial proportion of the population desires the use of some other language, he may direct that such language shall also be officially recognised. I agree to that, but it seems to me that it would be better to follow the Congress Working Committee's direction in this matter and lay down a certain proportion of the population on whose demand a language may be recognised. I think the Working Committee laid down 20 per cent. and we might well adhere to that; otherwise it would become very difficult for the Central Government to decide as to where to give in and where to refuse and that might create some

confusion and a certain amount of bitterness also in certain provinces. Where a proportion is fixed, the way for the Central Government will be clear.

And then in Chapter III—"Language of the Supreme Court and High Court," the proposals put forward in are—and Mr. Ayyangar will pardon me for saying it—palpably retrograde. You have adopted Hindi as the official language. You desire, I take it, that gradually Hindi should replace English. But that can be done only when you give Hindi the opportunity to replace English at least in the Hindi provinces. I know that the non-Hindi provinces have their difficulties; but the Hindi provinces have none in regard to the use of Hindi. Do not exaggerate the difficulties. It has been said that the proper idioms, the proper phrases or the proper terminology cannot be found. Well, leave that to those who will work in Hindi. In my own province, all the original texts of Bills and enactments are in the Hindi language. Obviously our work creates no difficulties for our brethren in the South. Why should you force us to conduct all our official work in the English language, when we are already doing it in Hindi? Again you say that so far as the Supreme Court and the High Courts are concerned, their work also must for fifteen years be done in English. I agree that the Supreme Court may work in English for fifteen years, but I submit that it is not necessary that all the High Courts should work in English for that period. The High Courts may be divided into two classes. There are those High Courts—some of them newly created in the States where work in done, and has traditionally been done in Hindi. Take for instance Gwalior or Indore. I am aware that English has also been used there, some of the judges imported from outside have done their work in English and it has been permitted; and yet a good deal of work is done in Hindi simultaneously. Will you now prevent it? Similarly, there is a High Court in Rajasthan and in some of the other States also. Will you prevent these High Courts from functioning in Hindi? Under the present proposal all Hindi work in these High Courts will become impossible. I say that must be changed.

Then there is another class of High Courts: those which have been doing their work in English but which can take up Hindi in a much shorter time than fifteen years. Take the High Court in my own province, or Bihar or the C P. I am very clear in my mind that our High Court can begin to function fully in Hindi after a lapse of five years. Gradually, during the next five years, the whole procedure can be built up and can be adapted to the needs of Hindi. Terminology will present no difficulty. It is already being created. A good deal of it is there, and it is, after all, not a very difficult task to coin necessary words. Hindi is not a new language. When Ireland framed its constitution it adopted the Irish language, which had not much literature and which had not a sufficient vocabulary and yet Ireland adopted it. Our language, Hindi, is a powerful language.

Mr. Ayyangar said that that language is entirely lacking in the terminology which will be necessary. What shall I say to that proposition! He himself says that he is not conversant with that language and yet he pronounces judgment upon it. I submit that that is not fair. I, for my own part, submit that Hindi, with the resources of Sanskrit, about which so much has been said in this House and which I endorse fully—Hindi with the backing of Sanskrit, can face all the difficulties of vocabulary with ease. Even before the expiry of five years, it seems to me, we can conduct the work of the High Court in Hindi. But I say that in any case five years is a sufficient period. We do not require that for fifteen years ours work should be carried on in English. So why make it compulsory for us to continue to work in English for that long period? Give us room enough to expand and then after fifteen years all the work that matters, for example the work of the Union, will become easier of accomplishment

[The Honourable Shri Purushottam Das Tandon]

because Hindi provinces by that time will have created that atmosphere and built up that terminology which will be helpful to the whole country.

Maulana Hasrat Mohani (United Provinces : Muslim) : What do you mean by Hindi provinces ?

The Honourable Shri Purushottam Das Tandon : I am referring to those provinces which have adopted Hindi as their language; for example, the United Provinces has formally adopted Hindi as its language : so has Bihar . . .

Maulana Hasrat Mohani : The United Provinces is either a Urdu province or a Hindustani province. It cannot be a Hindi-speaking province.

The Honourable Shri Purushottam Das Tandon : That may be your view. I do not propose to go into that controversy about Hindi, Hindustani, or Urdu. All I say is that Hindi has been adopted as the official language of the United Provinces and it is the language in which all the official measures and enactments are being passed today. Undoubtedly, a good deal of work is still being done in English, but by and by that work will also be done through the medium of the Hindi language. These are the smaller modifications which I have suggested.

Now, I come to the main amendment in 301-A, which relates to numerals. I know, Sir, that controversy over the numerals has created a certain amount of bitterness. I would be the last man to add to that bitterness. I would as far as possible remove it. I know that our Madras friends want to change the Hindi numerals.

Honourable Members : Bengal also !

The Honourable Shri Purushottam Das Tandon : If I am wrong you can correct me; but I never heard that from my Bengal friends.

Honourable Members : Bombay also. As a matter of fact, all non-Hindi speaking people.

The Honourable Shri Purushottam Das Tandon : My submission is that it is not correct, to say the least of it, that all non-Hindi areas want that change. I ask Mr. Shankarrao Deo and Dr. Ambedkar, who are sitting here, to tell me whether the people of Maharashtra are going to accept it.

Shri Shankarrao Deo : I say that whatever stand I take the Maharashtrians will take that stand too.

The Honourable Shri Purushottam Das Tandon : From my knowledge of Maharashtra I submit, because the script is the same, that if there is a referendum there, the people of Maharashtra will not accept the so-called international numerals.

Honourable Members : If there is a referendum in India Hindi will go !

The Honourable Shri Purushottam Das Tandon : I would beg of honourable Members to interrupt me one by one and not many at a time. I shall be happy to hear Mr. Shankarrao Deo and Dr. Ambedkar.

The Honourable Dr. Syama Prasad Mookerjee : Why not refer it to a referendum ?

Shri H. J. Khandekar (C. P. & Berar : General) : I am a Maharashtrian and I can say that if referendum is taken in Maharashtra they would not accept the international numerals.

Dr. P. S. Deshmukh (C. P. & Berar : General) : I am a Maharashtrian too and I can say that they would not accept the international numerals.

Mr. President : It is not necessary that individual Members should express their opinion on any particular proposition.

The Honourable Dr. Syama Prasad Mookerjee : The honourable Member is asking for opinions.

The Honourable Shri Purushottam Das Tandon : I submitted my view. You may agree with it or not. I did not ask Dr. Syama Prasad Mookerjee to express his opinion. What I said was, and I say it now and here, that if this proposition goes to the people of Maharashtra, they will not accept it. I am also in touch with that province. And I say, in spite of what my Friend, Mr. Munshi, may say, that when this provision goes into the hands of the Gujaratis, they will not accept it either.

(*Interruption from several honourable Members*)

Is it necessary for so many persons to speak at the same time? If one man interrupts I can hear him but when four or five people speak at the same time I cannot hear any of them.

I have heard Mr. Shankarrao Deo. He says that if the whole Constitution is referred to the people they will not accept it.

Shri Shankarrao Deo : Much of it.

The Honourable Shri Purushottam Das Tandon : If that is so then much of it is fit to be thrown into the waste paper basket. If there is any part of the Constitution which will not be accepted by the people then it must not be accepted here. I submit in all humility that I would gladly accept a referendum to the whole country. If the provinces do not accept Hindi, I would be the last man to force it upon them. I would then say at once that Hindi must not be the national language. Why should Hindi be forced upon any province? It is for the provinces to decide whether they will or will not accept Hindi. They may continue with English or have an *Esperanto* if they like. I would agree to that entirely, if that is their view. But let some way be found for ascertaining the wish of the people. A gallup-pool has recently been taken by a body of students. We have read about it. Another method for gathering the views of the masses may be attempted in the whole country. Let that the done in Madras also. Whatever my friends here may say I am hopeful that a very large number of people in Madras will desire Hindi.

Several honourable Members : No, No.

The Honourable Shri Purushottam Das Tandon : But if there is no such reference to the people possible, I would appeal to all those who are in power today to listen to the small voice in their hearts and not to accept even one little thing which they feel is not likely to be accepted by the people.....

Maulana Hasrat Mohani : I demand a referendum in U.P. on whether it is to be a Hindi or Hindustani province. Not a single person speaks Hindi in the Sanskritised form there.

Mr. President : May I just point out that this Constituent Assembly has been charged with the duty of framing a constitution for the country? There is no provision in the Constitution of this Assembly for any referendum and therefore there is no question of a referendum either on the whole or a part of it. So that need not give rise to any controversy, because it would be futile.

The Honourable Shri Purushottam Das Tandon : I appeal to those who are in power to think over the matter. I do not propose that this matter should

[The Honourable Shri Purushottam Das Tandon]

now go to a direct referendum. What is a referendum? It simply means the will of the people. If it was left to the people, what would they say?.....

Mr. President: So far as the Constituent Assembly is concerned it reflects the will of the people.

The Honourable Shri R. R. Diwakar (Bombay: General): Sir, what the honourable Member says is a reflection on the Members of this Assembly.

The Honourable Shri Purushottam Das Tandon: If every time we refer to the will of the people it is objected that that is a reflection on the Members of the House it would become impossible to proceed. Sometimes the views of the House may differ from the will of the people. So far as the question of numerals is concerned I ask you to reflect upon it. Perhaps you have made up your minds. Yet I ask you to listen to what I say. Do not get warmed up over this issue about numerals.....

The Honourable Dr. Syama Prasad Mookerjee (West Bengal: General): It is a warning for us.

The Honourable Shri Purushottam Das Tandon: You have made up your minds and you want to laugh at your opponents. It ill becomes you. I am serious about this question. I know that Mr. Ayyangar is serious about it. It is a matter which concerns the future of our people.

We have been speaking of a national language for years and years. It is not a new subject before the House. It was in the 19th century that this idea of a national language took shape in Bengal, not in U.P. or Bihar. I can quote to you extracts but I do not wish to take up the time of the House. I have with me the original of what Bankim Chandra Chatterjee wrote. I have the original of what Keshub Chandra Sen said on the subject. I have the original before me of what was written in 1908 by the 'Bandemataram', the editor of which was Shri Arabindo Ghose.....

Pandit Lakshmi Kanta Maitra (West Bengal: General): We have been amply rewarded for all that!

The Honourable Shri Purushottam Das Tandon: That idea took shape there and then Tilak supported it and Mahatma Gandhi, the Father of the Nation, took it up. My point is that this movement has been there for years and people have worked in accordance with certain ideas about the acceptance of Hindi as the national language. It has been taken for granted more or less that Hindi is the national language and work has been going on in different provinces on that assumption.

A few minutes ago I spoke of the work done in Madras. I may also mention that in Bengal, Assam, Maharashtra, Gujerat and Orissa that work has gone on for years. Today examinations are conducted from Wardha in Hindi and about 1,40,000 young men and women annually appear for them—young men and women who do not belong to Hindi-speaking provinces but who come from non-Hindi speaking regions. That shows that it is not a new idea, that there is work on the basis of that idea to the credit of the country.

May I ask how long has this idea about the numerals been before the country? No member could have the courage of coming before this Assembly with a proposition about the acceptance of the Hindi language if that language had not already been more or less accepted by the people for years and years. It is on that basis that that clause in the Draft Constitution relating to language has been framed. But how long have people been discussing about these numerals? Only for about two or three weeks.

The Honourable Shri K. Santhanam (Madras : General) : I may inform the honourable Member that this question came up before us in the South in connection with the Hindi Prachar Sabha at least fifteen years ago and we decided that Hindi Prachar in the South should be conducted with international numerals.

The Honourable Shri Purushottam Das Tandon : I accept Mr. Santhanam's statement as correct. I never knew about it. But neither Mr. Santhanam nor the Hindi Prachar Sabha of Madras ever brought up this question before the country.

Shri Moturi Satyanarayana (Madras : General) : You yourself were there on the Hindi Prachar Sabha fifteen years back ?

The Honourable Shri Purushottam Das Tandon : When I was in touch with the Hindi Prachar Sabha, it was the Nagari digits that were being used. I may give that information to my honourable Friend Mr. Satyanarayana whose connection with that Sabha, began long after mine. When I had something to do with that Sabha, when that Sabha was being guided from Allahabad all the work was being done through the Hindi numerals. It was at a later stage that he probably brought in the English numerals: and even today, I may remind him, some at least of the Hindi books that he has published have Nagari numerals. I have seen at least one of them.

Shri M. Satyanarayana : It was in 1927.

The Honourable Shri R. R. Diwakar : What about Hindi, Punjabi, Urdu who are using these numerals today ?

The Honourable Shri Purushottam Das Tadon : When you are adopting Hindi as the language, adopt also its numerals. I ask you to consider whether this is the proper time, when the country is not prepared with any views on that matter, to force English numerals upon Hindi ? I have said so many times that I would not force Hindi upon any province, but by the Constitution you are practically forcing this script for all official purposes upon all those who do their work through the Nagari script. I ask you to stay your hand there. The Prime Minister has repeatedly said that languages grow, that they are not born in a day. He has said that several times. (*A voice—He is right*). He is right. Languages grow. But the numerals grow also. (*Interruption.*) The numerals grow also, they have grown. (*Interruption.*) The numerals have grown along with the script. The script grows like the language which uses it. The script is not born in a day. It has grown with all parts of it, the vowels, the consonants and the numerals. It is one artistic whole. You cannot patch something upon the face of that whole. Today you say, "Take out the Nagari numerals." You might as well say—though you are not saying it today—"Take out the vowels, let the English vowels be used and let the consonants alone be Hindi". I say you would be creatnig a monstrosity.

The Honourable Shri N. Gopalaswamy Ayyangar (Madras : General) : That is is a caricature.

The Honourable Shri Purushottam Das Tandon : My friend says that is a caricature. He sees the absurdity of taking away the vowels. So far as we are concerned, we also see the absurdity of taking away the numerals. It does nobody any good. You are taking away something from us which does not enrich you but makes us poor indeed.

Our numerals are an ancient heritage. It has sometimes been said that these English numerals are our numerals and the question has been put : why should we not take them back ? As if we had lost our numerals and we are

[The Honourable Shri Purushottam Das Tandon]

going to re-possess them! Nothing of the kind. The knowledge of these numerals certainly went to Europe through Arabia from our country. We are all proud of that fact. There are many other matters in which Europe is indebted to us. But that does not mean that an object which has grown amongst us should be given up and we must bring back in their changed forms those things which originally went from here. They have modified their forms according to their needs and we have modified our forms in consonance with our genius. Circumstances and environments everywhere introduce changes. Changes have been made in our country also. Our numerals have grown as I said. They were written in a certain manner during Vedic times. Then changes came and for about sixteen centuries they have been written in the present style. Are we to give up now what has been used here for such a long time? I say internationalism is no argument and it is not fair that our people should suddenly in this manner be asked to give up their own numerals.

The Honourable Shri R. R. Diwakar: We are using them in the South today.

The Honourable Shri Purushottam Das Tandon: I would beg of Mr. Diwakar to be patient. He can have his chance afterwards.

It has been authoritatively said in regard to the Devanagari script including the numerals, that our system is the most perfect that exists in the world. I shall quote to you one or two extracts, although I have many before me. Here is one from Prof Monier Williams:

"And now a few words in explanation of the Deva-Nagari or Hindu system. This, although deficient in two important symbols, 'represented in the Roman by z and f, ...

(which deficiency as you know, has been made up by means of dots).

".....is, on the whole, the most perfect and symmetrical of all known alphabets. The Hindus hold that it came directly from the Gods—whence its name (*i.e. Devanagari*) and truly its wonderful adaptation to the symmetry of the sacred Sanskrit seems almost to raise it above the level of human inventions."

The late Sir Isaac Pitman, the great English inventor of phonography said:

"If in the world we have any alphabets the most perfect, it is those Hindi ones"

I shall refrain from reading other extracts.

Some friends suggested that the Roman script should be adopted. It is for them to think over the extracts which I have just read out. My view is that it is possible that when our country grows in strength the European nations may themselves be drawn more and more to see the excellence of our alphabet. This question of romanising our language was raised in the 19th century also. Some of the savants of England wanted that the people here should be given education through the medium of the Roman script. There was a long controversy over it and at last it was decided by the British Government that the Roman script could not profitably be used in this country and that the Nagari script was the most suitable. It is too late in the day now to think of Romanising our language. I hope that question will not be pressed.

Then, Sir, something was said about the adoption of Sanskrit. I bow to those who love Sanskrit. I am one of them. I love Sanskrit. I think every Indian born in this country should learn Sanskrit. Sanskrit preserves our ancient heritage for us. But today it seems to me—if it could be adopted I would be happy and I would vote for it—but it seems to me that it is not a practicable proposition that Sanskrit should be adopted as the official language.

Pandit Lakshmi Kanta Maitra : After fifteen years it will be all right, though it is not today.

The Honourable Shri Purushottam Das Tandon : I do not think that today in our Constitution it will be possible for us to say that Sanskrit should take the place of Hindi. I think the most practical view is to adopt Hindi as the language for official purposes.

Shri Mahavir Tyagi : What is your amendment about numerals, Sir ?

The Honourable Shri Purushottam Das Tandon : Therefore my submission is that in this perfect Devanagari script which has come down to us from time immemorial we should have Hindi as the official language. It is not right that all of a sudden, when the public have not been educated about it, when the subject has not been before them for a sufficiently long time, the Constituent Assembly should decide that Nagari numerals should be taken out of that script and the so-called international numerals or English numerals should take their place. There is some feeling among Members from South India about using the English numerals since they are using them in their languages, I am a man of peace. I do not desire to have any quarrel as far as possible.

My Friend Dr. S. P. Mookerjee made a kind of personal appeal to me. I am grateful to him for it. I also wish that our language resolution could be passed unanimously. With that object, although I feel strongly that Devanagari numerals should not be interfered with in any manner, in order to meet the wishes of our friends from the South I have come forward with a formula. I hope that it will be possible for you to accept it. I say : let both Indian and international numerals be recognised for the purpose of the Devanagari script for fifteen years and let the President, that is the Government, decide from time to time as to where one set of numerals is to be used and where the other set is to be used. The Government work will for a long number of years be done in English. Some friends, particularly Shri T. T. Krishnamachari, suggested to me that for statistics, for accounting and for banking, the international numerals should be allowed. I saw that they were keen about that. Therefore in one of the sub-clauses I have provided that so far as these matters are concerned, during this whole period of fifteen years, only the English language should be used, so that the main purpose for which the international numerals are wanted will be served by the English language, employing the English numerals as a matter of course. I do not suppose any one desires that English numerals should be used for printing ordinary Hindi books. But even there I have left it to the Government. If Government desire that for any particular work English numerals may be used, they may do so. They may use Hindi numerals only when they think them necessary.

I appeal to you to accept the compromise and not to insist that for ever and for ever international numerals should be substituted for the Devanagari numerals. (*Interruption.*) I appeal to you not to pass that proposition here, because you will be then very hard on people who been using Hindi. Their minds are thoroughly unprepared for this kind of change. (*Interruption.*) After we have adopted the Devanagari as the official script and Hindi as the national language, it would be up to all of us to meet in Conventions and decide what changes we should introduce in the Nagari character. Our system is perfect, but the shapes of some letters require a change. Also some new letters will have to be added.

I submit it will be possible for all of us, after accepting the Nagari script as it is today, and it will be necessary for the Government of India in particular, to hold conferences to consider what changes should be made in the script and in the numerals for the needs of the modern times. The Prime Minister mentioned that for purposes of composing matter for the Press the international

[The Honourable Shri Purushottam Das Tandon]

numerals were more suitable. With all deference to him I say that he is not acquainted with the details of press work. The information given to me by press workers with whom I have come in contact is that it makes absolutely no difference at all whether they have to use Hindi or international numerals. The best composing work is done on monotype or linotype machines. In fact, I submit, our numerals are more artistic and more in keeping with the shapes of our letters. I appeal to you to accept the compromise in the spirit in which I have placed it before you. I ask you to save further bitterness. Otherwise, this thing cannot stop here. Do you think there would be no agitation over this matter? This thing is bound to rankle in the hearts of those who have been using these numerals and love them—whether they be Hindi-speaking, or Marathi-speaking or Gujarati-speaking. We are not meddling with your Tamil or Telugu scripts at all, but here you are meddling with our Nagari script.

Shri L. Krishnaswami Bharathi (Madras : General) : It is only for official purposes.

The Honourable Shri Purushottam Das Tandon : I know it is only for official purposes of the Government of India. But once the Government of India begins this thing, it is bound to filter down and to spread as the Government is the centre of all activity. That is why we object to it. If you will kindly listen to me, I would request you in all humility to accept the compromise which I have placed before you and to adopt my amendments.

The Honourable Maulana Abul Kalam Azad (United Provinces : Muslim): *[Mr. President! I shall take some time of the House. I have come here to apprise you of my opinion about the language; also I would tell you the object with which I gave my advice to the Congress Party and the procedure adopted by the Drafting Committee, thereupon. I will place before you all these facts and through you will bring them to the notice of the country.

In this connection many questions came before us. The first question was as to how we could remove English from the position it has come to occupy in the Governmental machinery and in the sphere of education,—whether it should be set aside immediately or gradually. You will remember that two years ago I had expressed my opinion that we should wait at least for five years. In other words, English should remain in its place in the universities and in the government offices for five years and that after this period a change in procedure be ushered in and during this interval we should try to bring our national language on such a footing that it can easily replace English.

My opinion that English should not be brushed aside immediately was generally appreciated, but the time limit fixed by me was acceptable only to a very small number of my friends. Particularly my friends from South and Bengal were of the opinion that a much longer period was required for that, and that for such an important change a period of five years will not be sufficient. I admit that experience of work and contemplation forced me to a similar conclusion as that of my friends. Now I feel that my estimate was not correct. In no way can we cover this distance in five or six years. I am in full agreement with the amendment of Shri Ayyangar that a period of at least fifteen years be fixed for it. You know very well that nobody can be more eager in seeing our national language reigning supreme instead of English.

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*[ ] Translation of Hindustani Speech.

Perhaps it would not be out of the place if I tell you that I am the first man who tried in the Assembly that Hindustani be heard from the government benches instead of English. But considering the *pros* and *cons* of the matter I had to come to this conclusion that the matter could not be brought to reality merely by sentiments and wishes. We must realise the difficulties of the situation and formulate conclusion accordingly.

Two great obstacles stand in our way. The first difficulty is that there is no national language as such which can immediately take the place of English. Time is needed to evolve it, brush it, and polish it. So far as the administration of the government offices and the imparting of higher education is concerned, none of our languages can all of a sudden claim the position of English. Though admission of this fact gives us heart-burning, we have to admit it with regret. During these one and a half centuries of the British rule, if our national language had been used in the administration and academic spheres then surely today our national language would have attained the same status with the other rich languages of the world, but unfortunately it was not so. The language of administration and instruction has been English with the result that today we are forced to carry on our state and private business through the medium of English. The other obstacle is the non-existence of a common language in our country. If we try to bring immediately our national language in place of English, then, which can be that language which is read and written alike throughout the whole country? No doubt the language of Northern India is widely spoken and understood: but, firstly, it is not spoken and written everywhere, and secondly, the South does not come under its domain. There you will come across only a very small section of population which can express itself in broken Hindi. We have got to admit that so far as language is concerned North and South are two different parts. The union of North and South has been made possible only through the medium of English. If today we give up English then this linguistic relationship will cease to exist.

Today, if we desire to replace English by our national language which would be the national as well as the Federal language, then there is no other way but to wait patiently and try to introduce instruction in the national language widespread, while keeping English for some time. In this we require the goodwill and co-operation of our brethren of the South more than of anybody else. Unless and until they lend us their hearty support, we cannot succeed in our mission. With full willingness they have asked for a period of fifteen years and it behoves us to accept that with pleasure. If such an important problem as, that of a national language can be solved only within fifteen years than we should accept the bargain because it is very easily settled, and at the same time a very complex problem of the national life will be solved with ease.

In the life of a nation and a country a period of fifteen years is not long—nay it will not be more than fifteen days. To this some friends have raised this objection that this decision will have its repercussions on the provinces as well, though the fact is that some Provinces have already replaced English and some universities have decided that in the near future university education will be imparted through the medium of our national language. In this connection the names of two universities of the Central Provinces have been mentioned. I have no hesitation in saying that such a hasty decision will not benefit the object of having a national language. I am afraid that in this way the standard of education will suffer a set-back and it will not be in the interests of the academic capability of the students. The governments and the universities of the Provinces were aware of the fact that the Government of India are considering this matter and that a University Commission had been constituted which would consider this important matter in addition to other educational problems. It was necessary that they should have awaited the recommendations of the

[The Honourable Maulana Abul Kalam Azad]

Commission and should have acted after due consideration. By acting divergently in the field of education we would not be serving the educational life of the country.

The Honourable Shri Ravi Shanker Shukla : I would like to inform you that this decision was taken by the University three years ago and the University Commission has been set up now.

The Honourable Maulana Abul Kalam Azad : That is right. They decided upon it three years ago, but we have to see whether this decision was expedient or not. I have no doubt that this decision does not fit in with what is expedient concerning our education and it is necessary to reconsider it. The Government are in possession of the recommendations of the University Commission. Government will take an early opportunity to consider them.

I know that you will agree with me that in this connection the universities should not have different decisions. On the other hand, the country should act upon one uniform decision.

So far as education is concerned I am not of the opinion that we should wait for fifteen years. We can bring about this change earlier, provided that we prepare ourselves on the right lines. But any such change which is brought about immediately will surely be a wrong step, and it will put higher education in a topsy-turvey condition.

In this connection the question of courts has also come before us. It is my firm conviction that for fifteen years, English should be continued in the High Courts. If we replace English in haste, then legal tangles of various kinds will crop up. Over and above this, there would not be any common relationship or uniformity of language between the different courts of the provinces. This change should be ushered in only when a national language can be read and written in every part of the country and becomes mature enough for the expression of highly technical subjects. Surely for this work a period of fifteen years will not be too long.

Regarding language another question which confronts us is what should be our national language, what name should be given to it ?

So far as language in concerned, this has been admitted on all hands that the language spoken in Northern India can only be made the *Lingua Franca,* but it has got three names—Urdu, Hindi and Hindustani. Now, the point of dispute is as to what name should be given to it. Naturally, with different names are associated different forms and styles of the language; so in reality it is not a quarrel about the names but about the form or style. I want to give you a brief resume of the points of difference in these three names.

The general framework or the setup of the language spoken all over Northern India is one and the same, but in its literary style it has got two names—a style resplendent with Persian is called Urdu and a style leaning towards Sanskrit is known as Hindi. The term "Hindustani" has developed a wider connotation; it embraces all forms of the language spoken in Northern India. It includes 'Hindi' as well as 'Urdu' and even more than that. It includes each and every shade of the spoken language of the North. It does not exclude any. It covers all.

It was on my suggestion that, about a quarter of century ago, the All-India-Congress Committee, when the question was before it, decided in favour of

Hindustani. The object behind the decision was that in this language question we should not act with narrow-mindedness; rather we should try to extend its field. By adopting the name of "Hindustani" we had tried to do away with the differences that separated Urdu and Hindi, because when we try to speak in or write easy Hindi and easy Urdu then both becomes identical, and the distinction of Hindi and Urdu disappears. In the new framework of this easy vehicle of expression you can coin as many new words and new phrases as you please; there would be no obstacle. Besides, by adopting the name of Hindustani we leave untouched that vast and extensive field which the people of North India have created for their language. We do not put any check or obstacle upon them from above.

Think for a moment of the position in which people of this area find themselves today! Only seventy or eighty years ago Urdu language was spoken and written by them. The movement for Hindi was started much later and a new literary style came into being which was known as Hindi. Now Urdu and Hindi are being used as two separate names for it. Even then, the language commonly spoken all over U.P., C.P., Bihar and Punjab is the same in shape and form. Those who have a liking for Sanskrit literature generally use words of Sanskrit origin and those who have got Persian education commonly use words of Persian origin. What the Congress had decided was that in Hindustani both these styles were included. They all speak Hindustani. If we want to develop a powerful, extensive and a literary language then we ought not to place any artificial obstacles in its way. We should let people speak the language they desire. After sometime a peculiar style would evolve by itself; words which are more natural and near to the rules of philology would come to stay in common use and uncommon words would be dropped out. Literary languages are not made to order by imposing artificial rules and checks. Languages are never made; they evolve. They are never given a shape; they shape themselves. You cannot shut the mouths of people by artificial locks. If you do that, you will fail. Your locks would drop down. The law of language is beyond your reach; you can legislate for every other thing but not for ordering its natural evolution. That takes its own course, and only through that course it would reach its culmination.

Anyway, by adopting the name of Hindustani, Congress had recognised that natural law according to which languages evolve. Congress only wanted to save it from artificial restrictions. Both Gandhiji and the Congress acted on this principle. He toured all over the country and everywhere he spoke in Hindustani. He did not belong to Delhi or Lucknow. He was brought up in Kathiawar. His Hindustani was neither literary Urdu nor literary Hindi, but an inter-mixture of both. In his vocabulary were many a words and phrases current in Bombay and Gujarat and he used them quite freely. Even then, the language he spoke was Hindustani, and through its medium his message did reach millions of Indians. If you look at the Congress you will see to what a great extent it has been influenced by him. Prior to his coming speeches only in English used to be made from the Congress platform, but since his arrival Hindustani came into vogue and upto this day speeches are made in Hindustani. But his Hindustani was neither the idiomatic Urdu of Delhi or Lucknow nor the Sanskritised Hindi of Banares. The language used by him was wider and more expansive. Any speaker could express himself freely in that language according to his own taste and learning and could make himself intelligible to thousands of his countrymen. Urdu-knowing people could speak in Urdu while Hindi-knowing people could speak in Hindi. A speaker from Bombay would use Bombay-style Hindustani, while a Bengali speaker would speak in Hindustani with his own accent and style. All of them are covered by the wider term of 'Hindustani'. Hindustani has a place for all these styles.

It is necessary for us to maintain this extensive character of the language, rather we should let it grow wider and richer. We should not try to keep

[The Honourable Maulana Abul Kalam Azad]

it confined in any limited sphere. We have to replace English, which is a literary and extensive language, with a national language. That can only be done by making our own language rich and extensive rather than limiting its scope and extent, if you call it 'Urdu' then surely you narrow down its circle; likewise if you name it 'Hindi' you limit its extent, therefore by giving it the name of 'Hindustani' alone, you can widen its scope. It is the exact and right word which describes the real state of our language for the present.

For these reasons I have held this opinion for the last so many years that our national language should be called 'Hindustani'. I need not say that Gandhiji also held the same view upto the end. That was why he had started "Hindustani Pracharni Sabha", and had severed his connections from the Hindi Sahitya Sammelan. Now, when in connection with this Constitution this question came up before the Congress Party, naturally I emphasised the same view and I had hoped that at least the older congressmen would not forsake their previous stand and would continue to adhere to the Gandhian principles; but I need not hide my own feelings from you when I say that I was greatly disappointed. I realized that with few exceptions all have retraced their steps.

As you are aware, in the party meeting this question was thrashed out for several days, but they could not arrive at any conclusion. The question of fixing a time-limit for the retention of English and enforcement of the new change was the focus of the greater part of these discussions. Several fresh resolutions relating to language were also introduced. One resolution was to retain the word "Hindi" in the Constitution with this interpretation that Hindi includes that style of language also which is commonly known as Urdu. The object was to create that expensive spirit in "Hindi" which is associated with the name of "Hindustani". At last, the question was left to the Drafting Committee with the request to prepare a fresh draft of this part for the consideration of the party in the light of all those resolutions which were moved during the discussions in the party meeting. Several new members were also added to the Drafting Committee. I was also one of the members.

I attended the first meeting of the Committee, but I felt that the majority of members had a particular type of pre-conceived motion and they could not agree to adopt "Hindustani" in place of "Hindi", nor were they prepared to accept any such interpretation which can widen the scope of "Hindi". In the circumstances I could not associate myself with this Committee. Therefore I resigned and severed my connection with the Committee.

After my resignation this question was raised in the Committee afresh and an effort was made to introduce breadth of vision in solving the problem to a certain extent. The amendment of Mr. Ayyangar which he had moved in the party meetings was a product of this effort. It is the same amendment which is now before you for your consideration.

This amendment has introduced several alterations in the original Draft which are worthy of consideration :—

(1) So far the name of the language is concerned, the name given in the original draft, namely "Hindi" has been retained. Then again an effort has been made to explain the characteristic of "Hindi" by adding an Article and it has been emphasised that it includes "Hindustani" also.

(2) It has been emphasised that India has a "composite culture", and the national language of India should be the focus of this "composite culture."

(3) Regarding Urdu it has been made clear that it is one of the recognized languages.....of the country.

So far Urdu is concerned, all of a sudden the events had taken such a turn that in future it might have affected the rights of millions of people, but this amendment has removed that apprehension to a great extent. Although Urdu had spread throughout the length and breadth of Northern India, yet in point of fact, U.P. was its place of birth and growth. After the downfall of Delhi, Lucknow became the centre of its activities, and in the 18th and 19th centuries, it gave to this country a fully developed language. If according to the previous decision of the Congress, "Hindustani" in two scripts would have been accepted, then the question of Urdu would not have been taken separately; for in that case according to the commonly accepted concept. Urdu would have been a part and parcel of "Hindustani" and to be sure, eventually after mutual assimilation the language would have taken a definite shape; this was not done and "Hindi" was adopted in place of "Hindustani". In the circumstances, fact and fair play demanded that Urdu should have been given official recognition at least in its place of birth, namely, U.P. But it has not been done and "Hidi" in one script has been accepted as the official language.

Naturally the question arose whether Urdu will have any place in the Indian Union? True, if a language is spoken by millions of people in their day-to-day life, its life need not depend on the recognition or non-recognition of any Government, as long as the people themselves do not give it up by common consent. None can compel them to renounce it. Nevertheless it would have been inappropriate for the Democratic Constitution of the country not to acknowledge a language which is the common heritage of millions of Hindus and Muslims, and which is their mother-tongue. This amendment has made it abundantly clear that Urdu is also one of the recognized languages of the country and it will receive same treatment at the hands of the Government which all the recognized languages should receive. Perhaps I should also tell you that the interpretation of language given in this article was not included in the Constitution at first; it was placed under Directives. But later on it was incorporated in the Const tution as an irrevocable article. This alteration made the position of Urdu more manifest and firm.

So far as the question of script is concerned, the decision of the Congress was to adopt both the scripts, namely, both Devanagari and Urdu scripts. There was objection against this decision on the ground that if acceptance of both the script involves the commitment of giving equal right to both the scripts for the documents in the Government offices then it would create difficulties, for the reason that offices will have to work harder and that expenses would increase. I had felt the full weight of this argument and had agreed to adopt Devanagari as the script for Government offices. At the same time I had emphasised that all the Government declarations, resolutions, communiques and other similar documents should be published in both the scripts and that Government offices and courts should accept applications and petitions in both the scripts. I had also emphasised that this proposal should be incorporated in the Constitution; but this was not accepted. True, the right of the people to submit petitions in the recognized languages of the Indian Union has been accepted.

I do not propose, because I do not think it necessary to conceal the impression which I have got during the discussions over this problem. I was totally disappointed to find out that from one end to the other, narrow-mindedness reigned supreme. Do you know what is narrow-mindedness? Narrow-mindedness means pettiness and density of mind and refusal to accept higher, nobler and purer thoughts. I would like to tell you that with such small minds we cannot aspire to be a great nation in the world. It was this narrow-mindedness which was the product of a later period, which had buried the glory and advancement of ancient India in the darkness of gloom; and the danger is that

[The Honourable Maulana Abul Kalam Azad]

once again we are succumbing to this tendency. Of all the arguments employed against "Hindustani", greatest emphasis has been laid on the point that if "Hindustani" is accepted then Urdu also will have to be accommodated. But I would like to tell you that by accommodating Urdu, the heavens will not come down. After all Urdu is one of the Indian Languages. It was born and bred and brought up in India and it is the mother-tongue of millions of Hindus and Muslims of this country. Even today this is the language which serves the purpose of a medium of expression between different provinces and it is the only means of inter-provincial relations. Why should we allow our minds to be prejudiced to this extent against one of the languages of our country? Why should we allow ourselves to be swept away by the currents of our narrow-mindedness to such a great distance?

My friends would pardon me if I say that I have witnessed an exhibition of this narrow-mindedness during the debates on numerals. One may differ from those who want international numerals in place of Devanagari numerals, but I fail to understand why it should create bitter passions and why it should be opposed so vehemently. After all it is a small matter. Again and again it has been emphasised that why should we borrow anything from another country when we have our own. But this is altogether baseless. These numerals, which are in use among all European nations today, are really a gift from India, which we had given to the world centuries ago. If we are going to adopt them today we are taking back our own thing.

These Indian numerals first reached Arabia, then from Arabia they reached Europe. This is the reason why in Europe they were known as Arabic numerals, though they originated from India. This style of the numerals is the greatest scientific invention of India, which she is rightly entitled to be proud of, and today the whole world recognises it. The story of how these numerals had reached Arabia has been preserved in the pages of history.

In the eighth century A.D. during the reign of the second Abbaside Caliph, Al Mansoor a party of the Indian Vedic physicians had reached Baghdad and had got admittance at the court of Al Mansoor. A certain physician of this party was a specialist in astronomy and he had Brahmaguptas' book "Siddhanta" with him. Al Mansoor, having learnt this, ordered an Arab philosopher, Ibraheem Algazari, to translate the "Siddhanta" into Arabic with the help of the Indian scholar. It is said that the Arabs learnt about the Indian numerals in connection with this translation, and having seen its overwhelming advantage, they at once adopted it in Arabic. Like Latin, in Arabic also there were no specific symbols for counting figures. Every number and figure was expressed in words. In cases of abbreviations various letters were made use of, which were given certain numerals values. At that time Indian numerals put before them a very easy way of counting. They became famous as Arabic numerals. And after reaching Europe they took that form in which we find them in International numerals at present.

I have emphasised that these numerals are India's own. It is not a foreign thing. But suppose it is an European invention. But if in accounting and arithmetic these are more clear, more striking and more useful, then why should we not adopt them without any hesitation? Why should their use become objectionable for us, on the ground that they belong to some other country? Surely you cannot deny the fact that the form of these numerals is more clear and more striking than the form of the Devanagari numerals. These can be identified more easily. In their aggregate form they look more prominent, more clear and more beautiful. Everybody would admit that in arithmetic and accounting these numerals are more useful than other numerals.

Shri Jaspat Roy Kapoor (United Provinces : General) : Since when has this thing been experienced ?

The Honourable Maulana Abul Kalam Azad : This peculiarity of these numerals has attained this fame since the beginning of the popularity of these numerals. I shall tell you about the other oriental countries. Almost in all the oriental countries these numerals have been adopted. Even those people who do not know European languages have learnt these numerals and use them. However, so far as the question of numerals is concerned, I totally agree with the amendment of Mr. Ayyangar and I am glad that this essential reform is being worked upon.

So far as the question of language is concerned I have expressed my views clearly. I am sorry that the problem of language has not been settled in the way in which it ought to have been settled. I and some of my colleagues tried to solve this problem, but at last we realized that in the present circumstances no improvement can be made on Mr. Ayyangar's formula.

Today you will decide that the national language of the Indian Union will be "Hindi". You may decide that. There is nothing substantial in the name of "Hindi". The real problem is the question of the characteristic of the language. We wanted to keep it in its real form by calling it "Hindustani" Your majority did not agree to it. But it is still in the hands of our countrymen not to allow the shape of Hindi to be deformed and instead of making it an artificial language let it remain an easy and intelligible medium of expression. Let us hope that the present atmosphere of narrow-mindedness which is the residue of the past misfortune will not last long and very soon such an environment will be created in which people freeing themselves from all sorts of sentiments would see the problem of language in its real and true perspective.

Mr. President, I have already taken much time of the House and I shall not burden the attention of my friends any longer.

I have finished.

Dr. Raghu Vira (C. P. & Berar : General) : Mr. President, so far the consideration of the language question has been by persons who have been predominently carried away by political considerations. Heat has been brought into problems which ought to have been considered with perfect coolness, and here agreement or disagreement would not, or should not have mattered in the least. My predecessor, the Honourable Maulana Saheb, has brought to our notice a very important item of nomenclature, namely, Hindi and Hindustani. Ordinarily these names may not have much different significance attached to them. But in the history of the last one century and a half the two words—Hindi and Hindustani—have come to connote very different things. Unfortunately they have been taken up by opposing political parties in the country and given different connotations. They have made an effort to change the connotation of the word Hindustani and there now seem to be a great difference of opinion about Hindi and Urdu also.

The difference was exactly brought out by a European Philologist, Mr. Grouse, and this is what he said long ago about Urdu and there is no difference of opinion on it. "Urdu" is a Turkish word and we are familiar with the word in another form, the English word "horde" as in "military hordes". The word Urdu is clear in its connotation. I shall not be mincing matters when I say that the protagonists of Urdu have a responsibility on them and I hope they will not shirk it. It lies in the manner in which they started the bifurcation in the 19th century.

[Dr. Raghu Vira]

In the beginning the difference between Hindi and Urdu literature was not great. If I had time at my disposal I would give you quotations and authorities from the 19th century. The writers of Urdu in the 19th century made it a law or an article of faith that not a single literary word shall be derived from Indian sources. While they took the grammar and construction of the language from India, the literary inspiration and other factors were taken from Arabic and Persian. In the 19th century it was felt that the loss which people had sustained from the disappearance of Persian had to be made up by rearing up Urdu. There are quotations without number from European writers in the 19th century who have made it clear beyond a shadow of doubt that the loss of Persian was a loss to the Muslim conquerors, a loss to the language of the Emperors. So that loss had to be made up. It was said that the streets of Lucknow should be transformed into the streets of Ispahan in Persia.

So, the tradition was developed in the 19th century whereby Urdu became the repository of Persian and Arabic words and culture. There was a reaction in the same 19th century and hence developed the Hindi literature which had for its basis and structure the same language which was the basis of Urdu but whose literary tradition was native to the soil. This difference went on developing and developing until today we find two literatures, which though they had the same basis have developed differently.

Then there is the third word, Hindustani. This word has been interpreted differently by different writers. As a student of languages I have myself tried to come to some conclusion whether we could or could not use the word Hindustani in one and one sense only. I have found it impossible. It is not a case where the Assembly can give a definite meaning to the word which has been used in different senses. In the Indian army the word Hindustani has been used widely, more widely than the word Urdu. Hundreds of books have been published. A few days ago I collected a number of books which bore the title Hindustani. I went to the bazar in Delhi and collected all the books I could and here I have one of the very important books published in Germany by Germans. It is "Hindustani Conversation—Grammar." From the beginning to the end, it is Urdu and nothing but Urdu. There are thousands and thousands of passages where Hindustani means nothing but Urdu. There are other passages though rare but important where the word Hindustani is used as a generic term to include both Hindi and Urdu. But one thing remains clear and absolutely clear, that that language which we call literary Hindi cannot be included in the word Hindustani.

I am neither pleading for Hindi nor Urdu but I am just putting to you the problem of nomenclature. If we take the case to an impartial tribunal composed of judges of the high courts, put the word Hindustani before them and all the evidence pertaining to it, the tribunal can come to only one conclusion and there can be no second, that Hindustani is Urdu. Nobody can deny that literary or highflown Urdu is Arabicised and Persianised. On the other hand Hindustani can include what we know as simple Hindi, the Hindi of the villages, what is called Khari boli. Literary Hindi, I submit, cannot be included in the word Hindustani. This is the difficulty before us but what we decide is a different matter. When the word Hindustani is capable of being interpreted differently by different people it is always better to use a clear word. I have great respect for the Honourable Maulana Saheb and I have to submit as a humble student of literature if you call Hindi a narrow language that is not the word to be used. That is not the limiting adjective, at any rate, that you can use for Hindi. Hindi is very widely based, more widely based than Urdu. Urdu is based at the most on the vernacular, in the words of Grierson, which is spoken in between Delhi and Meerut. He has given the figure as 52 lakhs for the vernacular Hindustani.

Literary Hindi has for its basis the speeches from the borders of Bengal to the borders of Punjab, from the borders of Nepal to the borders of Gujerat. When you come to examinations in the Universities you will find literature of old Rajputana language, Dingal, the literature of Avadhi and other different dialects such as Braj and Bhojpuri whose literatures are included in literary Hindi. If you study literature for M.A. in Urdu you will never have literature of any one of the dialects of India to be studied. Why? Because Urdu does not concern itself with the dialects of India.

Firstly, Hindi is a widely based language and a national language should be broad-based. Secondly, when we come to Urdu there is a preponderance of Arabic and Persian words. My first school language was Urdu and my second language was Persian and I had occasion to have a peep Arabic also. As a student of languages it is not possible for me to hate any particular language and so the question of hatred does not arise. It is only through love that you can appreciate the beauty of a language.

I have here an Urdu magazine published by the Government of India bearing the title "Bisate Alam". It is a beautiful title in Arabic and nobody can quarrel with the content of the word. It is a literary word and denotes much. But does it denote anything for the Indian population? If you look inside, the first line reads :

بین الاقوامی سیاسیات و کیفیات کے حامل مصور ماہنامہ بساط عالم کا سالنامہ

"Bainul Qavámí sayasiyát va kaifiyát ke hámil musavvar máhnámà

Bisáte Álám ká sálnámá."

This is the head line of this magazine. Whereas it could be perfectly intelligible in Persia or Arabia, it is not going to be intelligible in any part of India. I have been listening with great care to the fine speech of the Maulana Saheb. I have taken down certain words which if they were replaced by Indian words would be better understood. For instance, he used a word 'riyazi'. The friend sitting next to me said, "What does that mean?" I told him it means "ganitam". Whether it is Tamil, Oriya, Assamese, Bengali or Gujarati, we have a certain common vocabulary, a common ideology and common life-values. An effort was made in the past and I hope that effort will be made in the future also, for simplifying Urdu; but when we simplify Urdu and call it Hindustani, even then we cannot include in it phraseology which will be used in other languages. When considering the Hindi and Urdu languages and their relative claims, it was contended by several front rank leaders of high name and prestige that we must have a bridge language which will bring the two languages nearer. But today the problem is not to bridge the gulf between Hindi and Urdu but to find a language which will bridge the gulf between Hindi, Bengali, Gujarati, Maharathi, Telugu, Tamil Assamese, Oriya, Punjabi—all the languages of India. We have to find a language which will serve the needs not only of Hindi and Urdu but also of all the languages in the North and in the South.....

An Honourable Member : It is already one o'clock, Sir. The speaker may continue after Lunch.

Mr. President : I know the time. Will the honourable Member take a long time to conclude?

Dr. Raghu Vira : At least half an hour.

Mr. President : I cannot allow so much. I will give a few minutes more in the afternoon.

[Mr. President]

It has been suggested to me that the House should meet at 5 o'clock instead of 4 o'clock. So we shall meet at 5 o'clock.

The Assembly then adjourned till Five of the Clock in the afternoon.

The Assembly re-assembled at Five of the Clock in the afternoon. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Pandit Balkrishna Sharma: Mr. President, may I, with your permission, move that the debate on this language question be closed and that Dr. Raghu Vira, if he wants to say a few words more and finish his speech, may be permitted to do so before the closure is put to the House?

Mr. President: If Dr. Raghu Vira considers it worthwhile to speak, very well, he may have two minutes.

Dr. Raghu Vira: Mr. President, I join the other Members of the House in expressing our great satisfaction that a satisfactory arrangement has been reached between the different view-points on the question of the numerals. Now discussion may be conducted in a friendly manner. This is a matter in which I should congratulate the House. As there is no controversy now, the discussion may be closed.

Mr. President: Closure has been moved. I take it that the House accepts it.

Maulana Hasrat Mohani: Sir, you have accepted the motion for closure. I beg to withdraw my amendment of which I gave notice, for the reason that I am thoroughly disgusted with the attitude adopted by our Prime Minister yesterday and the policy of appeasement adopted by Maulana Abul Kalam Azad today. I also give up my right to make any speech in this matter. I shall simply oppose the whole thing.

Mr. President: I am concerned only with the fact of the withdrawal and not with the reasons therefor.

Now I would like to know in what form I should put the question before the House We have got something like 300 amendments.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, Shri Gopalaswami Ayyangar is going to accept some of the amendments. Those amendments should then be placed before the House. All the other amendments may be treated as withdrawn.

Shri K. M. Munshi (Bombay: General): Mr. President, may I request you to adjourn the House for about half an hour? I am very glad to state to you that, on this very difficult question of language, most of us have come almost to a unanimous decision. One or two small points have been left outstanding in respect of which an amendment is being drafted. That will take a few minutes. If the House has no objection and if you permit it, Sir, we may adjourn for about half an hour.

Mr. President: I have no objection to the House adjourning for a short while.

Mr. Naziruddin Ahmad (West Bengal: Muslim): I would require notice if any new amendment is going to be brought forward.

Mr. President: There is no amendment that is going to be moved at this stage. I think they are considering which of the amendments to accept. That will take a little time.

Shri Mahavir Tyagi (United Provinces : General) : Let the Drafting Committee be put in charge of all the amendments.

Pandit Hirday Nath Kunzru (United Provinces : General) : I believe that a closure motion was moved only three or four minutes ago and that you accepted it. Unless the closure motion is withdrawn with the permission of the House, I do not see how any new amendment can be allowed to be moved either by Mr. Munshi or by anybody else.

Mr. President : Dr. Kunzru has raised a point of order.

The Honourable Shri Ghanshyam Singh Gupta : May I say a word about that point of order ? There are so many amendments on the Order Paper. The Mover of the main motion Shri Gopalaswami Ayyangar can pick and choose and accept or reject any of them. After the closure he has the right to speak. Therefore he can well speak and, while speaking, accept any of the amendments. Closure does not mean that all the amendments moved are lost or thrown out. If he makes some verbal alterations here and there, that can be permitted by the vote of the House.

Mr. Naziruddin Ahmad : May I say a few words, Sir ?

Mr. President : Yes, Mr. Naziruddin Ahmad may speak. In the meantime I expect Shri Gopalaswami Ayyangar and Shri K. M. Munshi to get the thing ready. They can do this while we are discussing the point of order.

Mr. Naziruddin Ahmad : Mr. President, Sir....

The Honourable Pandit Ravi Shankar Shukla : My proposal is that Pandit Balkrishna Sharma may withdraw his closure motion.

Mr. President : Let me hear Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. President, after strenuous work we have come to a practically unanimous resolution. But we have an important constitutional question to remember. We are setting an example on constitutional principles to the country, not only to this country but to other countries. A point of order has been raised by Pandit Hirday Nath Kunzru that, after the closure motion was accepted, no new amendments could be proposed. Mr. Gupta did not reply to this point, but merely said that after a closure motion the mover of the main Motion will have a right of reply, and he may accept some of the amendments. I do not object to it. But the point raised by Pandit Kunzru is that after a closure motion has been accepted, no new amendment could be moved unless the closure motion is withdrawn. There is no precedent or rule or practice to permit the withdrawal of a closure motion accepted by the House. These are the difficulties.

Then I should submit that, although I am glad that a compromise has been reached and settlement come to amicably, still there are some unimportant minorities, numerical minorities here and there that have a right to consider the proposed new amendments and express their opinion. Therefore whatever amendment is going to be moved, some reasonable notice should be given to the Members to consider them. If an amendment has to be moved, nothing will be lost by postponing a decision on it. We may consider the matter tomorrow and come to a decision.

Mr. President : I think probably those who have arrived at some sort of agreed solution of the problem will take just a little time to put the thing in shape, not necessarily by moving fresh amendments but by picking and choosing from amongst the amendments which are already on the order paper, which to accept and which not to accept. And if they do that, probably no question of the point of order which has been raised will arise, but I do not know how circumstances will develop. For the present, I think it is best to give them a little

time so that they might consider the whole question with reference to the various amendments which have been moved to see to what extent these amendments can be accepted and the agreed formula can be fitted with the amendments which are already on the order paper. If the House has no objection, I would like....

The Honourable Shri Ghanshyam Singh Gupta: The whole thing may be finished today.

The Honourable Shri N. Gopalaswami Ayyangar: May I say a word?

The Honourable Shri K. Santhanam: Meanwhile, are you taking up the point of order?

Mr. President: I have not said anything on the point of order, and I have not yet adjourned the House. I am still in the process of consultation and I am entitled to hear Shri Gopalaswami Ayyangar.

The Honourable Shri N. Gopalaswami Ayyangar: I might explain in four or five sentences. As regards the changes that should be made in the draft which I moved the other day, we have, I think, by negotiations outside the House agreed upon the substance of these changes. They are not many. I believe there are only four or five changes to be made. Two of them are merely verbal. The other two or three are matters which involve a little substance. As a matter of fact we have a rough draft on it, and if you give us some twenty or thirty minutes, we shall bring that draft before the House in a form which it would be in a position to accept. I would suggest that we meet about half an hour later.

Honourable Members: We can meet at 6 o'clock.

Pandit Govind Malaviya (United Provinces: General): We are the Constituent Assembly. We make our own rules and anything, which you think is going to help us in fulfilling the task for which we are here, and which has the approval of the House as a whole, should certainly be possible and permissible. I submit we should not stick to mere legalistic interpretations of Rules and we should adjourn the House for half an hour which has been requested.

The Honourable Shri K. Santhanam: In the meanwhile, let the discussion go on.

Mr. President: No, no. I am not giving any decision or ruling on the point of order that has been raised. I think we should adjourn the House for, say, about three quarters of an hour. We meet again at 6 o'clock.

The Assembly then adjourned till Six P.M.

The Assembly re-assembled at Six P.M. Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

Shri K. M. Munshi: Mr. President, Sir, I understand closure has been moved and accepted. In view of what I state, Sir, I submit that the debate be re-opened in order to enable me to submit amendments which I propose to place before the House. I therefore move, Sir, that the debate be re-opened.

Mr. President: The motion which has been placed before the House by Mr. Munshi is that the closure which has been accepted be nullified and the debate be re-opened. I take it that, under the Rules if a certain percentage of Members indicate their wish to re-open any resolution or decision, that it can be re-opened. I do not think there is any difficulty on that ground. I would like to know if the House wants to re-open the question.

Honourable Members: Yes.

Mr. Naziruddin Ahmad: Mr. President, Sir, some new amendments have just now been put into my hands. I have not even had the time to read them. I only desire that opportunities be given to us so that the new amendments may be examined and the effect of these new amendments be carefully considered. We shall have to consider as to what of our own amendments we shall press and what amendments we shall withdraw. (*Interruption*). In order to give us this opportunity, I think some little time should be given. There is Rule 13(o).... .....(*Interruption*).

Shri C. Subramaniam (Madras : General) : Sir, the motion is that the closure be re-opened. We are not considering any amendments now. If the honourable Member wants to submit anything about this, he may proceed. The honourable Member is making submissions about some amendments which are not before the House.

Mr. Naziruddin Ahmad: I submit that the amendments have just now been put into my hands. I have not had the time.....

Mr. President: We are at the present moment on the question of re-opening of the closure.

Mr. Naziruddin Ahmad: With regard to that, I have not the least objection.

Mr. President: At the present moment, we are only concerned with that.

Those who are in favour of re-opening the question of closure will say Aye.

The motion was adopted.

Shri K. M. Munshi: Sir, I move :

"That for clause (1) of article 301A, the following be substituted :—

'(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals'."

Shri Mahavir Tyagi: What is the meaning of (1) when there is no. (2) ?

Shri K. M. Munshi: One sentence has been split into two, and the word 'and' has been omitted. It is a purely verbal one.

Pandit Balkrishna Sharma: Mr. Tyagi's point is, there is only one sub-clause and why should it be 1 (1).

Shri K. M. Munshi: There is a sub-paragraph 1 (1) because there are other sub-paras (2) and (3) in the original article. Not this (2) but there are other (2) and (3).

Mr. President: I should like to see all the amendments.

Shri K. M. Munshi: I have the second amendment, Sir.

"That for clause (3) of article 301A, the following be substituted :—

'(3) Notwithstanding anything contained in this article, Parliament may after the said period of fifteen years by law provide for the use of—

(a) the English language, or.....'"

Some Honourable Members: It should be 'and'.

Shri K. M. Munshi: The word 'or' is proper; it means 'and'. However the Drafting Committee will consider it carefully. We did as well as we could within the forty five minutes. We feel 'or' is correct. If we find that 'or' is incorrect, we shall change it.

Shri H. V. Kamath (C.P. & Berar : General) : May I suggest, Sir.....

Mr. President: He is on his legs. Why not let him finish?

Shri K. M. Munshi:

"(b) the Devanagari form of numerals, for such purposes as may be specified in such law."

My next amendment is—

'That Article 301F be renumbered as clause (1) of article 301F, and to the said clause as so renumbered the following clause be added :—

"(2) Nothing in sub-clause (a) of clause (1) of this article shall prevent a State from prescribing, with the consent of the President, the use of the Hindi language or any other language recognised for official purposes in the State for proceedings in the High Court of the State other than judgements, decrees and orders.

In continuation of this there is another clause.

"(3) Notwithstanding anything contained in sub-clause (b) of clause (1) of this article, when the Legislature of a State has prescribed the use of any language other than English for Bills, Acts, Ordinances and orders having the force of law and rules referred to in the said sub-clause, a translation of the same in English certified by the Governor of the State shall be published and the same shall be deemed to be the authoritative text in English under this article."

Honourable Members: What about 'Or ruler'?

Shri K. M. Munshi: There are many articles in which this will be found and it will be corrected. If you like I will put it here a or Ruler of the State'. This corresponds to amendments tabled by the Mr. G. S. Gupta, Nos. 164 to 167.

Then the next one is—

'In the schedule substitute 'Kannada' for 'Kanarese' and after 'Punjabi' and 'Sanskrit'

Shri Mahavir Tyagi: Is there no amendment with regard to the language of Bills and Acts passed by State Legislatures?

Shri K. M. Munshi: No more amendments.

Shri Mahavir Tyagi: Then it is not the true interpretation of the agreement

Shri H. V. Kamath: Mr. President, may I suggest a verbal change.

Mr. Naziruddin Ahmad: On a point of Order. The whole question is that we should be given some breathing time to consider the amendments. This is an ordinary fairness to an individual Member. It may be that the overwhelming majority of Members have come to an agreement but that does not conclude the matter. Every single member must have an opportunity.

Mr. President: I think the whole question has been under discussion and we have discussed it from all points of view threadbare. These amendments look like amendments because in the numerous amendments, of which we have received notice, no one amendment occurs in exactly the same words. I do not know if any of these amendments actually touches the substance of so many of the other amendments which have been moved and placed before the House. So, the only question is whether we shall have this formality of going through a fresh consideration of these amendments or we shall accept the amendments as they are being placed representing the substance of so many of the other amendments which are on the paper and representing the sense of a number of Members who have agreed amongst themselves. If it were a new question which was going to be raised altogether a new, probably there will be some justification for notice and also for anything else. Therefore under rule 38(O) which says—

"If notice of a proposed amendment has not been given two clear days before the day on which the Constitution or the Bill, as the case may be, is to be considered, any Member may object to the moving of the amendment, and such objection shall prevail, unless the President in his discretion allows the amendment to be moved",

I think I could not think of any other case which would be more fit for the use of the discretion of the President in favour of these amendments.

Shri H. V. Kamath: While commending this motion wholeheartedly to the acceptance of the House, may I suggest a purely verbal change?

Mr. President: You had better suggest it to the Mover. I can wait for a minute or two.

Shri H. V. Kamath: Thank you, Sir. I shall do so.

Prof. Shibban Lal Saksena (United Provinces: General): Can I speak on this amendment?

Mr. President: Certainly.

The Honourable Shri Ghanshyam Singh Gupta: Mr. President, there can be no debate because you have said that the amendments or points moved by Mr. Munshi have been covered by the amendments that have been tabled already. I can give the numbers in which those amendments can be covered. If we re-open all the debate, then I must humbly submit that he has no right to speak as a debate on this motion. If he has any verbal amendment to suggest, that is a different matter.

An Honourable Member: Some of us are not in possession of the third sheet.

Mr. President: You will be getting it. In the mean time Mr. Saksena wants to speak on this. Let him speak.

Prof. Shibban Lal Saksena: Sir, this question....

Mr. Naziruddin Ahmad: Sir, we have not yet got a copy of the 4th amendment.

Prof. Shibban Lal Saksena: Sir, this question of the national language has been the subject of hot controversy for the last two days, and these amendments

have been suggested by Mr. Munshi as a sort of a compromise, and it supposes that the Members of the House are agreed upon these amendments. Sir, with profound regret I have come here to lodge my protest and say that I do not agree with them and I do not accept these so called compromise amendments. I have myself moved my amendment, No. 70, but I am prepared to support as a compromise the amendment moved by Sri Purushottam Das Tandon. These amendments which are now moved are supposed to be a compromise but they are not an improvement at all and they do not in any meet the point of view urged by Tandonji or myself. In fact, the fundamental point on which the supporters of Hindi have been insisting has been that the English numerals shall not be a permanent feature of our national language. But the amendment now proposed will make these so-called international numerals which are really only plain and simple English numerals, a permanent feature of one language by this Constitution, and that is a position which I cannot accept. All that is conceded in the compromise is this, that after fifteen years. Parliament may prescribe Hindi numerals for such purposes as may be specified by law. That means the Devanagari numerals can be used for some purposes, but the main numerals shall be the English numerals, and by accepting this amendment, we shall be committing this House and the future generations of our country to accepting the English numerals as a permanent feature of our language by this Constitution Act, and I shall not accept that under any circumstances. It is not without reason that I have taken up this attitude. I regard this draft of Mr. Gopalaswami as a fraud on the supporters of Hindi and a fraud on the Constitution itself. Really this draft perpetuates English for many, many years to come as Mr. Gopalaswami himself confessed. The Father of the Nation had warned the Nation of this danger which he had scented as early as Sept. 21, 1947, when he wrote his editorial in the *Harijan* of that date.

There are other amendments also which Tandonji moved and which also I had supported as a compromise. But as no real compromise has been possible, I will press my own amendment which runs as follows :—

"That in amendment No. 65 above, for the proposed new Part XIV-A, the following be substituted :—

'PART XIV-A

CHAPTER I—LANGUAGE OF THE UNION

301A. (1) The State language of the Union shall be Hindi in Devanagari script.

(2) Notwithstanding anything contained in clause (1) of this article the English language may continue to be used for official purposes of the Union during the period of transition which shall not exceed 5 years, provided that the State language will be progressively utilised until it replaces English completely at the end of the transitional period of five years.

301B. (1) Within three months of the commencement of this Constitution, there shall be constituted a committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States chosen respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(2) It shall be the duty of the Committee to make recommendations to the President as to the ways and means which should be adopted as to the progressive use of the Hindi language for all the official purposes of the Union and the replacement of the English language by the Hindi language at the end of the transitional period of five years.

(3) The Committee shall submit its report within a period of six months from the date of its appointment.

(4) Within a period of three months from the date of submission of its report by the committee, the President shall cause every recommendation made by the Committee together with an explanatory memorandum as to the action taken or to be taken thereon to be laid before each House of Parliament.

[Prof. Shibban Lal Saksena]

(5) (a) When any member of the House of the People or the Council of States cannot adequately express himself in the language in use for the time being in the House of the People or in the Council of States, the Speaker of the House of the people or the Chairman of the Council of States may permit him to address the House in his mother tongue.

(b) The Chairman of the Council of States or the Speaker of the House of the People may, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People as the case may be a summary in Hindi and in the language in use in the House for the time being of the speech delivered by a member in any other language and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

CHAPTER II

REGIONAL LANGUAGES

301C. (1) A State may by law about Hindi or the language or languages in use in the State as the language or languages to be used for all or any of the official purposes of that State.

(2) (a) When any member of a State Legislature cannot adequately express himself in the language in use for the time being in either House of the State Legislature, the Chairman of the Legislative Council or the Speaker of the Legislative Assembly may permit him to address the House in his mother tongue.

(b) The Chairman of the Legislative Council or the Speaker of the Legislative Assembly may, whenever he thinks fit, make arrangements for making available, in the Legislative Council or the Legislative Assembly as the case may be, a summary in Hindi or in the language in use in either House for the time being of the speech delivered by a member in any other language, and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

301D. (1) (a) The Language for the time being authorised for use in the Union for official purposes shall be the official language for communication between a State and the Union;

(b) if the Language authorised for use in the Union is also the official language of any State, the official language of the Union shall be the official language for communication between that State and another State :

Provided that if two or more States agree that the Hindi language shall be the official language for communication between such States, that language may be used for such communication.

(2) The authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in the House or either House of the Legislature of a State,

(ii) of all Acts passed by the Legislature of a State and of all Ordinances promulgated by a Governor or a Ruler, as the case may be,

(iii) of all orders, rules, regulations and bylaws issued under this Constitution or under any law made by the Legislature of a State.

shall be in the official language of the State :

Provided that if the State official language is not Hindi, they shall be accompanied by an authoritative text in Hindi :

Provided also that during the transition period of five years from the commencement of the Constitution, if the State official language is not English, they shall also be accompanied by an authoritative text in English.

301E. Where on a demand being made in that behalf the President is satisfied that a substantial proportion of the population of a State, but not less than 20 per cent. desires the use of any language spoken by them to be recognised by that State, he may direct that such language shall be recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III

DIRECTIVE PRINCIPLE

301G. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the language used in the Union or in the State, as the case may be.

301H. It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating the forms, style and expressions used in the other languages of India and drawing wherever necessary or desirable for its vocabulary primarily on Sanskrit

301-I. It shall be the duty of the Union to promote the use of the Devanagari script throughout the territory of India.

301-J. It shall also be the duty of the Union to promote the study of Sanskrit throughout the territory of India as it is the source of most of the other languages in India.' "

Shri Brajeshwar Prasad (Bihar : General) : Sir, I would like to say a few words.

Mr. President : It is not necessary.

The Honourable Shri Ghanshyam Singh Gupta : Sir, closure.

Mr. Mohamed Ismail (Madras : Muslim) : Mr. President, I want to speak on these amendments.

Shri Jagat Narain Lal (Bihar : (General) : Sir, I want to say a few words on these amendments which have been moved just now and in the framing of which I had a hand.

Mr. President : Is it necessary ? If we start a discussion, I do not know how long it will go on. If there is any Member who is opposed to these amendments, I would give him a chance. I would not like Members who are in favour of the amendments to take the time of the House. I have given a chance to Mr. Saksena because I understood he was opposed to these amendments. If you wish to oppose them. I shall allow you to speak.

Shri Jagat Narain Lal : I do not want to oppose it.

Mr. President : Then please leave it alone

Shri Mahavir Tyagi : Sir .....

Mr. President : You want to oppose it ?

Shri Mahavir Tyagi : I want to move an amendment to this amendment.

Mr. President : About numbering the clauses ?

Shri Mahavir Tyagi : Yes, Sir. I would like.....

Mr. President : That I think will be taken care of by the Drafting Committee.

Shri Mahavir Tyagi : Sir, there is not to be much discussion and I do not want to speak also. I only want to submit that in the clause as it originally stood there was the word "and", between these two sentences, and the only change now proposed is that the word "and" be removed and a full-stop be put in after the word "Devanagari script", and the paragraph has been split into two. I submit that the first sentence be lettered (a) and the second (b).

Mr. President : As it is placed before me, there are two separate paragraphs.

Mr. Mohamed Ismail : Mr. President, Sir, since the debate has been re-opened and the closure has been nullified, I think I can refer to the amendments which I have already tabled and are before the House.

An Honourable Member: Other amendments?

Mr. Mohamed Ismail: No, the amendments of which I have already given notice of; because the closure has been nullified and the debate has been reopened, I think I have got the right to speak on the amendments.

Mr. President: Fundamentally he is right.

Mr. Mohamed Ismail: Sir, in doing that, first I have to say that I oppose the amendments that have been placed before the House just now by Mr. K. M. Munshi. The amendments which I have given notice of, in effect, ask for the acceptance by the House of Hindustani with Devanagari and Urdu scripts as the official language of the Union, and the international form of Indian numerals as the numerals to be used for purposes of the Union. And one of my amendments also proposes that the English language which shall be continued for fifteen years in use for the purposes of the Union shall, even after the period of fifteen years, be so continued until Parliament decides, otherwise by a majority of the total membership of each of the Houses of Parliament. That in effect, is my amendment.

Mr. President: Number?

Mr. Mohamed Ismail: Sir, yesterday the Honourable Prime Minister in his noteworthy speech made three points amongst others. Firstly, he quoted the views and the authority of Mahatma Gandhi over this subject. Secondly, he said that we should not go back and look back too much, lest we should be retarded in our forward progress. Thirdly, he wanted us to realise that the world is becoming smaller and smaller now, and in that context we must realise how the world is pressing upon us from hour to hour. If we bear in mind the principles implied in these points, I think, the subject before us is very easy of solution.

It is agreed that the official language of the Union shall be an Indian language. It is also agreed that that language must be one that is spoken by the largest number of the people of the Union.

It is further agreed that that language must be such in nature as to be able to assimilate the modern tendencies and modern conditions in our national life. With regard to these points I do not think there is any disagreement. But what exactly is the language which satisfies all these conditions is a matter of discussion and controversy. On this matter I cannot do better than quote the authority of Mahatma Gandhi. In an article which was published on August 10, 1947, Mahatma Gandhi says:

> "In Delhi I daily come in contact with Hindus and Muslims. The number of Hindus is larger. Most of them speak a language which has very few Sanskrit words and not many more Persian or Arabic. They or the vast majority do not know the Devanagari script. They write to me in indifferent English and when I take them to task for writing in a foreign language, they write in Urdu script. If the *lingua franca* is to be Hindi and the script only Devanagari, what will be the plight of these Hindus?"

That is the question Mahatma Gandhi asked, not very many years ago but as late as August 1947. It may be said that he refers here only to Delhi and the surrounding parts. But in the same article later on he says—I am reproducing his exact words:

> "The millions of villagers of India have nothing to do with books. They speak Hindustani which the Muslims write in Urdu script and the Hindus in the Urdu script or in the Nagari script. Therefore the duty of people like you and me is to learn both the scripts."

That, Sir, is the view of Mahatma Gandhi. Here he makes it very clear that the language that is spoken by the largest number of people is Hindustani and the script used for that language, according to him, is Urdu and Devanagari,

Therefore I and certain of my friends appeal to this House to adopt Urdu as well as Devanagari as the script of the official language of the Union.

This language, Hindustani, is not a foreign language as you all know. It is an indigenous language. It was born and bred up in this country. A further advantage with regard to this language is that it was born under modern conditions and it has developed itself under and has been adapting itself to modern conditions. So I say it is the most suitable language for expressing modern ideas, sentiments and requirements. As I have already pointed out, it is this Hindustani, which is really the language that is being spoken by the largest number of people of this country.

With regard to the question of going back too much to the past, I have to say that if we want to go back we must be logical about it. Why do we want to go to the past? Because some friends of ours want to have an ancient language—not only an Indian language but an ancient language of the country—to be the official language of the Union. If it were granted then I make bold to say that Tamil, or to put it generally, the Dravidian languages are the earliest among the languages that are spoken on the soil of this country. No historian or archaeologist will contradict me when I say that it is the Dravidian language that was spoken first here on the soil of this country, and that is the earliest language. Tamil language has got a rich literature of a high order. It is the most ancient language. It is, I may say, my mother-tongue. I love it, and I am proud of that language. However, I am, and so also the other Tamilians are, sensible enough not to insist that this undoubtedly most ancient language of the country should become the official language of the country, because we know that it is not spoken by as large a number of people as some other language; if we go to the past, as I said, it is this language that must become the official language of the country, but the speakers of that language do not put forward that claim.

We are of course bound to our past. We cannot get away from it, as even Tandonji explained. But what I say is if we are to be bound by the chain of the past, that chain must not be static, must not be rigid : it must be elastic. We must not try to be all roots and only roots. We must try to become branches with ever fresh foliage, fruits and flowers. Therefore we must also take into consideration the modern conditions.

Shri Ramnath Goenka (Madras : General) : Sir, I have already moved for closure, and I can move for closure in respect of the speech of the honourable Member also.

Mr. President : I will allow the honourable Member to finish it.

Mr. Mohamed Ismail : Sir, I quite realise that if closure is moved and accepted I cannot say anything here. But as it is not done and as the debate is on, I think I am within my rights.

Shri Ramnath Goenka : He is repeating the arguments.

Mr. President : The honourable Member may finish his speech.

Mr. Mohamed Ismail : Sir, with regard to numerals I would like to say a few words. I am insisting upon the international form of numerals because many languages of the country have adopted these numerals. It was asked whether this question of numerals was before the country as long as the question of the official language was. I ask the question whether people do not know that this question of numerals is thoroughly different from the question of official language. Now English is the official language of the Union. This has not permeated the masses. But the case is different with the numerals. The masses are making use of these so-called "English" numerals, which are really Indian numerals, in their every-day life. I have seen cart-men, manual labourers making use of these

[Mr. Mohamed Ismail]

numerals. Now millions upon millions of the masses are already making use of these numerals. Therefore when my friends insisted that these numerals must be made a permanent feature of the official language of the Union, they were only echoing the sentiments of the people. They were only representing what is already there in existence in the country.

If we make any change in the form of the numerals, it will create a lot of confusion in addition to expense and waste of energy. As has been frequently pointed out, these are after all our own numerals. So I still appeal to the House that these numerals must be made a permanent feature of the official language and that it should not be changed into anything else after any number of years.

In brief, my proposal is that Hindustani with Urdu and Devanagari scripts must be accepted as the official language of the Union and the international form of Indian numerals must be made a permanent feature of that official language.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question be now put.

Maulana Hasrat Mohani: Sir, I request you to give me a chance.

Mr. President: Closure has been moved.

Mr. Naziruddin Ahmad: Sir, I submit I have some serious thing to point out in amendment No. 4.

Maulana Hasrat Mohani: Sir, I request you.....

Mr. President: Closure has been moved and I cannot allow you to speak. I think you had promised not to speak at a previous stage.

Mr. Naziruddin Ahmad: Sir, acceptance of the closure is entirely in the hands of the President. I want to submit a few words regarding amendment No. 4

Mr. President: You want to oppose the amendment?

Mr. Naziruddin Ahmad: Yes, Sir. Acceptance of the closure depends on this, that the President is satisfied that there has been sufficient debate.

Honourable Members: Closure, closure.

Mr. President: I have to put the closure to vote. I think the House is not in a mood to have further discussion.

Mr. Naziruddin Ahmad: Is it your ruling that closure should be accepted?

Mr. President: I have to put it to the House.

Mr. Naziruddin Ahmad: No, Sir, it is not necessary. I submit you are not bound to put it to the House.

Mr. President: I do not say I am bound to, but I propose to put it to the House.

Mr. Naziruddin Ahmad: I wanted to say a few words. There are serious flaws in this amendment.

Honourable Members: No, no. Order, order.

Mr. President: The question is:

"That the question be put".

The motion was adopted.

Mr. President: Mr. Ayyangar, do you wish to say anything in reply to the whole debate?

The Honourable Shri N. Gopalaswami Ayyangar: Sir, we are in a happy mood just at this moment and I do not want to mar this happy mood by anything like a long speech from me. I have formally, as mover of the major amendment, to accept the amendments to that amendment which have been moved by my honourable Friend Mr. Munshi. I accept them *in toto*.

I wish to add only one thing which I believe I committed myself to certain friends who moved certain amendments yesterday, particularly the amendment which was supported by a most well-reasoned speech from Mr. S. V. Krishnamoorthy Rao. He suggested that on account of the fluid condition of the Hindi language, particularly in respect of political, constitutional, scientific, technological and other terms, it is desirable that an academy or a commission should be established as soon as the new Constitution comes into force so that it may make a review of the use of this language in different parts of the country and standardise words and expressions. I think, Sir, it is a most helpful suggestion in the present conditions of the country. He moved an amendment to that effect, but I do not think that it is necessary to add to the draft I have placed before you for carrying out his ideas. We have an article in that particular Part which directs the State to take steps for promoting the development of the Hindi language, to take all steps that may be necessary for enriching it, for enabling it to draw upon Hindustani and other languages in the country for styles, forms of expression and so on and for enriching its vocabulary by borrowing in the first instance from Sanskrit and secondarily from all other languages in the world. That is a comprehensive directive which we have put into this Part XIV-A and I am sure that whatever Government may be in power after this Constitution comes into force, will take steps necessary for promoting this particular object and in doing so the suggestion of Mr. Krishnamoorthy Rao will, I have no doubt, be implemented.

Mr. President: I have now to put the amendments to vote. We have got such a large number of amendments. I will go on calling the No. of the amendment and Members who desire to withdraw will say so and I will take it that the House gives them leave to withdraw them.

The Honourable Shri Ghanshyam Singh Gupta: Sir, may I suggest something? If any Member particularly wants that his amendment be put to vote he may point it out. Otherwise, if you go on taking every amendment that will take a lot of time. I suppose we have made up our mind that only certain amendments should be accepted, so we can save a lot of time if you are pleased to ask only those honourable Members who want that their amendment should be voted upon.

Mr. President: Is that the wish of the House?

Honourable Members: Yes.

Mr. President: Then I would ask the Members to indicate to me the amendments they wish to be put to vote.

Mr. Naziruddin Ahmad: Sir, I would like my amendment to be put.

Mr. President: What is the number of it?

Mr. Naziruddin Ahmad: No. 277.

Mr. Z. H. Lari (United Provinces: Muslim): Sir, what is the procedure?

Mr. President: It has been suggested to me that instead of my formally putting each amendment to vote, the Member who moved it having to withdraw it and asking the House leave to withdraw it, I should put only those amendments which Members who have sponsored them wish to put to vote.

Mr. Z. H. Lari: There would be confusion. The proper course is that those Members who want to withdraw their amendments can withdraw them first.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): When an amendment has been moved, the Member who has moved it should stand up and say that he withdraws it and the House must accept that withdrawal. That is the procedure laid down in our rules.

Shri Alladi Krishnaswami Ayyar (Madras: General): There is no necessity for every Member to get up and say that the withdraws the amendment. Those amendments which the movers do not want to press may be automatically taken as withdrawn. There is nothing in the rules to prevent such a procedure.

The Honourable Shri Purushottam Das Tandon: I just want to know what your decision in regard to this matter is.

The Honourable Dr. B. R. Ambedkar: Those Members who have moved amendments and do not want them to be put to vote may be taken to have given you the authority that they do not want to press them.

Mr. President: About this matter I have a suggestion to make. I have got a list of names of all the Members who have got amendments to their credit. I will call out the name of each Member and if he wishes any particular amendments to be put to vote I will put them. I think that will solve the problem. With regard to the rest I shall take it that Members withdraw their amendments and the House gives them the leave to withdraw the amendments.

The following Members asked for leave to withdraw the amendments against their names:—

Seth Govind Das
The Honourable Pandit Ravi Shankar Shukla
Shri Algu Rai Shastri
Shri Lakshmi Kanta Maitra
Shri H. V. Kamath
Maulana Hasrat Mohani
Shri L. Krishnaswami Bharathi
Shri H. R. Guruv Reddy
Shri Arun Chandra Guha
Mr. Mahboob Ali Baig
Dr. P. Subbarayan
Shri S. Nagappa.

The Amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No. 65 above, for the proposed new Part XIV-A, the following be substituted:—

"PART XIV-A

CHAPTER I—LANGUAGE OF THE UNION

301A. (1) The State language of the Union shall be Hindi in Devanagari script.

(2) Notwithstanding anything contained in clause (1) of this article the English language may continue to be used for official purposes of the Union during the period of transition which shall not exceed 5 years, provided that the State language will be progressively utilised until it replaces English completely at the end of the transitional period of five years.

301-B. (1) Within three months of the commencement of this Constitution, there shall be constituted a committee consisting of thirty members, of whom twenty shall be members of the Council of States chosen respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(2) It shall be the duty of the Committee to make recommendations to the President as to the ways and means which should be adopted as to the progressive use of the Hindi language for all the official purposes of the Union and the replacement of the English language by the Hindi language at the end of the transitional period of five years.

(3) The Committee shall submit its report within a period of six months from the date of its appointment.

(4) Within a period of three months from the date of submission of its report by the Committee, the President shall cause every recommendation made by the Committee together with an explanatory memorandum as to the action taken or to be taken thereon to be laid before each House of Parliament.

(5) (a) When any member of the House of the People or the Council of States cannot adequately express himself in the language in use for the time being in the House of the People or in the Council of States, the Speaker of the House of the People or the Chairman of the Council of States may permit him to address the House in his mother tongue.

(b) The Chairman of the Council of States or the Speaker of the House of the People may, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People as the case may be a summary in Hindi and in the language in use in the House for the time being of the speech delivered by a member in any other language and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

CHAPTER II—REGIONAL LANGUAGES

301-C. (1) A State may by law adopt Hindi or the language or languages in sue in the State as the language or languages to be used for all or any of the official purposes of that State.

(2) (a) When any member of a State Legislature cannot adequately express himself in the language in use for the time being in either House of the State Legislature, the Chairman of the Legislative Council or the Speaker of the Legislative Assembly may permit him to address the House in his mother tongue.

(b) The Chairman of the Legislative Council or the Speaker of the Legislative Assembly may, whenever he thinks fit, make arrangements for making available, in the Legislative Council or the Legislative Assembly as the case may be, a summary in Hindi or in the language in use in either House for the time being of the speech delivered by a member in any other language, and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

301-D. (1) (a) The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between a State and the Union;

(b) If the language authorised for use in the Union is also the official language of any State, the official language of the Union shall be the official language for communication between that State and another State :

Provided that if two or more States agree that the Hindi language shall be the official language for communication between such States, that language may be used for such communication.

(2) The authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in the House or either House of the Legislature of a State,

(ii) of all Acts passed by the Legislature of a State and of all Ordinances promulgated by a Governor or a Ruler, as the case may be,

[Mr. President]

(iii) of all orders, rules, regulations and by-laws issued under this Constitution or under any law made by the Legislature of a State,

shall be in the official language of the State :

Provided that if the State official language is not Hindi, they shall be accompanied by an authoritative text in Hindi :

Provided also that during the transition period of five years from the commencement of the Constitution, if the State official language is not English, they shall also be accompanied by an authoritative text in English.

301-E. Where on a demand being made in that behalf the President is satisfied that a substantial proportion of the population of a State, but not less than 20 per cent. desires the use of any language spoken by them to be recognised by that State, he may direct that such language shall be recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III.—DIRECTIVE PRINCIPLE

301-G. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

301-H. It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating the forms, style and expressions used in the other languages of India, and drawing wherever necessary or desirable for its vocabulary primarily on Sanskrit.

301-I. It shall be duty of the Union to pomote the use of the Devanagari script throughout the territory of India.

301-J. It shall also be the duty of the Union to promote the study of Sanskrit throughout the territory of India as it is the source of most of the other languages in India'."

The amendments were negatived.

Mr. President : The question is :

"That in amendment No. 65 above, in clause (1) of the proposed new article 301A, for the word 'Hindi' the word 'Hindustani' be substituted."

The Assembly divided (by show of hands).

Ayes : 14

Noes : The rest, a large majority.

The amendment was negatived.

Mr. Mohammad Tahir (Bihar : Muslim) : I beg leave to withdraw my amendment No. 81.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in amendment No. 65 above, in clause (1) of the proposed new article 301A, after the word 'Devanagari' the words 'and Urdu' be inserted."

The Assembly divided (by show of hands).

Ayes : 12

Noes : The rest, a large majority.

The amendments were negatived.

Mr. President : Mr. Yudhisthir Misra is not in his place. Shri Phool Singh withdraws his amendment. Messrs. V. I. Muniswami Pillai, Shankarrao Deo and Shri R. V. Dhulekar withdraw their amendments.

Shri Ramalingam Chettiyar's amendment is the next one on Paper.

Shri T. A. Ramalingam Chettiyar (Madras : General): My amendment No. 105 may be put to vote.

Mr. President: The question is :

"That in amendment No. 65 above for the proposed new article 301B, the following be substituted :—

'301B. The President shall, after the expiration of 15 years from the commencement of this Constitution, lay down the method by which the substitution of English by Hindi should be carried out.' "

The amendment was negatived.

Shri T. A. Ramalingam Chettiyar: Votes may be taken, Sir.

The Assembly divided (by show of hands).

Ayes : 6

Noes : The rest, a large majority.

The amendment was negatived.

The alternative amendment was, by leave of the Assembly, withdrawn.

Shri Satis Chandra Samanta (West Bengal : General) : I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Mahboob Ali Baig: What about my amendment No. 98 ?

Mr. President: I called the name of the honourable Member and at that time he did not ask me to put his amendment to vote. If he now wishes me to put it to vote I will do so.

The question is :

"That in amendment No. 65 above, the proviso to clause (2) of proposed new article 301A be deleted."

The amendment was negatived.

The following Members asked for leave to withdraw the amendments standing against their names :—

Shri Ram Sahay,

Shri Mahavir Tyagi,

Shri S. V. Krishnamoorthy Rao,

Shrimati Purnima Banerji,

Shri Krishna Chandra Sharma,

Shri Yudhisthir Misra.

The amendments were, by leave of the Assembly, withdrawn.

Dr. P. S. Deshmukh: I withdraw my amendments. But I hope that the Drafting Committee will look into them. My drafts are better than theirs.

Mr. President: You may hand them over to the Drafting Committee.

The amendments of Dr. P. S. Deshmukh and Shri Jaspat Roy Kapoor were, by leave of the Assembly, withdrawn.

Mr. Z. H. Lari: I press my amendments Nos. 258 and 310.

Mr. President: The question is :

"That in amendment No. 65 of Fourth List, after the existing proviso to the proposed new article 301-D, the following be added :—

'Provided further that if any Indian language specified in the Schedule was used as official language in any State on 15th August 1947—the day of India's Independence—such language shall also be recognised as official language of the State for 15 years from the date of the commencement of the Constitution and thereafter if so directed by the President'."

The amendment was negatived.

Mr. President: I shall now put the next of amendment of Mr. Lari to vote.

The question is :

"That in amendment No. 65 of Fourth List, at the end of the proposed new article 301H, the following clause be added :—

'Notwithstanding anything contained in the foregoing provisions of this Part, primary education shall be imparted through the mother tongue of a child where thirty students in a school or eight students in a class make such a demand.'"

The amendment was negatived.

Shri Basanta Kumar Das and Shri B. Siddaveerappa asked for leave to withdraw their amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: Mr. Jaipal Singh. I think the Member is not in the House.

Shri Mahavir Tyagi: Sir, his amendment may be put to vote.

Mr. President: Mr. Lakra, what do you say ?

Mr. Boniface Lakra (Bihar : General): I withdraw.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I withdraw all my amendments except two, 277 and 282.

All the amendments of Mr. Naziruddin Ahmad except 277 and 282 were, by leave of the Assembly, withdrawn.

Mr. President: The question is :

"That in amendment No. 65 of Fourth List, for the proposed new Part XIV-A, the following be substituted :—

"PART XIV-A

CHAPTER I.—LANGUAGE OF THE UNION

301-A. The English language shall continue to be used for all the purposes of the Union for which it was being used at the commencement of the Constitution for fifteen years in the first instance and then for such further period, if any, till an All-India language is evolved which is of sufficient vigour, richness and flexibility to serve the multifarious purposes and functions of the Union and ascertained and adopted in the manner hereinafter laid down in this part.

301-B. As a first step to facilitate the evolution and ultimate adoption of a Union language referred to in the last preceding article, and to provide for and safeguard the continuance and growth of the regional languages referred to in article———of this Cosntitution, Parliament may, within ten years from the commencement of this Constitution, by law—

(a) under article 3 of this Constitution regroup and reconstitute, as far as practicable, all the States described in the First Schedule on linguistic bases according to the principal languages described in Schedule VII-A, and

(b) introduce a system of mass literacy among the citizens of India.

301-C. If within the period of ten years from the commencement of this Constitution, or as soon as practicable thereafter, the President is satisfied that the States have been reconstituted in the manner laid down in clause (a) of the last preceding article and a minimum of sixty per cent. of the adult and adolescent citizens of India have received primary education as laid down in clause (b) thereof, he shall require the Parliament and the Legislatures of the States to express their views on the question of the selection of the Union language or languages and the respective regional languages.

301-D. The President shall consider the views of the Parliament and the Legislatures of the States and may as soon as practicable, appoint a Language Commission representing the various languages enumerated in Schedule VII-A and also other languages and experts to investigate and report on the suitability of any one or more language or languages to be adopted as the Union language and one or more language or languages for the various States, regard being had to political, literary, official, legal, commercial, medical, technical, scientific, military international and other needs of India as a whole and of the States.

301-E. The President shall consider the report of the Commission and if he is satisfied that it is thorough and adequate, he shall direct the report to be placed before the Houses of Parliament and the Houses of the Legislatures of the States for expression of their opinions on the suitability or otherwise of any one or more of the Indian languages to be the official language of India as also the regional language or languages of the various States.

301-F. The President on a consideration of the opinions of the Legislatures and other documents and materials available, shall appoint a Committee consisting of thirty members of the House of the People and ten members elected by the Council of States on the principle of proportional representation by means of the single transferable vote to report as to the suitability of any one or more language or languages of the Union and of the various States.

301-G. The President shall consider the report of the Committee and may by notification in the official Gazette direct that one or more languages shall be official language of the Union with effect from such date as may be specially appointed in this behalf in the notification.

301-H. Notwithstanding anything contained in the foregoing provisions of this Part, Parliament may by law provide for the use of the English language after the date mentioned in the last preceding article for such purposes as may be specified in such law.

CHAPTER II.—REGIONAL LANGUAGE

301-I. Subject to the provisions of the next succeeding article, a State may, after consideration of the report of the Language Commission referred to in article 301-D of this Constitution and of the report of the Committee referred to in article 301-F of this Constitution, by law adopt any one or more of the languages in use in the State as the language or languages to be used for all or any of the official purposes of that State :

Provided that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used at the commencement of this Constitution.

301-J Where on a demand being made in that behalf, the President is satisfied that a substantial proportion of the population of a State or any substantial part thereof desires the use of any language spoken by them to be recognised by that State, he may direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose or purposes as he may specify.

CHAPTER III.—LANGUAGE OF THE SUPREME COURT AND THE HIGH COURTS, ETC.

301-K. Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides—

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts—

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State.

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinance promulgated by the President or the Governor or Ruler, as the case may be.

[Mr. President]

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

301-L. Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides, the proceedings in all courts subordinate to the High Courts shall, subject to the directions of the Supreme Court, be in English or such other language or languages as may be prescribed by the High Court to which such court is subordinate.

301 M. Until the date mentioned in the notification referred to in article 301-G of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in article 301-K of this Constitution shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendation of the Commission constituted under article 301-D of this Constitution and the report of the Committee referred to in article 301 F of this Constitution.

301 N. It shall be the duty of the Union to promote the spread of the official language or languages of the Union and to develop the language or languages so as to serve as a medium or media of expression for all elements of the composite culture of India and to secure its or their enrichment by assimilating the forms, style and expressions used in the other languages of India and drawing wherever necessary or desirable for its vocabulary on Sanskrit and other languages."

"SCHEDULE VII-A

1. Assamese
2. Bengali
3. Canarese
4. Gujrati
5. Hindi
6. Hindustani
7. Kashmiri
8. Malayalam
9. Marathi
10. Oriya
11. Punjabi
12. Rajasthani
13. Telugu
14. Urdu."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 65 of Fourth List, in clause (1) of the proposed new article 301A, for the words 'Hindi in Devanagari script' the word 'Bengali' be substituted."

The amendment was negatived.

The following Members requested leave of the House to withdraw the amendments standing in their names :—

Shri Har Govind Pant
Shri Prabhu Dayal Himatsingka
Shri B. M. Gupte
Acharya Jugal Kishore
Shri Sures Chandra Majumdar
Dr. Raghu Vira
Shri Gokulbhai Daulatram Bhatt
Master Nand Lal
Shri B. P. Jhunjhunwala

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: I press 322, Sir. I want that the last proviso to clause (2) be deleted. The words are redundant.

Mr. President: I can only put the whole amendment to the vote.

The question is :

"That in amendment No. 65 of Fourth List, for the proposed new article 301A, the following be substituted :—

'301A. (1) The official language of the Union shall be Hindi in Devanagari script and the form of numerals to be used for the official purposes of the Union shall be the Devanagari form of numerals.

(2) Notwithstanding anything contained in clause (1) of this article, for a period of five years from the commencement of this Constitution, the English language and the international form of Indian numerals shall continue to be used for all the official purposes of the Union, for which they were being used at such commencement :

Provided that the President may, during the said period, by order authorise for any of the official purposes of the Union the use of the Hindi language and the Devanagari form of numerals in addition to the English language and the international form of Indian numerals in addition to the Devanagari form of numerals.

(3) Notwithstanding anything contained in this article, the President may by order authorise the use of the English language and the international form of Indian numerals after the said period of five years for such purposes as may be specified in such order."

The amendment was negatived.

Mr. President: Sardar Hukam Singh.

Sardar Hukam Singh: I want amendment No. 330 put to the vote.

Mr. President: The question is :

"That in amendment No. 65 of Fourth List, for the proposed new article 301C, the following be substituted :—

'301C. Subject to the provisions of articles 301D and 301E, a State shall by law adopt the language spoken, according to the last census figures available for the purpose, by majority of the population, as the language to be used for all official purposes of that State :

Provided that until the Legislature of the State otherwise provides by law the English language, shall continue to be used for those official purposes within that State for which it was being used at the commencement of this Constitution.'"

The amendment was negatived.

The amendments of Dr. Monomohan Das were, by leave of the Assembly, withdrawn.

Mr. President: Shri Purushottam Das Tandon.

The Honourable Shri Purushottam Das Tandon: Which amendment are referring to, Sir ?

Mr. President: No. 333.

The Honourable Shri Purushottam Das Tandon: I want it to be vo I am not withdrawing it.

Mr. President: The question is:

"That in amendment No. 65 of Fourth List, for the proposed new article 301A, the following be substituted:-

Official language of the Union.

'301A. (1) (a) The official language of the Union shall be Hindi in Devanagari script.

(b) Notwithstanding anything contained in sub-clause (a) of this clause both Devanagari and international forms of Indian numerals shall be recognised for Devanagari script.

(c) The President may authorise the use of Devanagari form of numerals or the international form of numerals or both the forms for any one or more purposes of the Union.

(d) Notwithstanding anything contained in the foregoing provisions of this clause, Parliament shall after the expiration of a period of 15 years from the commencement of this Constitution by law prescribe the use of Devanagari numerals or the international form of numerals or both for any one or more specified purposes of the Union.

(2) Notwithstanding anything contained in clause (1) of this article, for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union, for which it was being used at such commencement:

Provided that the President may, during the said period by order authorise for any of the official purposes of the Union other than accounting, auditing and banking the use of the Hindi language in addition to the English language.

(3) Notwithstanding anything contained in this article, Parliament may by law provide for the use of the English language after the said period of fifteen years for such purposes as may be specified in such law."

The amendment was negatived.

Mr. President: Then amendment No. 345.

The Honourable Shri Purushottam Das Tandon: That also may be voted upon. I do not withdraw it.

Mr. President: The question is:

"That in amendment No. 65 of Fourth List, in the proposed new article 301B,—

(i) in clause (1), for the word "at", in the two places where it occurs, the word "before" be substituted;

(ii) in clause (2), sub clause (d) be deleted;

(iii) in clause (5), after the word "thereon" the words "making such recommendations as they think fit" be added; and

(iv) in clause (6), after the word "report", where it occurs for the second time, the words "which shall come into effect after the expiry of five years from the commencement of the Constitution" be added."

The amendment was negatived.

Mr. President: Amendment No. 346.

The Honourable Shri Purushottam Das Tandon: That I withdraw, Sir.

Mr. President: Amendment No. 348.

The Honourable Shri Purushottam Das Tandon: That also I withdraw.

The amendment were, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 349.

The Honourable Shri Purushottam Das Tandon: That may be voted upon.

Mr. President: The question is :

"That in amendment No. 65 of Fourth List, for the proposed new article 301F, the following be substituted :—

'301F. Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides—' "

The Honourable Shri Purushottam Das Tandon: May I interrupt : I am very sorry; I withdraw this.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Mr. Frank Anthony.

Mr. Frank Anthony (C.P. & Berar : General): I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I think I have covered all the amendments. If there is any Member whose amendment I have left out, he may tell me now.

Shri Mahavir Tyagi: Mr. Munshi's amendments.

Mr. President: That I am coming to. I am thinking of the other amendments.

Mr. Mohd. Tahir: Amendment No. 175, Sir.

Mr. President: The question is :

"That in amendment No. 65 above, in the proposed new article 301H, for the words 'used in the Union or in the State, as the case may be' the following be substituted :—

'specified in Schedule VII-A'."

The amendment was negatived.

Mr. Mohamed Ismail Sahib: My amendments Nos. 336, 341, 342 and 344.

Shri T. T. Krishnamachari (Madras : General): They have been covered by the other amendments.

Mr. President: I think amendment 336 is covered by an amendment which has been lost. The next amendment 341.

Mr. Mohamed Ismail Sahib: I withdraw it, Sir.

Mr. President: Amendment No. 342.

Shri T. T. Krishnamachari: That is covered, Sir.

Mr. President: That is covered. Amendment No. 344.

Mr. Mohamed Ismail Sahib: I withdraw it also, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: I think these are all the amendments. If I have left out any, the Member who has given notice of the amendments may point out otherwise they may be taken as withdrawn by leave of the Assembly.

I shall now put the amendments moved by Mr. Munshi. But, there is an amendment by Mr. Tyagi to number the paragraphs.

The Honourable Dr. B. R. Ambedkar: That is a matter we will look to later on.

Shri Mahavir Tyagi: It has been accepted, Sir.

Mr. President: It does not mean that it has been accepted. They will consider it.

Shri K. M. Munshi: I am not accepting it.

Mr. President: Are you pressing it?

Shri Mahavir Tyagi: If you are sending it to the Drafting Committee, I do not press it. I leave it to the good sense of the Drafting Committee.

Mr. President: The question is:

"That for clause (1) of article 301A, the following be substituted:—

'(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.'"

The amendment was adopted.

Mr. President: The question is:

"That for clause (3) of article 301A, the following be substituted:—

'(3) Notwithstanding anything contained in this article, Parliament may after the said period of fifteen years by law provide for the use of—

(a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in such law.'"

The amendment was adopted.

Shri T. T. Krishnamachari: The other two amendments may be put together.

Mr. President: The question is:

"That article 301F be renumbered as clause (1) of article 301F, and to the said clause as so renumbered the following clause be added:

'(2) Nothing in sub-clause (a) of clause (1) of this article shall prevent a State from prescribing, with the consent of the President, the use of Hindi language or any other language recognised for official purposes in the State for proceedings in the High Court of the State other than judgments, decrees and orders.'"

"That after clause (2) of the proposed article 301F, the following be added:—

'(3) Notwithstanding anything contained in sub-clause (b) of clause (1) of this article, when the Legislature of a State has prescribed the use of any language other than English for Bills, Acts, Ordinances, and Orders having the force of law, and rules referred to in the said sub-clause, a translation of the same in English certified by the Governor or Ruler of the State shall be published and the same shall be deemed to be the authoritative text in English under this article.'"

The amendment was adopted.

Mr. President: The question is:

"That in the Schedule, for "Canarese" the word "Kannada" be substituted; and after Punjabi' the word 'Sanskrit' be inserted."

The amendment was adopted.

Mr. President: I shall put amendment No. 65 to which all these are amendments, to vote.

The question is:

"That amendment No. 65 (proposed art. 301A to 301H) as amended by the amendments of Mr. Munshi which have just been adopted, stand part of the constitution.

PART XIV-A

CHAPTER I—LANGUAGE OF THE UNION

Official language of the Union

301A. (1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything contained in clause (1) of this article, for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union, for which it was being used at such commencement:

Provided that the President may, during the said period, by order authorise for any of the official purposes of the Union the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals.

(3) Notwithstanding anything contained in this article, Parliament may after the said period of fifteen years by law provide for the use of—

(a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in such law.

Commission and committee of Parliament on Official language.

301B. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in Schedule VIIA as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to—

(a) the progressive use of the Hindi language for the official purposes of the Union;

(b) restrictions on the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in article 301E of this Constitution;

(d) form of numerals to be used for any one or more specified purposes of the Union;

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language of inter-State communication and their use.

(3) In making their recommendations under clause (2) of this article, the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of thirty members of whom twenty shall be members of the House of the People and ten shall be members of the Council of States chosen respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

[Mr. President]

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under this article and to report to the President their opinion thereon.

(6) Notwithstanding anything contained in article 301A of this Constitution, the President may after consideration of the report referred to in clause (5) of this article issue directions in accordance with the whole or any part of the report.

CHAPTER II.—REGIONAL LANGUAGES.

Official language or languages of a State.

301C. Subject to the provisions of articles 301D and 301E, a State may by law adopt any of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used at the commencement of this Constitution.

Official language for communication between one State and another or between a State and the Union.

301D. The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

Special provision relating to language spoken by section of the population of a State

301E. Where on a demand being made in that behalf the President is satisfied that a substantial proportion of the population of a State desires the use of any language spoken by them to be recognised by that State, he may direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III. LANGUAGE OF SUPREME COURT AND HIGH COURTS, ETC.

Language to be used in the Supreme Court and in the High Courts and for Acts, Bills etc.

301F. (1) Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides—

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or a Governor or a Ruler, as the case may be,

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

(2) Nothing in sub-clause (a) of clause (1) of this artilce shall prevent a State from prescribing, with the consent of the President, the use of the Hindi language or any other language recognised for official purposes in the State for proceedings in the High Court of the State other than judgments, decrees and orders.

(3) Notwithstanding anything contained in sub-clause (b) of clause (1) of this article, when the Legislature of a State has prescribed the use of any language other than English for Bills, Acts, Ordinances, and Orders having the force of law, and rules referred to in the said sub-clause, a translation of the same in English certified by the Governor or Ruler of the State shall be published and the same shall be deemed to be the authoritative text in English under this article.

Special procedure for enactment of certain laws relating to language.

301G. During the period of fifteen years from the commencement of this Constitution no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 301F of this Constitution shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his

sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under article 301B of this Constitution and the report of the Committee referred to in that article.

CHAPTER IV—SPECIAL DIRECTIVES

Language to be used for representation for redress of grievances.

301-H. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Directive for development of Hindi.

301-I. It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India, and drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

SCHEDULE VII-A

1. Assamese
2. Bengali
3. Kannada
4. Gujrati
5. Hindi
6. Kashmiri
7. Malayalam
8. Marathi
9. Oriya
10. Punjabi

10A. Sanskrit

11. Tamil
12. Telugu
13. Urdu.

The motion was adopted.

Maulana Hasrat Mohani: I want to have my adverse vote recorded with the remark.....

Mr. President: There is no procedure for recording the vote of any particular individual specially with his remarks.

The question is :

"That Part XIV-A as passed stand part of the Constitution."

The motion was adopted.

PART XIV-A was added to the Constitution.

Shri T. T. Krishnamachari: May I suggest, Sir, before adjourning the House, that you may put to vote articles 99 and 184 which this Chapter supersedes ?

The Honourable Dr. B. R. Ambedkar: No: no. It is not in today's Order Paper.

Mr. President: This brings the proceedings of this evening to a close but before adjourning the House I desire just to say a few words of congratulation. I think we have adopted a Chapter for our Constitution which will have very far reaching consequences in building up the country as a whole. Never before in our history did we have one language recognised as the language of rule and administration in the country as a whole. Sanskrit was the language in which all our religious literature and lore was enshrined and in which other literature was enshrined. That was studied no doubt in all parts of the country but it was never the language which was used for administrative purposes throughout the country as a whole. Today it is for the first time that we have got a Constitution,

[Mr. President]

we are going to provide in our Constitution a language which will be the language of administration for the Union and that language will have to develop itself to suit the exigencies of time.

I do not claim to be a scholar of Hindi or any other language. I do not claim to have made any contribution to literature but this much I can say as a layman that it is not possible today to foresee what form this language, which we have adopted as the language of administration of the Union, is going to take in the future. As it is, Hindi has undergone change in the past on many many occasions and we have several styles of it, we have had literature written in Braj Bhasha. Khari Boli is now the prevalent style in Hindi. I think its contact with all the other languages in the country will give it opportunities for further development. I have no doubt that Hindi will benefit rather than lose by absorbing as much as it can of the best that is to be found in the other languages of the country.

We have now accomplished political unification of the country, such as it is. We are now going to forge another link which will bind us all together from one end to the other. I hope all Members will go home with a feeling of satisfaction and even those who have lost in voting will take it in a sportsman like spirit and will help in the work which the Constitution will now impose upon the Union in regard to language.

I want to say one word about South India. It was in 1917 when Mahatma Gandhi was in Champaran and I had the privilege of working with him that he thought of starting Hindi Prachar in the South and he decided to request Swami Satyadev and his dear son Devdas Gandhi to go and start the work which they did. Subsequently, in 1918 at the Indore Session of the Hindi Sahitya Sammelan, this Prachar work was accepted as one of its primary functions by the Sammelan and the work progressed. It has been my privilege to be associated—although I cannot claim to be associated very intimately —with the work throughout this period of nearly 32 years now. I have gone to the South from one corner to the other and it has pleased my heart to see how the people of the South responded to the call of Mahatma Gandhi in respect of this language. I know the difficulties that they had to face, but the enthusiasm which they brought to bear upon this was simply marvellous. I have been associated with prize distributions on several occasions and it may amuse Members to hear that I have distributed the prizes to two generations at the same time if not three on some occasions; that is to say, the grand-parent, the Parent, and the grand-child—for having studied the language, having passed the prescribed examination and having come for the prizes and for their diplomas. The work has progressed and it has been adopted by the people of the South as their work. Today I do not know how many lakhs they are spending over this Hindi Prachar work and I do not recollect the figures, how many examinees are sitting at the examinations from year to year. This means that the language has been recognised by a large section of the people in the South as the language for All-India purposes and the enthusiasm which they have exhibited in this deserves congratulation, deserves recognition, deserves gratitude from the people of the North.

If today they have insisted upon some particular thing, let us remember that after all if Hindi has to be accepted by them, they must accept it, not we for them; and after all what is it which has evoked so much controversy? I was wondering why we should take so much time, so much discussion over a small matter. What are after all the numerals? They are ten figures. Out of these ten, as far as I can say from memory, there are three which are identical in the English numerals and the Hindi numerals—2, 3 and 0. There are four others I believe which are identical in shape but convey different meaning. For example,

4 of Hindi is very like 8 of English, although one represents 4 and the other represents 8. 6 of English is very like 7 of Hindi, although they represent two different meanings. 9 of Hindi in the form in which it is now being used, taken largely from Maharashtra, is very much like 9 of English. Well there are only two or three figures left which have a different shape and different meaning in each of the numerals. It is therefore not a question of convenience or inconvenience of the Press as some Members suggested. I think the English numerals are more or less the same, so far as printing press is concerned, as Hindi numerals.

But we have to respect the sentiments of our friends who wanted it, and I would ask all our Hindi friends to accept this in that script, to accept it because we want them to accept the Hindi language and the Devanagari script, so far as the rest of it is concerned. And I am glad that this House has accepted the suggestion by a very overwhelming majority. It seemed to me that after all, it was not a question of making much of a concession. We wanted them to accept Hindi and they accepted it and we wanted them to accept the Devanagari script and they accepted it. They want us to accept a different form of numerals; and why should there be any difficulty in accepting it? It looks like this, if I may give a small metaphor which may amuse. We want some friends to invite us. They invite us. They say, "You can come and stay in our house. We welcome you for that purpose. But when you come to our house, please wear the English type of shoes and not the Indian chappal which you wear in your own house." I should be not very wise to reject the invitation, simply because I do not want to give up my chappals. I would accept the English type of shoes and accept the invitation, and it is in this spirit of give and take that national problems can be solved.

Our Constitution so far has evoked many controversies, and raised many questions which had very deep differences; but we have, somehow or other, managed to get over them all. This was one of the biggest gulfs which might have separated us. Let us imagine what would have happened if the South had not accepted the Hindi language and the Devanagari script. In a small tiny country like Switzerland, they have got three languages which are recognized by the Constitution and everything has to be done in those three languages. Do we think, can we imagine, that we shall be able to keep together all the provinces, bind them together, if we thought of having as many languages as there are in existence, for central administrative purposes? One page of printing will have to be extended—I do not know—perhaps to fifteen or twenty pages.

And it is not only a question of expense. It is also a question of psychology which will affect our whole life. This language which we shall use in the Centre will tend to bring us together, nearer and nearer. After all, the English language has brought us nearer and nearer because it was one language. If in place of English we have adopted an Indian language, it is bound to bring us closer together, particularly because our traditions are the same, our culture is the same and everything that goes to make our civilisation is the same. Therefore, if we did not accept this formula, the result would have been either a large number of languages to be used, for the country as a whole, or separation of provinces which did not like to submit or accept any particular language under pressure. We have done the wisest thing possible and I am glad, I am happy, and I hope posterity will bless us for this.

The House stands adjourned now till 9 o'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday the 15th September, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 15th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

New Article 112-B.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. President, Sir, I move :

"That after article 112A, the following new article be inserted :—

Jurisdiction and powers of His Majesty in Council under existing law in certain cases to be exercisable by the Supreme Court

'112B. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to matters other than those referred to in the foregoing provisions of this Chapter in relation to which jurisdiction and powers were exercisable by His Majesty in Council immediately before the commencement of this Constitution under any existing law'."

Sir, the position is this that according to the ruling of the Privy Council there is a distinction between civil matters and matters relating to Income-tax and, for instance, acquisition proceedings. It has been held that the proceedings relating to Income-tax and to acquisition of property do not lie within the purview of what are called 'civil proceedings.' And it might therefore be held that unless a special provision was made the powers of the Supreme Court were confined to civil proceedings. In order to remove that doubt this article 112B is now proposed to be introduced so as to give the Supreme Court full powers over all proceedings, including civil proceedings and other proceedings which are not of a civil nature. That is the reason why this article is sought to be introduced.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, I beg to move :

"That in amendment No. 17 above, in the proposed new article 112B, the words 'or practice' be added at the end."

My only purpose in moving the amendment is that I am not sure if the words "under any existing law" will cover the entire scope of the jurisdiction which the Privy Council has been enjoying for such a long time. We have now got a Bill which is going to be introduced in a day or two—I think it is coming for discussion on the 17th—in which an attempt has been made to confer such jurisdiction on the Federal Court as has been enjoyed by the Privy Council. Paragraph 2 of the Bill says :

"As from the appointed day, the jurisdiction of His Majesty in Council to entertain, and save as hereinafter provided to dispose of, appeals and petitions from, or in respect of, any judgment, decree or order of any court or tribunal (other than the Federal Court) within the territory of India, including appeals and petitions in respect of criminal matters, whether such jurisdiction is exercisable by virtue of His Majesty's prerogative or otherwise, shall cease."

My submission is that it is doubtful in what manner and in what matters the Privy Council has been exercising jurisdiction. If there were no pre-existing

[Pandit Thakur Das Bhargava]

law, but the Privy Council was exercising jurisdiction only as a matter of practice, those jurisdictions must be taken away from the Privy Council and conferred on the Federal Court. Much of the Constitution of England is by way of conventions, so that we have to see that the jurisdiction of our Federal Court may be foolproof and is no less expensive than that of the Privy Council.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I beg to move :

"That in amendment No. 17 above, the proposed new article 112B be numbered as clause (1), and the following clause be added :

'(2) The Supreme Court shall also have jurisdiction to hear appeals against sentences of death passed by Courts martial'."

Sir, in article 112 of the Constitution, the Supreme Court has been given very wide powers. It has been said that the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any case or matter, passed or made by any court or tribunal in the territory of India in cases where the provisions of article 110 or article 111 of this Constitution do not apply. So, there is inherent power in the Supreme Court. I want to make this specific as this question is important.

I have had occasions to discuss this matter with many persons who are connected with decisions of the courts-martial. One thing that has struck me is that in the hearing of the courts-martial, the Judge Advocate who is the Judge is also the prosecuting counsel. When a military officer is prosecuted for breach of army discipline, the case goes to the Judge Advocate who is both the Court and also the person to give directions as if he were the prosecution Counsel in that case, with the result that he prepares the prosecution case and at the same time sits in judgment on the accused. Naturally, he cannot be expected to be so fair and impartial as laws of jurisprudence would expect him to be. The man who is the prosecutor should not be the Judge. I know of many cases where the ends of justice have not been met for this reason.

Recently the British Government appointed a Commission to enquire into the procedures of Courts-Martial. That Commission recommended that the Judge Advocate should have nothing to do with the prosecution. Hence my amendment that the Supreme Court shall also have jurisdiction to hear appeals against sentence of death passed by Courts-martial.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, the amendment which stands in my name is of a verbal nature and, therefore, I shall leave it to the Drafting Committee to consider. I, however, with your permission, desire to take part in the general discussion.

This article 112B seeks to be very intricate and circumspect in its approach. It is the inevitable result of piecemeal introduction of articles on the subject. I submit that the way in which the present articles have been worded would make it absolutely difficult to realise what they mean. Article 112B tries to give jurisdiction to the Supreme Court over subjects on which "His Majesty in Council" had powers. We are thus linking the rights and powers of the Supreme Court in matters of appeal to the undefined powers of His Majesty in Council. I think instead of proceeding in a roundabout manner like this, the more satisfactory

course would have been to say that Income-tax and Acquisition proceedings are subjects on which there would be a right of appeal before the Supreme Court.

Sir, I would like to draw the attention of the House to article 111A which gives absolute jurisdiction with regard to criminal cases where there is a final judgment, or order or sentence of a criminal Court, provided of course there is a substantial question of law and there is special leave. Then in article 112 it is said that the Supreme Court may give special leave to appeal from any judgment, decree or final order in any cause or matter passed or made by any Court or tribunal in the territory of India. These, I think, ought to be enough so as not to require any further clarification by means of article 111B.

Then again in article 112A we have already provided that the Supreme Court has the powers to review any judgment pronounced or order passed in any case. So in these circumstances, the real utility of article 112B is not very clear. If there are some loopholes in the articles already passed the better course would be to clarify the matter by specific enactments.

With regard to the British Constitution the greatest difficulty is that it is in a fluid condition. Nobody knows what the powers of the King are and nobody can define them with precision. They are determined by the Courts or by the Parliament when they arise. The proposal of linking the powers of the Supreme Court with the powers of His Majesty would be open to two objections, namely, the linking up of the Supreme Court with something which is vague and undefinable and secondly to inevitably perpetuate the designation of "His Majesty" in the Constitution of Free India.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to support Prof. Saksena. I feel that military courts are not likely to have proper regard for the sanctity of human life. I am against capital sentence. The traditions of non-violence are so strong in this country that it is not advisable to vest final powers into the hands of military tribunals in cases of death sentence. We cannot abolish capital punishment here. All judiciaries, even the Supreme Court are responsive to public opinion. I have no reason to think that our Supreme Court here will have no regard for public opinion and for the traditions of this country.

Mr. President : Dr. Ambedkar, would you like to say anything ?

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the amendment of my Friend, Pandit Thakur Das Bhargava, I do not think that that amendment is necessary if he is really enlarging the jurisdiction of the Court. The word "practice" is generally taken to cover matters of procedure, and article 112B which I have proposed does not deal with procedure but deals with substantive matter of jurisdiction. Therefore his amendment "or practice" is unnecessary.

With regard to the amendment of my Friend Prof. Shibban Lal Saksena, there are two points to which I would like to reply. The first is this, that if there is to be an appeal to the Supreme Court in matters of sentence of death passed by Courts-martial, then such a provision could be easily made by the Indian Army Act giving the accused person the right to appeal, and it has been provided, if I may draw my friend's attention to clause (1) of article 114, that the Supreme Court shall have such further jurisdiction and power with respect to any matters in the Union List. It reads :

"114(1). The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer."

[The Honourable Dr. B. R Ambedkar]

If Parliament thinks that such a power should be vested in the Supreme Court, there is no impediment in the way of Parliament making an appropriate provision in the Army Act conferring such a power on them.

Again, I should like to draw attention to article 112 which deals with matters of special need. Under that it would be open to the Supreme Court to entertain an appeal against a Court martial because therein the words used are—

"any cause or matter made by any court or tribunal",

and therefore, the wording being so large, no Court or tribunal could escape from the special jurisdiction of the Supreme Court provided under article 112. The short, my submission is that his amendment is also quite unnecessary.

With regard to the amendment of my friend Mr. Naziruddin Ahmad to omit the words 'existing law . . . . .

Mr. Naziruddin Ahmad: I have not moved that.

Mr. President: He has not moved it, he has left it to the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: If he has left it to the Drafting Committee I am very glad, Sir. We shall certainly pay the best attention that his point deserves.

Mr. President: Then I will put the amendments.

Prof. Shibban Lal Saksena: In view of the assurances given, I would like to withdraw my amendment.

Pandit Thakur Das Bhargava: I too am withdrawing mya mendment, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That proposed article 112B stand part of the Constitution."

The motion was adopted.

Article 112B was added to the Constitution.

New Article 15-A

Mr. President: Then we go back to New Article 15A.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after article 15, the following article be inserted:—

'15A. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice.

Protection against arrests and detentions.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in this article shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested under any law providing for preventive detention;

Provided that nothing in sub-clause (b) of clause (3) of this article shall permit the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention, or

(b) such person is detained in accordance with the provisions of any law made by Parliament under clause (4) of this article.

(4) Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained'."

Sir, the House will recall that when at a previous session of this Assembly we were discussing article 15. there was a great deal of controversy on the issue as to whether the words should be "except according to procedure established by law", or whether the words "due process" should be there in place of the words which now find a place in article 15. It was ultimately accepted that instead of the words "due process", the words should be "according to procedure established by law". I know that a large part of the House including myself were greatly dissatisfied with the wording of article 15. It will also be recalled that there is no part of our Draft Constitution which has been so violently criticised by the public outside as article 15 because all that article 15 does is this, it only prevents the executive from making an arrest. All that is necessary is to have a law and the law need not be subject to any conditions or limitations. In other words, it was felt that while this matter was being included in the Chapter dealing with Fundamental Rights, we were giving a *carte blanche* to Parliament to make and provide for the arrest of any person under any circumstances as Parliament may think fit. We are therefore now, by introducing article 15A, making, if I may say so, compensation for what was done then in passing article 15. In other words, we are providing for the substance of the law of "due process" by the introduction of article 15A.

Article 15A merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause (1) and clause (2) are already to be found in the Criminal Procedure Code and therefore probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of article 15A is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate these two provisions, because they are now introduced in our Constitution itself.

It is quite true that the enthusiasts for personal liberty are probably not content with the provisions of clauses (1) and (2). They probably want something more by way of further safeguards against the inroads of the executive and the legislature upon the personal liberty of the citizen. I personally think that while I sympathise with them that probably this article might have been expanded to include some further safeguards, I am quite satisfied that the provisions contained are sufficient against illegal or arbitrary arrests.

As Members will see, the provisions contained in clauses (1) and (2) of article 15A are made subject to certain limitations which are set out in clause (3) which says that the provisions contained in clauses (1) and (2) of article 15A will not apply to any person who for the time being is an enemy alien. I do not think that there could be any further objection to the reservation made in clause (3) (a) in respect of an enemy alien.

[The Honourable Dr. B. R. Ambedkar]

With regard to sub-clause (b) of clause (3) I think it has to be recognised that in the present circumstances of the country, it may be necessary for the executive to detain a person who is tampering either with public order as mentioned in the Concurrent List or with the Defence Services of the country. In such a case I do not think that the exigency of the liberty of the individual should be placed above the interests of the State. It is on that basis that sub-clause (b) has been included within the provisions of clause (3).

There again, those who believe in the absolute personal liberty of the individual will recognise that this power of preventive detention has been helged in by two limitations : one is that the Government shall have power to detain a person in custody under the provisions of clause (3) only for three months. If they want to detain him beyond three months they must be in possession of a report made by an advisory board which will examine the papers submitted by the executive and will probably also give an opportunity to the accused to represent his case and come to the conclusion that the detention is justifiable. It is only under that that the executive will be able to detain him for more than three months. Secondly, detention may be extended beyond three months if Parliament makes a general law laying down in what class of cases the detention may exceed three months and state the period of such detention.

I think, on the whole, those who are fighting for the protection of individual freedom ought to congratulate themselves that it has been found possible to introduce this clause which, although it may not satisfy those who hold absolute views in this matter, certainly saves a great deal which had been lost by the non-introduction of the words 'due process of law'. Sir, I commend this article to the House.

Pandit Thakur Das Bhargava : Sir, if you permit me I shall simply read out the numbers of my amendments and they may be treated as moved in the House. This will save time.

Mr. President : Yes, as the amendments are lengthy ones they may be treated as read out in the House.

Pandit Thakur Das Bhargava : Sir, I request that all my amendments may be taken as moved.

"That after article 15 the following new article be added :—

'15A. No procedure within the meaning of the preceding section shall be deemed to be established by law if it is inconsistent with any of the following principles :—

(i) Every arrested person if he has not been released earlier shall be produced before a Magistrate within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the Court of the Magistrate and informed of the nature of the accusation for his arrest and detained further only by the authority of the Magistrate for reasons recorded.

(ii) Evey person shall have the right of access to Courts to being defended by counsel in all proceedings and trials before courts.

(iii) No person shall be subjected to unnecessary restraints or to unreasonable search of person or property.

(iv) Every accused person is entitled to a speedy and public trial unless special law or public interests demand a trial *in camera*.

(v) Every person shall have the right of cross examining the witness produced against him and producing his defence.

(vi) Every convicted person shall have the right of at least one appeal against his conviction'."

'15B. No procedure within the meaning of Sec. 15 shall be deemed to be established by law in case of preventive detention if it is inconsistent with any of the following principles :—

(i) No person shall be detained without trial for a period longer than it is necessary.

(ii) Every case of detention in case it exceeds the period of fifteen days shall be placed within a month of the date of arrest before an independent tribunal presided over by a judge of the High Court or a person possessed of qualification for High Court Judgeship armed with powers of summary inquiries including examinations of the person detained and of passing orders of further detention, conditional or absolute release and other incidental and necessary orders.

(iii) No such detention shall continue unless it has been confirmed within a period of two months from the date of arrest by an order of further detention from such tribunal in which case quarterly reviews of such detentions by independent tribunal armed with powers of passing of orders of release conditional or otherwise and other necessary and incidental orders shall be made.

(iv) Such detention shall in the total not exceed the period of one year from the date of arrest.

(v) Such detained person shall not be subjected to hard labour or unnecessary restrictions otherwise than for willful disobedience of lawful orders and violation of jail rules'."

"That in amendment No. 1 above, for clause (1) and (2) of the proposed new article 15A, the following be substituted :—

'15A. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the procedure for criminal proceedings and trials of accused persons contravenes any of the following established principles and rights—

(a) the right of production of the person under custody before Magistrate within 24 hours of his arrest (excluding the reasonable period of journey from the place of arrest to the court of Magistrate) and further detention only with the authority of the magistrate for reasons recorded;

(b) the right of consultation after arrest and before trial and the right of being defended by the Counsel of his choice;

(c) the right of full opportunity for cross-examination of witnesses produced against the accused and production of his defence;

(d) the right of at least one appeal in case of conviction'."

"That in amendment No 3 above, after clause (d) of the proposed new article 15A, the following clauses be added :—

'(e) right to freedom from torture and unnecessary restraints and from unreasonable search of person and property;

(f) right to a speedy and public trial unless special law and public interest demand a trial *in camera*'."

"That in amendment No. 1 above, in clause (1) of the proposed new article 15A, for the words 'a legal practitioner of his choice' the words 'and be defended by a legal practitioner of his choice in all criminal proceedings and trials' be substituted."

"That in amendment No. 1 above, in the proposed new article 15A, for clause (2), the following be substituted :—

'(2) Every arrested person if he has not been released earlier shall be produced before a Magistrate within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the court of the Magistrate and detained further only by the authority of the Magistrate for reasons, recorded'."

Or, alternatively

"That in amendment No. 1 above, at the end of clause (2) of the proposed new article 15A, the following be added :—

'and for reasons recorded'."

[Pandit Thakur Das Bhargava]

"That in amendment No. 1 above, after clause (2) of the proposed new article 15A, the following clauses be added :

'(2a) Every person accused of any offence or against whom criminal proceedings are being taken shall have the full opportunity of cross-examining the witnesses produced against him and producing his defence.

(2b) Every person sentenced to imprisonment shall have the right of at least one appeal against his conviction'."

"That in amendment No. 1 above, for clauses (3) and (4) of the proposed new article 15A, the following be substituted :—

'15B. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the prevention or detention contravenes any of the following principles'—

(1) Such detention without trial shall only be allowable for alleged participation in dangerous or subversive activities affecting the public peace, security of the State and relation between different classes and communities inhabiting India or membership of any organisation declared unlawful by the State.

(2) Such detention shall not be longer than two months unless an independent tribunal consisting of two or more persons being High Court judges or possessing qualifications for High Court judgeships and armed with powers of enquiry including examination of the detainee recommend continuance of detention within the said period of two months

(3) Such detention shall not exceed the total period of one year.

(4) Such detention shall be free from unnecessary restrictions and hard labour otherwise than for wilful disobedience of lawful orders and violation of jail rules :

Provided that the Parliament shall never be precluded from prescribing other reason and circumstances which may necessitate such detention and the conditions of such detention'."

"That in amendment No. 1 above, in the proviso to clause (3) of the proposed new article 15A, for the word 'three' the word 'two' be substituted."

"That in amendment No. 1 above, in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the word 'Board' the words 'with powers of inquiry including examination of persons detained' be inserted."

"That in amendment No. 1 above, at the end of sub-clause (b) of the proviso to clause (3) of the proposed new article 15A, the following be added :—

'but in no case more than six months' *or* 'but in no case more than a year'."

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, after the word 'circumstances' the words 'and the conditions' be inserted."

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, for the words 'three months' the words 'one month' *or* 'two months' be substituted."

The House has just heard the speech of the honourable Mover of the main motion. I need not recall to the memory of the House the heated controversy which raged about a year and a quarter ago round the words 'due process of law'. Now a substantive part of the 'due process' has practically been given up after 70 per cent. being secured in article 13. I should think that in the circumstances of our country, this provision of 'due process' is certainly necessary cent. per cent It is the only right process in this country. Our country is not trained to the restraints and discipline which mark out a country in which democracy has worked for a long time. Our country is full of autocratic ideas. The domination by a foreign power of this country for hundreds of years has so demoralised our character that a man in the street.....

The Honourable Dr. B. R. Ambedkar : Sir, may I say a word ? I am prepared to accept one of the amendments of my honourable Friend which says that the accused shall have the right to be defended. I can add these words in the last line of clause (1) of article 15A. It will run thus : be denied the right to consult or to be defended by lawyers of his choice'. I think that will carry out my honourable Friend's intention.

Pandit Thakur Das Bhargava: In trials as well as in criminal proceedings?

The Honourable Dr. B. R. Ambedkar: 'Defended' means that. Could we not curtail the debate now?

Pandit Thakur Das Bhargava: We have already passed an article, No. 24 about Compensations. Is it the idea that no compensation need be given at all? If you make acceptance of amendments a price for my not speaking further, I should be paid full compensation.

So far as the question of compensation is concerned, we wanted that the words 'due process of law' should be there. I am glad that Dr. Ambedkar, who has been very cautious in this matter, has today confessed that he is of the same view as many other lawyers in this House. But our misfortunate was that the greatest obstacle to this 'due process' came from the greatest jurist in this House and it is most unfortunate to this country that we have not been able to pass this 'due process' clause. In the long history of the struggle for liberty which the Congress had to wage with the foreign government, the High Courts and the Supreme Court many a time held that the laws passed by the bureaucracy were not valid. Now, this power is being taken away from our Indian courts in the name of liberty. My submission is that the first casualty in this Constitution is justice. After all what is a fundamental right? A fundamental right is a limitation of the powers of the executive and the legislature. Whatever fundamental rights we have given in this Constitution, lately an attempt has been made to take them away. Article 15 is the crown of our failures because by virtue of article 15 we have given the Executive and the legislature power to do as they like with the people of this country, so far as procedure is concerned. I cannot describe the state of mind in which I felt myself when I could not succeed in getting this House to agree to the due process clause.

Now, Sir, Dr. Ambedkar says that he has given a compensation for that clause. He has given us these two clauses (1) and (2). I congratulate him so far as these two clauses are concerned, although I shall have occasion to quarrel with him over one of these clauses. All the same, I congratulate him on the efforts he has made in salvaging something out of the lost cause. All the same, I do not know, Sir, which department of the Government of India or which Minister has got the cheek to oppose the whole nation when it wants to get into its own.

Now, Dr. Ambedkar says that he is agreeable to accept my amendment that the accused will have the right of being defended by a lawyer of his choice. I make bold to say that in no country, in no civilised country is that right not given. This too has been very niggardly given by Dr. Ambedkar. This Dr. Ambedkar says, is a sort of compensation to the original due process clause. I submit with great pain that this is in my opinion no concession at all. These two provisions mentioned by him are so elementary that I may say without any sort of hesitation that these two clauses are of such a nature that no civilised country, no civilised legislature, can have the heart to say that even these should not be recognised.

Now, in regard to the two matters of arrest and detention, these two clauses are sought to be introduced; but what happens after a person is arrested or detained? His troubles begin then. When he is detained or arrested and he is in the clutches of the police, he is alone in the world, and the forces of the police, the forces of the Crown and all other forces combine against him and he is helpless. We have made absolutely no provision to save him from the tyrannies of the police and the courts. After all, what is the magistracy?

[Pandit Thakur Das Bhargava]

When we come to the other articles which are coming before the House, 209, etc., we will realise that the whole panorama of Swaraj is being taken away from us bit by bit. All the powers of the magistracy will remain in this country as before. They are not going to make any change so far as the question of the separation of the judiciary from the executive is concerned. Knowing well what kind of magistracy we have, we should at least provide some sort of check by the way of procedure at least. If you do not allow the courts, even the highest courts in this land to pronounce if any law is valid and just, you must at least have some compensatory thing. In regard to these principles, only two are sought to be put in. Now, after arrest and detention, there is absolutely no sort of right which is sought to be given.

Sir, if you will kindly examine these two clauses (1) and (2), you will be pleased to see that not only no further right is sought to be given, but also that they take away from the existing rights. In regard to 15A (1), I submit it reads thus :—

"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice."

The law at present is that no person is to be kept in detention for a single minute longer than is necessary or reasonable. This section does not even give this right that the executive will be compelled to produce a person arrested before a court as soon as possible. If an officer detains a person longer than is necessary, he cannot be called upon to explain now. Fundamental Rights mean that these rights cannot be taken away by the legislature or the executive. Left to myself, I would rather be without any fundamental right, unless there is a modicum of right which ensures the liberty of the citizen. Sir, the present practice under 61 of the Criminal Procedure Code is as soon as a person is arrested, he must be produced before a court within twenty-four hours, excluding the time taken for the journey from the place of arrest to the nearest magistrate's court.

Apart from this, Sir, when he is brought before the Court under section 61 within twenty-four hours, then at that time the powers of the courts also are restricted under the present law, and I think they have been rightly restricted. We know that the magistracy, especially the special class magistrates, is police-ridden, because the Superintendent of Police has only to write a letter in secret against the magistrate and the magistrate will be no more. Therefore the ordinary magistrates have not the guts to do anything against the wishes of the police. and therefore they allow detention as a matter of course. This is the present practice, and therefore the law enacted a provision in section 167 of the Criminal Procedure Code. With your permission, I would just read that provision.

The provision in the Criminal Procedure Code is as follows :—

"Whenever any person is arrested and detained in custody and it appears that the investigation.....cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the Police-station or the Police Officer making the investigation if he is not below the rank of Sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time foward the accused.....to such Magistrate."

Now, this provision and the other provision say that an accused must be kept with the authority of a Magistrate; and third-class and second class Magistrates, unless they are specially empowered, have not the right to authorise detention of a person, because in 1923 we passed a law whereby a proviso was added to this effect :—

"Provided that no Magistrate of the third class and no Magistrate of the second class not specially empowered in this behalf (by the Provincial Government) shall authorise detention in the custody of the Police."

Even this right is taken away. There is an amendment by a friend of mine to this clause which says that only first-class Magistrates should be enabled to have this power and to authorise detention. I do not agree with him, because unless and until the second-class and third-class magistrates are also specially empowered, it would be difficult to work it in practice, but at the same time, I do not see any reason why this provision passed in 1923 should be taken away by this clause.

Then again, Sir, a very important and salutary check has been placed on the authority of the Magistrate by virtue of provision 167 (3) which says : "A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing," and I beg Dr. Ambedkar to kindly give me his ear for half a minute. I beg to submit that only four words "and for reasons recorded" be added. When a person is brought before a Magistrate, this is exactly the time when his fate is going to be sealed or to be bettered. At that time, according to the practice followed in the Punjab and elsewhere, when an accused is presented before the Magistrate, when the remand is sought to be given, the Magistrate is bound to record his reasons and this is a very great check upon the power of the Magistrate. I have got some specific amendments to this effect. I want that in the first proviso in the proposed new article 15-A as moved by Dr. Ambedkar the words "and for reasons recorded" to be added and I beg of Dr. Ambedkar to kindly consider the full effect of these words.

I claim that unless these words are there, you will be taking away a very important right of the accused. If you put these words, then it would mean this that as soon as a man comes, as soon as the papers are presented to the Magistrate, it is the duty of the Magistrate to see how long the remand is to be given, for how long this man is to be put in the dangeon and give full reasons and these reasons could be scrutinized by the superior Courts and the accused could get that order revised. This order is revisable; it is a judicial order; it is not an executive order and therefore, reasons must be given. If reasons are given then, of course, we may say that the order is justified. If you provide the reasons to be given, then the Magistrate will be called upon to explain; he will have to hear the lawyer and then pass an order whether a man is to be detained for ten or five days and for what reasons he has to detain him. If you do not condition his order with the words "and for reasons recorded", the probability is that the Magistrate will mechanically make the order of remand.

I do not want to read from the rulings which give effect to it and why this is a very salutary law. I leave it to the House because I submit this is one of the most important amendments that I seek to make in this law. If these words are there, I submit Sir, the liberty of the accused will to a very great extent be secured and at the same time the present provision 15A (1) will not be necessary, because as soon as a person is brought within a period of twenty-four hours his counsel is there; then in that case when the Magistrate goes into the reasons as why he should allow further remand at that time, the reasons are gone into and

[Pandit Thakur Das Bhargava]

the accused is automatically informed and the accused can ask the Magistrate why he is granting a remand and why he is being put in custody. He has a right to an explanation from the Magistrate why he is detained, and thus the provisions of 15A (1) will be in effect fulfilled. If you put these words "and for reasons recorded" in clause (2) then it would follow that 15A (1) will be unnecessary.

In practice what happens? The police is all powerful, they misinform the persons, ill-treat him and his relations and give them wrong reasons of detention. You have got nothing to prevent this being done unless it be by this clause. If a person has misinformed, the accused there is no record of it. You have got no check over the Police and have no guarantee that these provisions will be given effect to. Therefore the only check that you can place upon the police and on a Magistrate is at the time when the man comes for remand and when he comes, you could certainly insist that the reasons must be recorded so that the Magistrate when he records the reasons and when he considers them he may also explain to the accused or to his counsel why he is being detained or for what further period he is to be detained. I only suggest that these words must be added to clause (2) if you really mean that a person may be secured in his rights. I do not think I am asking for more than what is absolutely due to the accused.

In regard to my other amendments, I am glad that one amendment has been accepted by Dr. Ambedkar regarding counsel and I will not take up your time by referring to this aspect of the case. The other amendments which follow also relate to such rights as have been already conceded by the Criminal Procedure Code and the only apprehension is that a panicky legislature or an autocratic Government may not take away those rights from the people and begin to tyrannise over them. Let us be quite clear in our minds about this aspect of the matter. The whole of India, though governed by the Centre, is at the same time governed by the Provincial Governments and States where the autocracy of the old days is still in vogue and it is high time that when the new legislatures come into being, we should see that the legislatures do not misuse the powers in respect of which they have not got any experience whatsoever. It is in the blood of every executive officer and much more so in India to have as much powers as possible. Does this House not remember that in 1947 we passed such a law as against which one of the present Ministers of the Crown stood up and said "It is a black law"? Do we not remember that we in a panic passed in this House laws authorizing the Police to shoot over the public without any warning? Do we not know that we in this House passed some laws whereby if a person wrote an article, not because it was inflammatory, but tended to do something which was quite vague in respect of worsening the relations between different Communities, not only his other publications, but the press in which they were published, could be confiscated without an appeal to any Court?

I know that these powers were not used because we have got Sardar Patel at the helm of affairs, because we have got our own Government who do not want to use these powers. Suppose, Sir, in a new State which is being formed these powers are given to the Ruler of that State, who in his wisdom begins to exercise those rights, what would happen to the rights of the individual. We are making a Constitution which will save the liberty of the people. My humble submission is that that article 15 as it stands with these two safeguards also is a blot upon the Constitution. We have not been able to secure the rights which we wanted to secure. I know I am using strong words. But, my feelings are extremely strong and I cannot conceal them from this House. I want them to

share these feelings with me. As a matter of fact, I say this is the only time when you can impose some restrictions on the legislature. We must bring all the pressure on Dr. Ambedkar, and tell him that these are the minimum rights which we want to secure to the people at large. I would have rather liked that Dr. Ambedkar, instead of resisting the attempts of these people, should have resigned from his post as a protest against the pressure which is being brought upon him by the powers so that these fundamental rights may not be put in.

We have agreed that due process of law shall not be there. But I do not agree that even these small rights should not be put in. I submit for your consideration what these rights are. One of these rights is that every person accused of any offence shall have the right of cross-examining the witnesses produced against him and producing his defence. This is a very elementary right. If you do not allow this, why speak of a trial? Do we not know every day that this right is being denied to the accused? In the mofussil the courts do not wait for the counsel and cases are conducted in places where witnesses do not reach. The people are being deprived of their right of defence. So far as cross examination is concerned, we know even under section 256, the provisions are abused and attempts are made not to allow cross examination. Where is the guarantee that in the future the legislature will not assume, that the executive will not force the legislature to assume the power that any accused may be condemned even in his absence? I know of the legislatures where attempts were made to see that in the absence of the accused, the hole trial is gone through. Do we not know the Rowlatt Act which said, no *vakil*, no *daleel* no appeal?

Mr. President: The Honourable Member has made reference to this House several times. I do not know which House he means.

Dr. P. S. Deshmukh (C. P. & Berar: General): In its legislative garb.

Pandit Thakur Das Bhargava: This House has got two forms, one legislative and the other constitutional. We pass laws in the other House and here we only pass this Constitution. I am referring to the other House. You are the President of that House also though we have got a Speaker too. My humble submission is, we take full responsibility for what we have done. These laws have not been misused. My humble submission is, where is the guarantee that any other Government which is not manned at the Centre by people like the present Cabinet, or any other provincial Government will not exercise these powers? We do not think this Government would do it. But, there are other Governments. Take the case of Rajasthan. They have just emerged from autocracy; we do not know to what extent they will go when they are confronted with an emergency. With regard to emergency.....

Mr. President: I was thinking of reference to this House when you mentioned the Rowlatt Act.

Pandit Thakur Das Bhargava: The Rowlatt Act was passed in 1918, XIV of 1918, I know. My submission is, where is the guarantee that this House or the provincial legislatures will not enact a law like that Act? This should be made foolproof so that the courts would sit in judgment and pronounce that these Acts are not valid. When it is a case of giving compensation, let us be fair and let that compensation be adequate and fair and just. It is neither, it is not even justiciable.

I shall come to another clause. No person shall be subject to unnecessary restraints or to unreasonable search of person or property. This clause has a history of its own. I do not want to go into the history of general search, etc.,

[Pandit Thakur Das Bhargava]

as they happened in England. But, I want to refer to what happened in this very House. On 3rd December, Kazi Syed Karimuddin brought an amendment in this House in your absence. It was to this effect : it appears on page 794 of the proceedings dated 3rd December 1948.

"That in article 14, the following be added as clause (4) :—

'(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized'."

When we were debating this, at the end, Dr. Ambedkar who is imbued with the notions of a criminal lawyer, I do not know whether he has practised or not, said, (it appears on page 796) : "I am however prepared to accept amendment No. 512 moved by Mr. Karimuddin. I think it is a useful provision and may find a place in our Constitution. There is nothing novel in it because the whole of the clause as suggested by him is to be found in the Criminal Procedure Code so that it might be said in a sense that this is already the Law of the land. It is perfectly possible that the legislatures of the future may abrogate the provisions specified in his amendment, but they are so important so far as personal liberty is concerned that it is very desirable to place these provisions beyond the reach of the legislature and I am therefore prepared to accept his amendment." The amendment was accepted. The Vice President said twice that the amendment was accepted. But then, the question was raised and ultimately this was negatived.

I am submitting this to prove that as a matter of fact, this Drafting Committee which we have appointed, which should have carried out the will of this House, has failed to do so. It has succumbed to extraneous influences from other authorities. I think that so far as this House is concerned, the Drafting Committee should have carried out the behest of this House. Dr. Ambedkar should have been allowed to have his own way. Dr. Ambedkar agrees that this is a useful provision. Yet, now, he is not prepared to accept my humble amendment to this very effect. What is the position? The position is, that the will of the Members of this House is not being implemented by this Drafting Committee. I do not want to read from the speeches of Dr. Ambedkar and Mr. Munshi who also was of this view. He gave very good reasons : I have taken my cue from those gentlemen : they are not my arguments; they are arguments proceeding from those gentlemen. I am very sorry that these gentlemen have had to succumb to pressure from other places. My humble submission is that so far as this amendment is concerned, this is one which has been accepted by this House and I beg of Dr. Ambedkar to rise to the occasion and accept at least this amendment. He would have known fully well, if he had practised as a criminal lawyer in the mofussil, that as a matter of fact, when houses are searched, it is not the search which we object to, but property is sometimes planted and then searches are made in the presence of witnesses who are procured by the police. The House must remember that at least in 50 per cent. of the criminal cases brought before the courts the accused are either discharged or acquitted. The House can see what amount of corruption, what amount of embarrassment and harassment is being caused to the public, on account of this corrupt and incompetent police.

I know when we say this we are condemning ourselves I do not take any pride in saying that the police is so bad. But we have just started reforming them after 200 years of slavery and it may take some time to change. If we continue to have the Cabinet which we have got now for some years more, I think things will improve. But, we must take stock of things as they are. We cannot be complacent that everything is being done rightly. May I humbly submit, Sir, I do not want to paint a gruesome picture, in the present circumstances of the country. But there is no doubt there is great corruption, there is great tyranny and there are no civil liberties in this country. Our ministers at the helm of affairs are not fully aware of the situation. May I tell you, Sir, what happened in Delhi to the refugees? Without any law, police robbed the people of their goods, and broke up their stalls. There was no law; When asked under what law this was being done, the reply was that this was done under executive orders of the Cabinet. Now, my humble submission is that unless there is a reign of law in this country wherein no situation like the one in which we find ourselves will arise, the liberty that we have won is not worth the paper on which it is written.

What is the fifth right I claim? I claim if there is a conviction, if a person is sent to imprisonment, at least you provide him with one appeal. Now it was after great fight and after you yourself took some interest in the affair that we were able to put in a clause relating to Federal Court that in cases of persons who are for the first time sentenced by the High Courts to death, in those cases an appeal was allowed; but even then if the High Court in its wisdom wants to sentence the accused to transportation for life, even though this is the first conviction, there is no appeal. My submission is that in every civilised country the judgment of one man is not given the power whereby he can put a person in imprisonment of transportation. I therefore want a very simple provision that every person when he is convicted or sentenced to imprisonment must have one right of appeal. Is it extravagant that at least when the liberties of the people are taken away, they will have at least one appeal.

Similarly when you go to the other question about speedy trial, what are the functions of Government? Justice delayed is justice denied and I need not emphasize it. I am not one of those who want abstract rights—I am not one of those who are opposed to social control in the interest of the community but I do want that personal liberty may be secured to the individual in a full measure. My submission is that we must have the ordinary rights which have been enjoyed by every civilized country.

I now come to the second part of the provision and that is relating to preventive detention. There was a time when detention without trial was regarded as a very heinous offence by itself when every person said that no person should be detained without being tried. Now fortunately or unfortunately the time has come and in every civilised country we have a law about preventive detention. I do not want that my country must not have the safeguard; on the contrary I have always stood for having a law about preventive detention and I am glad that we are going to have clause (4). At the same time I want that the preventive detention may be regulated by law. I want that at least the barest demands of justice be secured to a person who is a detainee. After all every accused person before trial is presumed to be innocent, and similarly a detainee who is not even tried is presumed to be innocent. Therefore no unnecessary restriction may be put upon him and he may not be put to hard labour unless for wilful disobedience to lawful order or infraction of jail rules. Therefore I suggest that so far as these persons are concerned, they may not be put to unnecessary hardship or restrictions.

[Pandit Thakur Das Bhargava]

Now I am not satisfied that three months period is the right period which has been prescribed by Dr. Ambedkar. In ordinary cases we give fifteen days to Police for preparing the case. In cases of this nature when a case is prepared for this impartial tribunal, then according to me one month is quite sufficient. Taking the exigencies of the time I submit that before two months are over an order should be obtained from an impartial tribunal and not from a board. I want to use those words which a year and a half ago Dr. Ambedkar himself used, I am reading from the proposed draft of Dr. Ambedkar which he presented before the committee appointed to consider the question of Due Process. At that time the draft had these words :—

"Nothing in [illegible] 15, 15A, 15B and 15C shall apply to persons taken in custody under any law providing for preventive detention of persons who are believed to be engaged in dangerous or subversive activities. Provided however no such person shall be kept for a longer period than three months without the authority of an impartial tribunal."

you call it Board and I call it Impartial Tribunal. If you call it an 'Impartial Tribunal', unconsciously it gives the persons concerned an idea that it is an impartial tribunal. I want that this Board must be armed with the powers of examining the detainee. I regard it as one of the most salutary and one of the most elementary principles of justice.

We passed the other day an article that if a civil servant—if he was going to be reduced in rank or removed or dismissed, he must be given an opportunity of showing cause. Now this man whose liberty is taken away will not have such liberty of showing cause. Dr. Bakshi Tek Chand just showed me one of the laws of the Government of Madras which says that in a situation like this the Madras Legislature has in its wisdom sought to impose a restriction on the powers of the Executive that they must give the detainee the grounds for which he is detained and ask him his explanation of the same. When Dr. Ambedkar moved it he said probably this power may be given to that Board. My submission is I do not want to stand on formalities. I want in our Constitution we must place it that every person who has been detained shall be given an opportunity before a tribunal to explain his conduct and evidence against him and know the sources and the subject matter of evidence against him. He may be able to explain his conduct. I beg that this clause should be considered from this point of view. I want that this Board may be given the power of summary enquiry and examination of the detainee.

Now with regard to the ultimate period my humble submission is that in India the anticipation of life is said to be only 23 years and one year is certainly not a very short period because after that if the police is not able to secure evidence within that year and place before the Court, then I would imagine the evidence on which he is sought to be retained is not worth the paper on which it is written. Therefore this period may be taken to be one year.

I want these three amendments in this clause and I would be satisfied. My difficulty is if we pass these clauses as they appear in the amendment then we cannot touch this period of 3 months. This will become absolute and we cannot say in the coming law under clause (4) that the three months may be reduced to two months. In fairness the Executive has to account for every minute of the detention of such persons. It is in the laws of every country that no police officer is authorised to keep a person detained for a moment longer than is absolutely necessary and three months even is an unconscionably long period. I would like to reduce it further, but I would not go further than two months. Therefore, so far as these provisions are concerned, they should at least be reframed in such a way that these amendments are incorporated and these rights are secured to the citizens of this country.

Mr. Nazirudin Ahmad: Mr. President, Sir, I beg to move:

"That in amendment No. 1 of List I (Eighth Week) for clause (1) of the proposed new article 15A, following be substituted :—

'(1) Every person arresting another in due course of law shall, at the time of the arrest or as soon as practicable thereafter, inform that person the reasons or grounds for such arrest, nor shall he be denied the right to consult a legal practitioner of his own choice.'"

I also move :

"That in amendment No. 1 of List I (Eighth Week), sub-clause (b) of clause (3) of the proposed new article 15A be deleted."

I also move :

"That in amendment No. 1 of List I (Eighth Week), sub-clause (b) of clause (3) of the proposed new article 15A be deleted."

Shri Mahavir Tyagi (United Provinces : General) : Then, with what will the Member connect the word "nor" occurring there ?

Mr. Nazirudin Ahmad: It is not bad English, it is just good idiom. If it does not sound well to the musical ears of Mr. Tyagi, we may leave it to the Drafting Committee to cure it. Now, Sir, I do not wish to go over the general ground so ably and elaborately covered by my honourable Friend, Pandit Thakur Das Bhargava. He speaks with unique authority and experience and he speaks with the fervour of a real patriot and he has had ample experience as a criminal lawyer, of the vagaries of the police. And he is now not a practising lawyer and therefore he looks on these questions with considerable amount of knowledge and detachment which ought to be respected in the House.

I shall confine myself to the three amendments which I have just moved. There is a difference between the original article moved and my amendment, to clause (1). In the original clause the words are that when a man is arrested, he should be informed, as soon as may be, of the grounds of such arrest. This leaves it entirely to the discretion of the man arresting another whether or not to give the arrested person the reasons or grounds of his arrest, at once. It leaves him entirely free to give the reasons or not. He may give the reason later on, or rather invent a reason for the arrest, later on. My amendment says that the grounds and the reasons for his arrest shall be given at the time of the arrest, or as soon as practicable thereafter. The point is that there should be no needless delay. If quickness in giving of the information is impracticable, then alone he may delay it momentarily. Even then, he must give the information as soon as possible. I shall give the House an example. It may be that a man who is to be arrested gets scent of it and runs, and the police officer chases him. In that circumstance, it would be impracticable on the part of the arresting officer just before the arrest, to give the arrested man the reasons for the arrest. He must first of all, secure his body and must give the reason at the time, or as soon thereafter as practicable. All that I mean is that there should be no difficulty in giving the man arrested the reason for his arrest or the grounds for his arrest. The usual grounds for such arrests are that there is a credible or reasonable information against him that he has committed or is concerned with a cognizable crime or that from his demeanour or other circumstances, the officer arresting him has reasonable suspicion that he is connected with a cognizable crime or he is about to commit such a crime. These are the general nature of the circumstances in which an arrest is effected. Other circumstances are there is a warrant or summons against him or there is an order,

[Mr. Naziruddin Ahmad]

by an appropriate authority for his arrest. These are circumstances which it is easy for the police officer to explain, though not immediately before the arrest or at the time of making the arrest, at least immediately after that.

The need for such a provision is this. Although there are similar provisions in the Criminal Procedure Code, we must insert fool-proof provisions in the Constitution so as to make it impossible for a Legislature to change those salutary provisions. Therefore it is very necessary that the Constitution should be particularly careful about limiting the authority of the police in effecting arrests. There is nothing lost, but much gained by telling the accused immediately after the arrest or at the time of arrest the reasons for his arrest.

With regard to the other amendment, I seek to delete sub-clause (b) of clause (3) and of course the proviso to clause (3) which is connected therewith. Sub-clause (b) is to this effect—that nothing in this article shall apply to any person who is arrested under any law providing for preventive detention. Sir, I fail to see the necessity for this. If a man is to be detained, as a preventive measure, there is nothing lost, there would be no danger, nothing inconvenient in just letting the man know that he is being arrested for preventive purposes under the orders of a Magistrate or the orders of a superior officer or that there are such and such reasons against him. In fact, it is very necessary that a man arrested should be given the reasons for his arrest. And the obvious necessity for this is that unless the police officer is bound to give him the information at once, he may make indiscriminate arrests as is often done. If he can arrest a person without any justifiable reason, he will then be free to invent some reasons later on.

With regard to proviso to clause (3), there are a large number of elaborate provisions and I submit that they are going into too much details of administration. As to what should be done for a man who is under preventive detention should be left to the Legislature. If we go too much into details, the result of that would be that cases which we do not provide for would be rather doubtful. In these circumstances, I submit that these amendments which I have proposed should be attended to and if thought proper, their substance may be incorporated in the article.

Shrimati Purnima Banerji (United Provinces : General) : Sir, I move :

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A, after the words 'as soon as may be' the words 'being not later than fifteen days' be inserted."

I further move :

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the words 'a High Court has' the words 'after hearing the person detained' be inserted."

I further move :

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the words 'such detention' the words 'but so that the person shall in no event be detained for more than six months' be added."

I also move :

"That in amendment No. 1 of List I (Eighth Week), the following proviso be added to clause (4) of the proposed new article 15A :—

'Provided that if the earning member of a family is so detained his direct dependents shall be paid maintenance allowance.' "

Sir, the article with which we are dealing at the present moment is a very serious one as it takes away some of the liberties granted by article 15 as fundamental rights and provides for arrests of persons and even detention of persons without trial I am sure I am voicing the views of most of my colleagues here that any form of detention of persons without trial is obnoxious to the whole idea of democracy and to our whole way of thinking. Granting that we visualize a situation in which it may become necessary and occasions may arise, when powers of detention may have to be used and exercised by a particular Government : Clause (1) says that if a person has been arrested he shall soon after that be told the reason of his arrest and clause (2) says that after twenty-four hours he shall be placed before a Magistrate. We are not quite sure as to what is the length of time which will be considered suitable for a person to be told why he is arrested. And if he is placed before a Magistrate, does it presume and presuppose that before he is placed before a magistrate his charges will be given to him ? Having our own experiences in our own short political lives and careers of what it is to be detained and on what laws one is detained, we feel that in this clause a period should be specified; that is, if a person is arrested and is placed before a magistrate he should be given the charges for which he has been arrested within fifteen days at the most if his presentation in twenty-four hours before a magistrate does not involve such charge being framed within twenty-four hours.

Further it has been said that any detenu who has been put into jail shall be detained for three months till an Advisory Board decides whether he should be detained for a longer period. We feel that the detenu should be permitted to appear before this Advisory Board in person and state his case in full. We know the process how the person is detained. If a person is considered undesirable, the local Magistrates or the local authorities leave it to their subordinates to handle the situation and even to decide upon the situation. Then it happens that people in these situations have no manner or measure of relief because they are simply detained and not allowed to appear before any court and not told for the time being why they are being detained. Therefore we do feel that after being detained a detenu should have the right to appear before the Advisory Board in person before he is condemned or his detention is upheld. No facts regarding the detenu should ordinarily be withheld from the Advisory Board.

Thirdly, I have moved another amendment by which I say that if the Advisory Board should consider that such a person should be detained, in no case should that period exceed six months. I am sure that within that period if sufficient evidence is found against the accused the proper course would be that he should be placed before a proper court or he should be released. Continuous detention from month to month without a person getting a chance of appearing, or considering himself, sufficiently defended, before a properly constituted Board is highly arbitrary.

Fourthly, whereas in our Constitution many provisions have been made as to how much salary one should draw, what allowance members of the House shall get, what shall be each one's position and status, if a person is detained in prison and if he is an earning member of the family I do earnestly plead that he should be given a maintenance allowance. It should not be left to the arbitrary will of any one to deprive anybody of his liberty and then later on to decide, by leaving it to their sweet will, as to how his dependents shall live and maintain thmselves.

With these words I commend my amendments to the House.

Dr. P. S. Deshmukh: Sir, there is more than one amendment standing in my name. I need not move amendment No. 103, but I would like to move Nos. 107 and 110.

I move :

"That in amendment No. 1 of List I (Eighth Week), for clause (2) of the proposed new article 15A, the following be substituted :—

'(2) Every person who is arrested shall be produced before the nearest magistrate within twenty-four hours and no such person shall be detained in custody longer than twenty-four hours without the authority of a magistrate.'"

I further move :

"That in amendment No. 1 of List I (Eighth Week), clause (3) of the proposed new article 15A be deleted."

Sir, I would like to offer some observations of a general nature on this article. I do not share the vehemence which has actuated my honourable Friend, Pandit Thakur Das Bhargava, although the grounds that he has stated in the House really incline one to take extreme views. As has been remarked by the Honourable Dr. Ambedkar himself, he had really anticipated the argument that there is nothing new in this article and that most of these provisions were really covered by those which are in existence in the Criminal Procedure Code. His point was to a certain extent elaborated by my honourable Friend, Pandit Thakur Das Bhargava, and it was pointed out that if this article was passed in the shape in which it has been placed before this House the situation would be worse than it is at present and there would be no improvement.

In addition to the sections which have been referred to by my Friend, Pandit Thakur Das Bhargava from the Criminal Procedure Code I would like to refer to section 81 also. He has referred to section 61 where it has been laid down that :

> "No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

So, the period of the detention, not to exceed beyond twenty-four hours, is already provided for in the Criminal Procedure Code. In addition to that we have got section 81 which is as follows :—

> "The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person."

In addition to these there is section 167 to which a reference has already been made by my friend and that lays down the procedure when the investigation cannot be completed in twenty-four hours and a maximum period of fifteen days is allowed there. In addition to all these we have got the rights of the nature of *habeas corpus* which have been provided in section 460 and 461.

So, on comparing the provisions that exist in this Code of Criminal Procedure passed as early as 1898 with the provisions which we are seeking to make now, I was struck that a person like the Honourable Dr. Ambedkar could find anything new in it and these provisions which existed had been respected till we came into power more scrupulously than they have been of recent days. They were quite sufficient to protect the liberties of the people of this country I do not think it can be said that there were very many cases in which these provisions in the Criminal Procedure Code were disrespected or violated. But the reason why we feel the necessity of something being stated in the Constitution itself is a reflection of the present day events, of what is happening,

and the administration of law and justice in the Provinces, and probably through the Ordinances that we have promulgated and the legislations that we have passed in the Centre also.

So, the apprehension that the liberty of persons living in India will not be safe is not really based on the inadequacy of provisions existing in the Criminal Procedure Code. It arises from the fact that the provisions, which we had respected far more before, are not being respected today. I admit the fact that at the present moment we are not respecting the provisions which exist because there are many people who feel that the liberties or the rights given by the Code of Criminal Procedure or the penal laws of India are not such as can be enjoyed by people after freedom. I am quoting no less a person than Mr. K. M. Munshi who categorically stated in the Legislative Assembly that this Code of Criminal Procedure is out of date because people have got into the habit of committing offences and this Code which gives more liberties cannot be worked and is leading to many difficulties so far as the administration is concerned.

If that is the point of view, if that is the attitude, then article 15A cannot be much of a remedy. The present situation is certainly most obnoxious. We know of instances in every Province where people's liberties are taken away. I will give a most poignant instance which should make every Member of the House sit up and think. Two M.L.As. who were in Congress for eighteen years, who were elected on the Congress ticket, were detained by an order of the Bombay Government which is a Congress Government. One of them was released after a period of eleven months without being told at any time what the charges against him were, without there being any trial, without conviction; when his health was about to break down the Government was pleased to release him. The second M.L.A. is still in jail; he has not been tried, he has never been told what the allegation against him is, what offence he has committed; and to add insult to injury he has been told that because he has not attended the Legislative Assembly for a certain minimum period at laid down by the law, he ceases to be an M.L.A. of that Province. A person has been prevented from attending the Assembly because of an act of the Government and that has been made as a ground for ousting him from the membership of the Legislative Assembly. That I think is the height of disrespect for law. If that is the respect for law that we have, if that is the sort of administration that is going on in the Provinces and we are not to look into it or question their propriety, I do not think any provision in the Fundamental Rights would be of any use to us.

If you want to prevent this sort of thing happening, you will have to go much farther than you are prepared to go in this article. This article can be no remedy; it is a mere repetition of what exists in the Code of Criminal Procedure and if you are not prepared to respect that Code I am sure there will not be much respect given to this provision either. As was pointed out by my Friend, Pandit Thakur Das Bhargava, you are going to put in obstacles in the way of Parliament in enlarging the rights of the individuals; by the inclusion of sub-clause (3) you are going to lay down a procedure for all cases of preventive detention. If tomorrow the Legislature of a State or even the Parliament wishes to deal with the preventive detenus in a more liberal manner, they will be prevented from doing so by the fact that there is a provision in the Constitution which is of a fundamental nature and which cannot be altered by the Parliament. Therefore, this provision is absolutely useless. It does not protect the individual in any way to any greater extent than does the Code of Criminal Procedure. If

[Dr. P. S. Deshmukh]

you think that the Code of Criminal Procedure ought to be respected by the Provinces or by any individual who goes against it, there shall be some provision by which this evil can be prevented. But this is not the way in which it can be done. That is my humble opinion.

At any rate, if this article must be there, I have given so far as clause (2), is concerned my shorter draft of it. Of course, it is only in the nature of a drafting amendment, but I would like to support my Friend Mr. Naziruddin Ahmad and commend the omission of at least sub-paragraph (b) of clause (3) of this article, that is to say, the provision which will fetter the discretion of the future Parliament so far as laying down the procedure for the release of the preventive detenus is concerned. This provision would be curtailing the rights of the individual and not enlarging them and I for one agree that there is much to be done so far as this abuse of law is concerned. My Friend Pandit Thakur Das Bhargava admitted that this autocracy is in our blood and it is showing signs everywhere. There have been shooting cases, there have been *lathi* charges and there has been no attempt whatsoever to investigate into the causes to look into the grievances of the people. The rule of unlawfulness, the want of the rule of law, is so rampant in the whole of India that it is likely to recoil upon the heads of all of us one of these days. The people are getting tired; and if you feel that this Government is not popular there are very many reasons for that, but unfortunately nobody is paying any attention to it.

If this is the way in which we want to pay attention to these facts, then I would beg of my honourable Friend Dr. Ambedkar to provide a remedy which will be a real remedy and not something which will be merely taking away what exists. In fact, if there is not going to be any stringent provision, I would be more content to leave the thing as it is, under article 15. It would be much better not to have this article 15A at all than have it in this particular shape.

I appeal to you, Sir, that the situation is grave; our respect for law is certainly decreasing. We are ruling our people in a manner much less generous than the aliens did; if these rights that were conferred by the alien rulers upon the people of India as early as 1898, which continued though with very many violations throughout this period of fifty years, are not at all respected, if you want to respect them, if you want to safeguard the freedom of the people and their liberty, there should be a more radical provision in the Constitution than what has been proposed.

Shri H. V. Kamath (C.P. & Berar : General): Mr. President, it was refreshing to hear Dr. Ambedkar make a confession of faith. He expressed his dissatisfaction with article 15 as adopted by this Assembly and said that he was trying through this new article 15A to undo the harm that might accrue from the operation of article 15 as it stands. He commended this new article to the House in accordance with the age-old maxim :—

सर्वनाशे समापन्ने अर्धं त्यजति पंडित :

"Sarvanáshe samápanne
Ardham tyajati panditah".

I wish, Sir, we could accept this new article in this spirit, but I feel, not being a *pandit* myself in name or otherwise, that we are giving up more than half. If it was really half, *ardham tyajati*, I would not have minded it, but in an attempt to salvage what has been lost we are giving up much more than half.

That is why I have tabled my amendments whose purpose is to salvage as much as possible and undo the harm that has been done by the adoption of article 15. If the House would refer to article 15, as adopted, my honourable colleagues will see that the reference there is to procedure established by law. Once having adopted this article in this form, I see no reason why the law according to which a person could be deprived of his life and liberty could not have been safely left to the future Parliament. Why by introducing the new article 15A do we seek to fetter the future Parliament of our country? It is due, I fear, to a lack of faith in our future Parliament. I would not say that the House, but the Drafting Committee, is afraid that the future Parliament may not act wisely. I am sorry if the Drafting Committee is motivated by such a fear. This whole article detailing the law and the procedure under which a person can be deprived of his liberty could have been safely left to the future Parliament to lay down and to provide for. This has been an unnecessary intrusion into our Constitution and it would have been quite adequate for our purpose to mention in article 15 that life and liberty will be sacrosanct, except under procedure established by law, and that law could have been left for Parliament to provide and regulate.

Coming, Sir, to my amendments, I shall move them one by one. First, I shall take amendment No. 104, List III, Eighth Week. I move:

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A, after the word 'magistrate' occurring at the end, the words 'who shall afford days following his arrest' be substituted."

It is a well known fact, that the police or other authorities or persons arresting or detaining people are not always actuated by the justest and the fairest of motives. As one who has spent a few years in the administrative field—in the administration of a district—I am well aware myself how the police arrest people for reasons wholly unconnected with security or order and sometimes merely with a view to paying off old scores or wreaking private vengeance. In order to obviate or at least mitigate the evils or the harm that might accrue from unjust arrest of people by the police or other authorities I wish to provide through this amendment specifically that the person arrested shall be informed of the grounds of his arrest within seven days following his arrest. The words used in this article moved by Dr. Ambedkar are "as soon as may be". I would be happy if the person is informed of the grounds even at the time of his arrest.

The Honourable Dr. B. R. Ambedkar: That is the intention. You are worsening the position by your amendment.

Shri H. V. Kamath: Why not then make it specific? I would welcome the substitution of the words "as soon as may be" by the word "immediately". My Friend, Shrimati Purnima Banerjee, has also moved an amendment to the same article, where she wishes to substitute the words "as soon as may be" by "not less than fifteen days". I think fifteen days is far too long a period. I think twenty-four hours would be the best. In any case if there is any hitch in informing the arrestee of the grounds of his arrest, I think in no case should it exceed more than a week.

Coming, Sir, to the next amendment (No. 108), I beg to move:

"That in amendment No. 1 of List I (Eighth Week), after clause (2) of the proposed article 15A, after the word 'magistrate' occurring at the end, the words 'who shall afford such person an opportunity of being heard' be added."

The Honourable Dr. B. R. Ambedkar: I must tell my honourable Friend Mr. Kamath that he is worsening the position. Our intention is that the words "as soon as possible" really mean immediately after arrest if not before

arrest. Clause (2) says that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest. No magistrate can exercise his authority in granting longer detention unless he knows the charges on which a man has been detained.

Shri H. V. Kamath: I know a little of the Criminal Procedure. I am known of cases where magistrates have remanded persons for fifteen days at a stretch without the police filing a chalan or charge sheet before him. I know of magistrates who have remanded persons without caring to go into the *prima facie* merits of the case. Another thing that Dr. Ambedkar said was that the words 'as soon as may be' really mean 'immediately'.

The Honourable Dr. B. R. Ambedkar: It means in any case within twenty four hours.

Shri H. V. Kamath: May I invite his attention to certain articles where the words 'as soon as may be' have been used without any specific connotation. Take for instance article 280 which relates to the Emergency Powers of the President.

The Honourable Dr. B. R. Ambedkar: The interpretation of the meaning of the words 'as soon as may be' must differ with the context.

Shri H. V. Kamath: I do not know whether Dr. Ambedkar will be always in India to interpret and argue with doubting lawyers and doubting judges as to the meaning of the words and phrases used in the Constitution. I am sorry Dr. Ambedkar will not be immortal to guide our judges and lawyers in this country. As the Constitution is being framed not for Dr. Ambedkar's life time, but for generations to come I think we must be specific in what we say.

The Honourable Dr. B. R. Ambedkar: You are selling your immortality very cheap.

Shri H. V. Kamath: If Dr. Ambedkar admits that in using the phrase "as soon as however that Dr. Ambedkar presumes he will be immortal.

The Honourable Dr. B. R. Ambedkar: You might admit you have made a mistake in tabling this amendment.

Shri H. V. Kamath: If Dr. Ambedkar admits that in using the phrase "as soon as may be" he has erred, I would not say more. He is standing on false prestige and showing obstinacy not worthy of him.

Coming to my amendment No. 103 I am glad to find that Shrimati Purnima Banerjee has also one on the same lines. Both these are to the effect that the advisory board shall decide every case after giving an opportunity to the arrestee or the detainee of being heard and that no case shall be decided by the advisory board without hearing the person concerned. In the article as moved by Dr. Ambedkar there is no satisfaction on this point. I want that we should specifically provide that the advisory board shall hear a person or his lawyer before it recommends detention for a period longer than three months. The advisory board is liable to err and summarily dispose of cases especially where there are many of them awaiting disposal. We must clearly lay down in this Constitution that every person arrested or detained shall have an opportunity of being heard before his detention is extended under this article.

Sir, I now move amendment No. 109;

"That in amendment No. 1 of List I (Eight Week), after clause (2) of the proposed new article 15-A the following new clause be added :—

'(2a) No detained person shall be subjected to physical or mental ill-treatment'."

I think Dr. Ambedkar is not quite aware of the frequent cases of physical or mental ill-treatment to which detenus were subjected during the British regime, especially during the dark days of 1942 and immediately thereafter. In one or two prisons where I myself was detained, I personally knew of cases, where detenus in C class were beaten mercilessly and also subjected to all sorts of third-degree methods of torture. There were cases where detenus were given no clothes to wear and were made to shiver in severe cold in a state of nudity. There were other cases where the cells of detenus were flooded and the detenus had to pass hours on the damp floor which was not merely unhealthy, but definitely in some cases induced pneumonia and other diseases which proved fatal. Sir, after all, a man is detained on suspicion only. It is but fair that our Constitution should lay down specifically that no detenu will be subjected to physical and mental ill-treatment. The latest Constitution of Western Germany—the Bonn Constitution—though it is not the last word in constitution-making, has adopted, despite the prevalent chaotic conditions fraught with danger to the State, a clause on these very lines that no detenu shall be subjected to physical and mental ill-treatment. In the Preamble to our Constitution we have paraded the ideals of justice, liberty, equality and fraternity and have proclaimed that our Sovereign Democratic Republic will secure these to all its citizens. The Chapters close to the Preamble, Chapters III, IV etc., seem to bear the impress of the Preamble, but as we wander further and further from the Preamble and especially when we come to the end of the Constitution one gets the impression that we have forgotten the Preamble. It seems to have slipped from our memory altogether and it looks as if, in very many cases, justice is being delayed, if not denied, and liberty is being suppressed. It is a very unfortunate state of affairs that, after having proclaimed so many fundamental rights in our Constitution, we should proceed to abrogate them and in some cases even nullify them.

My next amendment is No. 113.

Mr. President : Amendments Nos. 113 and 114 have been covered by the amendment moved by Shrimati Purnima Banerjee.

Shri H. V. Kamath : My next amendment is No. 116. This amendment goes to the root of the matter and in my opinion it is a vital proposition. It runs as follows :

"That in amendment No. 1 of List I (Eighth Week), after clause (4) of the proposed new article 15A, the following new clause be added :—

'(5) Notwithstanding anything contained in this article, the powers conferred on the Supreme Court and the High Courts under article 25 and article 202 of this Constitution as respects the detention of persons under this article shall not be suspended or abrogated or extinguished'."

Sir, before I speak on this motion I would ask for some clarification as regards the content of the motion moved by Dr. Ambedkar. I know that the amendment as moved by me is not couched in happy language. It can be put in better language by lawyers if they accept the principle embodied in this amendment. First, in regard to clause (4) of article 15A as moved by Dr. Ambedkar which invests Parliament with power to make laws regarding preventive detention, I would like to know whether with regard to the persons detained under the

[Shri H. V. Kamath]

law of preventive detention, the jurisdiction of the High Courts and the Supreme Court, especially with regard to their right to issue a writ of *habeas corpus* will be ousted. If it is not ousted under this article, three is no need for amendment 116. If Dr. Ambedkar would make it categorically clear that the power and jurisdiction of the High Courts and the Supreme Court in regard to these detenues, and the right of the latter to move the High Courts and the Supreme Court, for a writ of *habeas corpus*, if these are not abrogated by this article 15A, then I would not press my amendment. Otherwise, I would do so. The article is silent on this point. Therefore it is that I have moved this amendment before the House.

We, Sir, have already adopted article 280 seeking to vest in the President extraordinary powers in the event of an emergency. According to that article, in an emergency the right of the individual to move the High Courts and the Supreme Court for the enforcement of the rights guaranteed under Part III—Fundamental Rights and the powers of the courts in this regard will be suspended. I hope this is the only article in our Constitution which seeks to abrogate or extinguish the fundamental rights conferred by this Constitution,—the rights of the individual as well as the powers of the Supreme Court and the High Courts in this regard.

Dr. Ambedkar in his speech referred to the enthusiastic champions of absolute liberty. I shall make it quite clear that I am not an advocate of *absolute* liberty.

Mr. President: He did not talk of absolute liberty today.

Shri H. V. Kamath: He did, Sir, if I remember aright. (The Honourable Dr. Ambedkar nodded in the affirmative). He referred to absolute personal liberty. I am not a champion or advocate of absolute personal liberty. No man can have absolute personal liberty if he wants to live within the social framework. If a man leaves the world and becomes an absolute *sanyasi*, not in the customary sense of the term but in the truest sense, the case is different. If any man has to live in society, his personal liberty must be restrained. Liberty without restraint will become licence. The eternal problem of government all over the world has been how to reconcile the liberty of the individual in society with the safety and security of the State, and thinkers have widely differed on this point. Some have tried to exalt the State above the individual making it a leviathan making it a veritable supreme power, which can crush the individual without any compunction. There have been other thinkers who have sought to lay down the dictum that the State is for the individual, and not the individual for the State. We will have to strike a balance between these two : the individual for the State and the State for the individual. We should bear in mind that the State has been formed, has been brought into being by individuals acting together, acting in unison, and we must provide that the State will not unjustly, unfairly override the claims of the individual to justice and liberty. That is what we hear, the founding fathers of our free State, have got to provide in our Constitution. If we seek to take away or abrogate or extinguish the liberties of the individual without due course, without having in mind really the security of the State, but having in mind only the lust for power of a coterie, or a few men in power, then that provision to my mind stands self-condemned.

The question is whether under the article as moved by Dr. Ambedkar we have provided for those cases where persons might be arrested and detained for long periods without even a show of justice. Clause (4) of this article lays

down that Parliament will prescribe the circumstances under which and the class or classes of casts in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained. Supposing Parliament takes it into its head to lay down that the period of preventive detention may last a man's life-time, what stands in the way of the Parliament doing so ? But as a safeguard there must be the courts of justice to go into every case and decide as to whether every person detained under that law has been justly detained, has been fairly detained and has been detained for longer than is absolutely necessary. That is why I want to vest the High Courts and the Supreme Court with this power to examine and decide the cases of persons detained under clause (4) of this article which provides for preventive detention. If, as I said, the powers and the jurisdiction of the High Courts and the Supreme Court have not been ousted by this article, then my amendment falls. Otherwise, there is a lacuna in this article and we shall greatly endanger the liberty of the individual if we do not provide any sort of safeguard against unjust detention which has been so often done in the past by the British Government. I do not mean to say that we will do so in future, but we know that the British detained persons without just cause, often on mere suspicion, or just because some officer wanted to take revenge on somebody.

Before I close, I would only say that it looks to me as though we are framing a short-term Constitution, we are drafting a Constitution which will last perhaps just as long as some of us hope to be in power and we do not have a long-term plan or vision. Has anybody considered how some other persons, possibly totally opposed to our ideals, to our conceptions of democracy, coming into power, might use this very Constitution against us, and supress our rights and liberties ? This Constitution which we are framing here may act as a Boomerang, may recoil upon us and it would be then too late for us to rue the day when we made such provisions in the Constitution. I hope, Sir, and I pray to God that we shall be guided by wisdom and vision, not merely wisdom but the vision for a long-term constitution and we will see to it that the Constitution that we are framing will not last merely for a few years but will last at least our life-time, if not for a few generations. If unfortunately this outlook is not there, the old Biblical saying will come true—"Where there is no vision, the people perish."

Shri H. V. Pataskar (Bombay : General) : Mr. President, Sir, there has been considerable discussion with respect to the way in which we have already passed article 15 and with respect to the fact that we failed then to make provision for due process of law and all that discussion has gone on for a long time. I have no desire to enter into all that discussion, to reopen it and take the time of the House because the Honourable Dr. Ambedkar the Chairman of the Drafting Committee has himself stated that in view of the article 15 as it has been passed, he has thought it necessary to bring forward this article 15A as a sort of compensation. I start from that point and do not want to go behind that. Then, Sir, I have tabled some three or four amendments which are on the basis that I do not want to refer to that controversy which was carried on for a large number of hours in this House, but I want to see if I can contribute anything to the improvement of the draft as it stands in certain technical matters and only one matter which I regard as a matter of principle.

My first amendment is No. 105 : it reads as follows :—

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15-A, for the words 'as soon as may be' the words 'within twenty-four hours' be substituted."

[Shri H. V. Pataskar]

So far as the intention is concerned, I would just claim for five minutes the attention of Dr. Ambedkar; he and I agree. He himself said while interrupting Mr. Kamath that the meaning of the words "as soon as may be" is that it must be done immediately. I agree entirely with the object in view, and say that the words "as soon as may be" should be replaced by the words "within twenty-four hours". Dr. Ambedkar says in clause (2) as follows : "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours", and the magistrate is to authorise his detention further. In paragraph 1 we have mentioned that the grounds should be communicated to the person "as soon as may be". It may happen in a particular case like this—and I would like to stress this point : Supposing the Police arrest a man, they take that man under clause (2) to the magistrate within twenty-four hours and there at that time they do not communicate any reasons to this man because under paragraph (2) what is required of them is to produce the person before the magistrate within a period of twenty-four hours. The only thing that paragraph (2) is concerned with is for a different purpose, it is for the purpose of enabling the Police Officer to get from the magistrate an authority to detain him for more than 24 hours and it has nothing to do with the question of informing that man of the grounds on which he has to be detained. I would like to make that distinction. Paragraph 1 refers to a matter which refers directly to the person who is detained, namely that he has to be informed of the reasons on which he is to be detained and paragraph (2) only refers to the matter that he must be produced before a magistrate within 24 hours. In a given case it may be argued that a person was produced before a magistrate within 24 hours and the magistrate authorized that he may be detained for a further period of a month or fortnight or whatever it may be, but a man may still not be informed of the reasons for a longer period than 24 hours. So far as the principle is concerned, I entirely agree with him and the object is the same. I would like to draw his attention to paragraph (2) which is intended to enable the Police Officer to get from the magistrate the authority to detain an arrested person for a longer period and paragraph (1) relates to supplying of grounds to the person who is detained. These are two different things. Suppose A is arrested, he is detained and within 24 hours he is taken before a magistrate and we know it would not be very difficult for any police officer to get from the magistrate an extension for a further period and the accused may not be informed, as required by para (1). Therefore I would suggest to Dr. Ambedkar—our objects are the same and we want that all these provisions in clauses (1) and (2) are based on the Code of Criminal Procedure provisions as they exist and there is no desire to go back on them—and I would appeal that this loop-hole be closed.

Therefore, I say instead of the words "as soon as may be" the words "within twenty-four hours" be substituted. I hope I have been able to convince the Honourable Dr. Ambedkar that clauses (1) and (2) are entirely for different purposes and in respect of different persons. The idea between "as soon as may be" and "within twenty-four hours" is the same, and Dr. Ambedkar goes further than myself and he says that the man must be immediately informed. If that be so I would appeal to him to accept my amendment No. 105.

As regards amendment No. 106 that also is an amendment which tries to carry out what is there already in the Code of Criminal Procedure. Along with several other arguments which were raised by Pandit Thakur Das Bhargava, he has already referred to this aspect of it. Under the Code of Criminal Procedure section 61 authorizes a Police Officer to detain a person for 24 hours and then there

is another section 167, and in that there is a proviso which says :

"Provided that no Magistrate of the third class and no Magistrate of the second class not specially empowered in this behalf by the (Provincial Government) shall authorize detention in the custody of the Police."

As the law stands now, the power has been given to extend the period of detention only to magistrates of the first class or to such third class and second class magistrates who are specially empowered in this behalf. Now, my amendment is that in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article 15A, after the word "magistrate", wherever it occurs, the words "of the First Class" be inserted. The reasons are clear. Probably on this point also, there may be no difference in principle. If under the Criminal Procedure Code, this power is to be exercised only by a Magistrate of the First Class and by magistrates of the Second Class and Third Class where they are specially empowered, I believe that in the Constitution, when we are making a provision of the nature which Dr. Ambedkar proposes to make, then, it is necessary that such a power should be confined only to Magistrates of the First Class, for reasons which I think it is not necessary for me to go into, knowing as he does the lower magistracy, its composition, ideas of justice and ideas of jurisprudence and all that. Probably Section 167 of the Criminal Procedure Code had to be amended because it was felt unsafe to leave this power in the hands of Second and Third Class magistrates unless they were specially empowered in this behalf. I would appeal therefore that this is a very salutary thing that when we are making a provision, this power should be given only to Magistrates of the First Class.

While I was discussing this matter with a colleague of mine, he suggested that the difficulty is that Second Class and Third Class magistrates may be available at short distances and First Class magistrates may not be available easily. To this, Sir, I would appeal that we may exclude the time taken for producing the person before the magistrate. When we are guarding the liberty of a subject, it is better, even if a man is detained for a few days more, rather than taking him before a Third or Second Class magistrate, he should be taken before a First Class magistrate, who is expected at any rate not to be influenced so much by mere police reports or the report of an executive officer. It is from that point of view that I have given notice of this amendment No. 106 which stands in my name. I hope this amendment also will be acceptable to the Honourable Dr. Ambedkar.

Then, there is another amendment, No. 111 :

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (b) of the operative part of clause (3) of the proposed new article 15A, after the word 'law' the words 'of the Union' be inserted."

Sir, this is not a formal amendment and naturally, I would like to press my views on this matter. Clause (2) of this new proposed article 15-A says : "Every person who is arrested and detained in custody shall be produced before the nearest magistrate etc., etc." Clause (1) says that he should be informed of the grounds for such arrest. Clause (3) is in the nature of a proviso, or an exception being made (to the provision already made) in clause (1) and (2). Clause (3) says : "Nothing in this article shall apply (a) to any person who for the time being is an enemy alien." There can be no point of difference so far as that provision is concerned. With respect to the next provision, the clause says : "to any person who is arrested under any law providing for preventive detention." My point is that so far as these laws for preventive detention are concerned, there must be uniformity in the new Union to come into existence. At the present moment, we have got public safety measures passed by different provinces. There is one law in Bengal; there is another law in Madras and there is a third law in Bombay. They

[Shri H. V. Pataskar]

differ in their wording, in their content and they differ in the manner in which they take away the jurisdiction of the High Courts. There have been various interpretations and naturally, therefore, there is a sort of a confusion. We have already listened to some honourable Members who have pointed out some of the defects in the existing public security measures Acts in the different provinces. I need not dilate upon that point.

But, my point as a lawyer is that there must be uniformity in this legislation and it is the Union Government and the Union Parliament that alone should pass this legislation. I am told that it would be too late in the day now, when we have put in the Concurrent List certain matters. Unfortunately, I was not here at that time to express my views. Even that difficulty does not exist to my mind because in the Concurrent List I am told there is made a provision for legislation with respect to public safety, and with respect to the safety of the State it has been left exclusively in the hands of the Parliament at the Centre. Even if it is in the Concurrent List, there is nothing wrong in providing here in the Constitution that so far as laws regarding preventive detention are concerned, where the question of the liberty of the individual is concerned, it is better that this exception should be made in clause (3) in respect of laws passed by the Union only. If a provincial Government has passed any law, that law must be in conformity with the provisions that we are making in article 15A and it must be within the limits which are now being presented so far as such legislation regarding arrest and detention of persons is concerned.

Therefore, I think it is just and proper, it is in the interests of the administration of the country, it is in the interests of the reputation of our people as a whole that we have one uniform law so far as this question of restricting the liberty of a person is concerned. It is no good of having different provincial laws; ultimately, they react upon the whole country, upon the reputation even of the Central Government whether the law are passed by this provincial Government or that. Therefore, I say this is an amendment of substance which I would like the honourable Members of the Drafting Committee to seriously consider. It is not my object to go back or blame this side or that. I know, if due process of law has not been accepted, it is not the fault of Dr. Ambedkar as it was hinted by some other speaker; it is the fault of all of us. I deplore more than any one else that we have not done the right thing. Still, I say it is no good blaming them or charging them with this and that. The defect is that there is scant regard given in this House whenever measures of such importance come forward for reasons which I would not like to go into.

Therefore, I would appeal to the Drafting Committee that it is better in the interests of the Central Government, it is better in the interests of the nation that we have one uniform law throughout the land with respect to this unwholesome and unpopular matter of detaining people with out trial. I learn on good reliable authority that even foreign countries we are being blamed for the way in which some of these provisions are being carried out. Is it not desirable therefore that we have one uniform legislation ? We have got our freedom newly. People have not learn to behave democratically and there are so many actions which are beyond control and resort has to be had to detention without trial. I would submit, let us not be warped by what is happening in the present, let us be guided by the wholesome principles which should prevail and if at all this thing is to be done, that should be done by the Central Parliament which may take a more dispassionate view rather than by the provincial Governments.

Another drawback is that whenever power is given to any State or province to pass such a legislation, naturally, the human tendency is to go along the easiest line. If we anticipate some trouble somewhere for the ordinary process of law, which is believed to be cumbersome, the tendency is to curtail the liberty of the subject and to pass legislation which would prevent it. As a matter of fact, I find that that process, that method has not succeeded. On the contrary, it is bringing many of us into unpopularity. Because, as soon as a man is detained without trial under the Public Safety measures, he is exasperated, and his supporters get a handle. Therefore, I think it is best that if such measures are necessary, they should be uniform and they should be passed by the Central authority where representatives of all the States meet and where they can take a more dispassionate view rather than in the Provincial Governments. Therefore, Sir, I commend this amendment.

There is only one little point. Probably this was also intended by the Drafting Committee; as is apparent from what they have mentioned in para (4). Otherwise, it would not have been there. In paragraph (4) they say :

"Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested, under any law providing for preventive detention may be detained for a period longer than three months.....etc."

What is contemplated in clause (4) is—

"Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained."

My amendment is that the exceptions should only apply to a person who is arrested under any law of the Union providing for preventive detention. I hope this amendment also will be acceptable to the Drafting Committee.

My next amendment is No. 112

"That in amendment No. 1 of List I (Eighth Week) in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, the words 'or are qualified to be appointed as' be deleted."

Now clause (3) in its latter portion makes provision for an Advisory Board because it is thought that when we are trying to detain persons without trial their cases should be considered by some independent authority, so that there will be some sanction for the executive action by which the liberty of the individual has been taken away. We have been told of instances where people have to be detained for long periods. Therefore it has been wisely decided that this should be left at least after three months not to the discretion of the executive, but the matter should be brought before a Board. Therefore this is a wholesome provision. My amendment is that I do not want the words—'or are qualified to be appointed as.' The fundamental idea underlying the Constitution of this Board is that the matter should go before a judicial tribunal or before any authority which is capable of judiciously thinking, which has got either the experience or is at present concerned with administration of justice. But to make the provision 'or are qualified to be appointed as' is dangerous. I can understand that this Board should consist of some High Court Judges at present working; I can understand if it should consist of some persons who have been High Court Judges and who therefore can take a judicious view of the question when it is brought before them.

Shri T. T. Krishnamachari (Madras: General): Will the honourable Member prevent a person like himself being appointed a member of the Advisory Board ?

Shri H. V. Pataskar: Yes. Once you expand the scope of persons that can be appointed, it is dangerous. I expect the people will be appointed by the Executive and it will give a loophole in their hands—not that it is fair that I should charge that the present Executive would be unfair—but the question remains that if a loophole is kept whereby somebody who might in future be in charge of Government might take advantage of it and cram the Board with persons who are not fit enough for the purpose. Because a man is a graduate in law according to the provisions at present he can be appointed as High Court Judge and therefore he can be appointed to this Board. If we leave this loophole it may be abused. We can get people who are either Judges or who had worked as Judges. Of course there may be some eminent persons who are not on the Bench or who have not been on the Bench. If this loophole is kept it will enable an unscrupulous executive to nominate persons who may be their own men. We have so many High Courts Judges and I am sure that a person who has acted in that position is likely to be more independent and fair than somebody who is unconnected. I need not dilate on this. There may be even better persons outside the High Courts but it is desirable that it should consist of persons who have worked as Judges. It is from that point of view that I have moved amendment No. 112.

To sum up, I would appeal that I have desisted as far as possible from reopening that old controversy about due process of law. I am happy that Dr. Ambedkar and the Drafting Committee have thought fit to make amends or as described by him, to compensate regarding what has been lost in the present article 15A. I have no quarrel with the Drafting Committee but the objective with which they have brought forward this amendment should be carried out in a more satisfactory manner in order that whatever we have lost by 15 may to some extent be gained by 15A in a manner to allay the fears of those who unfortunately have at the present moment to suffer on account of several other measures which are there.

I therefore commend that so far as 105 and 106 are concerned, there is absolutely no difference between me and the Drafting Committee regarding the objective. Regarding 105 there is no difference. Regarding 106 it is consistent with the present provision of the Criminal Procedure Code and I do not think there is any desire to go behind those provisions in the Cr. P.C. Looking to 106, I think it should be confined only to first class magistrates. It will be unsafe to rely upon the authority given to second class magistrates. We have not abolished honorary Magistrates. On the contrary I find there is a desire to perpetuate them for reasons into which I need not go while discussing this matter. Therefore it is better to follow the principle which has been followed in the present Cr. P.C. and leave this matter only in the hands of First Class Magistrates so that there may be some security. No. 111 says there must be uniformity in legislation in respect of such matters. In spite of the fact that this is in the Concurrent List there is nothing to prevent us from saying that exception shall apply only in cases of persons arrested and detained under any law passed by the Union. I hope my reasons will appeal to the Drafting Committee.

No. 112 is meant only for ensuring a sort of a feeling in the public that what we are doing is that we are trying to do our best consistent with the present circumstances which requires such action to be taken, to do our utmost to see that justice is done and no injustice is done and we are giving fair opportunities to those who have or are to be unfortunately detained.

I therefore commend my amendments to the acceptance of the Drafting Committe and the House.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. President, I move :—

"That in amendment No. 1 of List I (Eighth Week), at the end of clause (3) of the proposed new article 15A, the following new proviso be added :

'Provided that in the case of any such person so recommended for detention as stated in sub-clause (a) of clause (3), the total period of his detention shall not extend beyond nine months provided the Advisory Board has in its possession direct and ample evidence that such person is a source of continuous danger to the State and the society'."

While going through this article I wanted to know whether it gives any kind of concession or facilities to the detenus or it stiffens the present provisions of the laws provided in the Criminal Procedure Code or the Indian Penal Code.

I think, Sir, that this article now proposed does not give any kind of concession or facility to the detenus. I do feel that while the present laws are not stiffened, there is nothing in this article which should find a place in the Constitution. In a matter like this, the laws must be flexible so that according to the times, the laws may be framed according to the conditions prevailing in the country. We have, under the existing conditions to consider the state of affairs, namely peace and tranquility and law and order, and from that point of view we cannot bind down the Constitution with rigid laws which may not be really desirable during the time when the peace of the country is in danger. Sir, I find that clauses (1) and (2) are reproductions of the Criminal Procedure Code, as has been stated by many honourable Members here. Clause (3) provides for the Advisory Board. Such advisory board already exists and it may exist in the future also. In the past the detenus were asked to give explanations, if they have any, and the Advisory Board, comprising of High Court Judges used to give their opinions to the respective governments. There is nothing new in this article even as far as the provision of the Advisory Board is concerned.

And clause (4) says that despite what is stated therein, Parliament may make laws and the period of three months' detention may be increased. My amendment says that when an Advisory Board is appointed, it should be seen that the aggregate continuous detention of a detenu is not more than nine months. If it exceeds this period, then there should be definite evidence before the Advisory Board that the person detained is a danger to society, that he is a pest to society and that he is out to destroy our freedom. I am certainly agreeable to making any kind of law for dealing with a person who is out to destroy our well-deserved freedom by violent methods. He should have, from my point of view, no quarter or no kind of protection. I am quite clear about that point. At the same time, I must say that persons detained on suspicion should be given the fullest protection, and from that point of view, I do not find in this article any provision for that purpose. On the contrary, I find from all sources his hands have been tied down. We know, Sir, during the British regime, detenus were put into prisons and the then legislature made law, that the maximum period should not be more than on year, which subsequently was enhanced to two years. In this article no maximum period is laid down and a person can be detained for an indefinite period. The Advisory Board may say that the detention should be continued. Today what happens is this. The detenu is asked whether he has to say anything against his detention. That is all. And on a statement by the accused, with C.I.D. report the judges give their opinion. My own feeling is that whatever the charges may be, whatever the evidence may be against the detenu, they should be supplied to him

[Shri R. K. Sidhva]

so that he may make a statement as to whether the charges are correct or not. Then it is for the judges to go into the matter. But it is not proper to give *exparte* decisions by the judges on a mere statement from the C.I.D. and the detenu. He will certainly ask you, "For what purpose do you detain me? Please let me know the charge under which you detain me. You ask me for an explanation. I say, I am not guilty of anything, and so please release me." And the judges, on the other hand, say "There are good reasons for detaining you and so you must be detained for an indefinite period." That is not fair. I do not find any improvement made in this article. I do realise the conditions existing at present in the country, and for that purpose there should be some specific mention. But the whole thing should not be left to the discretion of the judges. I feel that the charges for detention should be made public. The Advisory Board should say that such and such person has been detained because he is a danger to society and he is out to destroy the freedom of the country. By this method the confidence of the people will be gained They will come to know that such and such a person deserves to be detained for an indefinite period. It may be that for certain purposes and in certain cases you may have to keep certain information secret. But in the case of detention of such persons, you must make the grounds public. Otherwise the people will begin to have many doubts and suspicions as to why such and such person is detained.

Sir, from that point of view, my amendment makes the position clear and says that a man should not be detained for more than nine months, and if the detention is to be continued, then there should be explicit evidence against him, that he is a dangerous and violent person, that he is a danger to society; this should be made public. It should be known to the public, that that is the opinion of the judges, and they have got ample evidence to that effect If such an amendment is made, then it can be said that this article is justified. Article 15 gives liberty. It says that a person shall have liberty to do anything, subject to the laws of the land. That is quite sufficient. He has not absolute liberty, but there are many laws of the land and he would be subjected to them. It is not that I state that every person should have absolute freedom. His liberty must be restricted, according to the law of the land. But at the same time, when a person is detained, I find article 15A gives no concession or facility to him. On the contrary, I must say, my feeling is it ties down his hands You tie him down under the Constitution by laying down all sorts of laws.

Therefore, there is no justification, in my opinion for providing article 15A in the Constitution. Parliament is there and Parliament makes the law and Parliament will see what are the conditions in the country and what is the state of affairs from time to time and make laws. But why do you put down such a clause in the Constitution? It may become harmful to the State if you provide such an article in the Constitution. You may require something very deterrent. But why do you want to put it in the Constitution? Why not leave it to Parliament. The person detained may be quite innocent. After all, the machinery of the State is composed of officials and we know the mind of the officials. Officials, after all, are officials. They have a particular line to follow and from that point of view it is very likely that even under a democratic government, most of the laws would be abused. Therefore, under the existing circumstances, a detenu, if he is detained on mere suspicion, should be properly protected. That is my point. I have no sympathy, as I have said, and I repeat it, for the man who is out to destroy our fredom. He must have

no quarter. I again repeat that, and from that point of view, and for that purpose if you want to add to this article any stringent law, I am with the Drafting Committee; but not for other purposes. We know that even today for peaceful demonstrations and for such other matters persons have been detained by officials, and then subsequently the Ministers have realised that it is not a wise course and they have been released. As I said, no improvement has been made in this article. After all, when you make a provision, when you provide an article, some concession or some liberty is given to the person, and for that purpose articles are provided.

Mr. President: You are repeating yourself.

Shri R. K. Sidhwa: Therefore, Sir, my object in bringing this amendment is what I have already stated. I commend my amendment for the acceptance of the House.

Dr. Bakshi Tek Chand (East Punjab: General): Sir.....

Mr. President: There is one amendment which Dr. Bakhshi Tek Chand is going to move I do not know if Members have got copies of it, but I hope he will read it out.

Dr. Bakhshi Tek Chand: Sir, I move.

"That in the proviso to clause (3) of article 15A, the following new clause be added:—

'(aa) As soon as may be after the arrest of the person, the grounds on which he has been arrested shall be communicated to him, and he shall be informed that he may submit such explanation as he desires to make which shall be placed before the Advisory Board referred to in sub-clause (a)'."

Sir, it is a very modest amendment and I hope in article 15A, attenuated as it has been, Dr. Ambedkar will accept and incorporate it in the article. The amendment goes no further than what is provided in the Safety Acts that have been enacted by some of the Provincial Legislatures. For instance clause (3) of the Madras Maintenance of Public Order Act (I of 1947) lays down:

> "When an order in respect of any person is made by the Provincial Government under sub-section (1) of section 2, etc., the Provincial Government shall ocmmunicate to the person affected by the order, so far as such communication can be made without disclosing the facts which they consider would be against the public interest to disclose, the grounds on which the order has been made against him and such other particulars as are in their opinion sufficient to enable him to make, if he wishes, a representation against the order. And such person may, within such time as may be specified by the Provincial Government, make a representation in writing to them against the order, and it shall be the duty of the Provincial Government to inform such person of his right of making such representation and to afford him opportunity of doing so.
>
> (2) After the receipt of the representation referred to in sub-section (1), or in case no representation is received after the expiry of the time fixed therefor, the Provincial Government shall place before the Advisory Council constituted under sub-section (3) the grounds on which the order has been made, and, in case such order has been made by an authority or officer subordinate to them, the report made by him under sub-section (2) of section 2, and the representation, if any, made by the person concerned, etc., etc."

I need not repeat the remaining sub-sections of that section. This is the provision in the Madras Act.

Similar provisions were to be found in the Rules made under the Defence of India Act. Many honourable Members of this House, who had been proceeded against in 1942 and in the following years under the Defence of India Rules, will remember that the substance of the grounds on which they were detained were communicated to them and they were asked to make representations, if they chose to do so.

[Dr. Bakhshi Tek Chand]

Similar provisions existed even under the notorious Rowlatt Act passed in 1919, as a protest against which our revered leader, Mahatma Gandhi, started the great movement which ultimately culminated in the liberation of the country from foreign yoke.

In England under the Regulations framed under the Defence of Realm Act, both in 1914 when the first World War broke out and the Defence of Realm Act was enacted, and later again in the Regulations which were in force in 1939 when a state of grave emergency was declared and arrests or detentions began to be made in that country, similar provision existed.

As I have already stated, in Madras Act I of 1947 called "the Madras Maintenance of Public Order Act", similar provision has been made. In similar Acts in other Provinces, for instance in Bombay, there is provision to the limited extent that the substance of the grounds on which a person is arrested and detained shall be communicated to him and he will be asked to submit, if he likes, an explanation. But there is no provision that his explanation will be laid before a tribunal or any other independent Board. The explanation is only for the consideration of the executive government which may, after considering it, either release him or confirm the previous order or order his detention for such longer period as it thinks proper. In the United Provinces also, while there is provision for an explanation of the person affected being taken, there is no provision for its being placed before an impartial tribunal. And in Bengal the latest Act is narrower still.

I submit this procedure is open to serious objection and it is necessary that Constitutional guarantees be provided, so that the legislatures of this country—provincial or central are precluded from enacting legislation of this kind. We should see that our legislature do not go farther than what the British Indian Government did under the Rowlatt Act or the Defence of India Act in 1942 or what was done under the Defence of Realm Act in England. That, Sir, is the sum and substance of the amendment which I have moved.

Dr. Ambedkar, in the amended article 15A as he has introduced today, has made provision in clause (3) of the article that "an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention". Of what value will the opinion of this tribunal be, if the explanation of the person affected is not laid before it? It will be an *exparte* opinion expresed by the members of the tribunal upon such papers as may be placed before them by the executive government, which, in most cases will be based either upon police reports or reports of other officials or informers. The whole object of constituting a tribunal of three persons, who are High Court Judges or who have been High Court Judges or who are qualified to be High Court Judges, will be rendered nugatory if the explanation of the person affected is not taken and placed before it. And no explanation can be given by that person unless he is informed of the nature of the charges against him whether it was merely on suspicion or upon some solid ground that he had been arrested and was being detained. I submit that this is an elementary right which should be conceded Perhaps, this is an omission in Dr. Ambedkar's amended article, and if so, he will, I hope, supply it by accepting this amendment.

With your permission, Sir, I will now make a few general observations on article 15A as it has been introduced by Dr. Ambedkar today, and then I shall say a few words with regard to some of the amendments which have been

placed before the House by Pandit Thakur Das Bhargava and other Honourable Members. I feel—and I may be pardoned for saying categorically that I consider article 15A as the most reactionary article that has been placed by the Drafting Committee before the House, and therefore I would ask the House to reject it altogether and not allow it to form a part of the Constitution. I will ask Dr. Ambedkar and I will ask Mr. Munshi and I will ask our great jurist Shri Alladi Krishnaswami Ayyar whose knowledge of constitutional law is perhaps second to none in this country, and who has contributed so much to the drafting of this Constitution, if there is any written Constitution in the world in which there is provision for detention of persons without trial in this manner in normal times. In the case of a grave emergency, as for example when the country is invloved in war, there are provisions even for suspension of the fundamental rights. But apart from that, I have looked in vain in any Constitution for a provision for such detention without trial in peace times. It is not to be found even in the Japanese Constitution, which the Drafting Committee purports now to follow. That Constitution was prepared for Japan in 1946, at a time when that country having been defeated and lay prostrate under the heel of a dictator appointed by the conquering powers, the United States and the other Allied Nations.

I consider that this article, in the form in which it has now been framed instead of being a fundamental right of the citizen, is a charter to the Provincial legislature to go on enacting legislation under which persons can be arrested without trial and detained for such period as they think fit subject to a maximum period fixed by Parliament.

It does not give any fundamental right to the people. In fact it is a charter for denial of liberties, and I am surprised to find how the Members of the Drafting Committee including great lawyers, have subscribed to it. It is strange, indeed, how the Members of the Drafting Committee have drafted from the position which they had originally taken to the submission of the present article 15A. Sir, with your permission, I will place the history of this article before the House which will show how the Members of the Committee have come down from the high place at which they were at the beginning to the position to which they have ultimately come and which they want the House to adopt.

Our Law Minister, Dr. Ambedkar, a great lawyer, an eminent jurist, an erudite student of constitutional law as he is—what was the proposal that he submitted to the Drafting Committee before he had been appointed to the high office which he now occupies? In 1947, soon after the Constituent Assembly met first, members were asked to submit their suggestions for the draft Constitution. A number of suggestions came. Dr. Ambedkar at that time was a private Member of this House; he had not been installed on the *gaddi* which he is occupying now and which, if I may say so with respect, he is so worthily occupying. Early in 1947 he submitted this note, which he circulated in the form of a book styled, *"States and Minorities—What are their rights and how to secure them in the Constitution of Free India"*, by B. R. Ambedkar. At page 9, article 2, are his suggestions headed, "Fundamental Rights of Citizens", this article reads as follows:

> "No State shall make or enforce any law or custom which shall abridge the privileges or immunities of citizens. Nor shall any State deprive any person of life, liberty and property *without due process of law*, nor deny to any person within its jurisdiction equal protection of law."

This is the suggestion which Dr. Ambedkar submitted to the Advisory Committee of the Constituent Assembly early in March 1947. That was his opinion as a private Member.

[Dr. Bakhshi Tek Chand]

Then we come to the second stage of the consideration of this matter by the Advisory Committee of the Constituent Assembly. As you know, the Advisory Committee on Fundamental Rights and Minorities was one of the earliest Committees appointed by the Constituent Assembly and Sardar Vallabhbhai Patel was its Chairman. The Committee consisted of a large number of Members including three of the most prominent Members of the Drafting Committee, namely Dr. Ambedkar, Mr. Munshi and Shri Alladi Krishnaswami Ayyar. This Committee submitted its report on the 23rd of April 1947 recommending the adoption of certain fundamental rights by the Constituent Assembly. In this report also this "due process of law" clause figured prominently. The report of this Committee came up for consideration before the House in April 1947, and we find from the Reports of the Committees (First Series) issued by the Constituent Assembly office that at page 28 a List of what are called "justiciable fundamental rights." Article No. 9 at page 29 is as follows :

> "'No person shall be deprived of his life or liberty without *due process of law*, nor shall any person be denied equality before the law within the territory of the Union.' This was the considered decision of this House and the Drafting Committee was directed to draft the Constitution on these lines."

Now, what did the Drafting Committee do ? It met, considered the matter, and ultimately produced this Draft Constitution which was circulated to the Members in February 1948. There in article 15 instead of submitting a draft on the lines of the resolution of April 1947 which I have just now read, it suggested the following article :

> "No person shall be deprived of his life or personal liberty, except according to procedure established by law. Nor shall any person be denied equality before the law or the equal protection of the laws within the territories of India."

So, instead of the words "due process of law" which, as I shall presently show, have acquired a certain fixed meaning both in England and in America, as a result of the struggle for liberty against the Executive which went on there for centuries, the Drafting Committee put in the words "according to procedure established by law." There is a footnote appended to it in the Draft Constitution. The footnote says :

> "The Committee is of opinion that the word "liberty" should be qualified by the insertion of the word "personal" before it, or otherwise it might be construed very widely so as to include even the freedoms already dealt with in article 13.
>
> The Committee has also substituted the expression 'except according to procedure established by law' for the words 'without due process of law' as the former is more specific (*c.f.* Art. XXXI of the Japanese Constitution, 1946). The corresponding provision in the Irish Constitution runs : 'No citizen shall be deprived of his personal liberty save in accordance with law'."

Now, Sir, the reason given for the substitution of the words "according to procedure established by law" for the words "due process of law" is that the former expression is more specific and precise and are taken from the Japanese

Constitution. Well, no doubt, they are more precise in a sense. But while copying them from the Japanese Constitution the Drafting Committee has omitted some other important provisions which are to be found in that Constitution.

If I may just digress for a minute here, what does the expression "due process of law" mean? It was for the first time introduced in England in the year 1353 in the reign of King Edward III, when a statute was passed incorporating the substance of the great Magna Carta which King John had given to the people of England a century earlier.

Mr. President: I was not present during the discussion when article 15 was adopted, but I hope this whole question would have been discussed at great length and as a result of that discussion the article in the form in which it has found its place would have been passed.

Dr. Bakhshi Tek Chand: I won't take very long, Sir.

Mr. President: I am not objecting to your speaking. I was only asking whether this question was not discussed at great length.

Dr. Bakshi Tek Chand: Sir, it was discussed. But Dr. Ambedkar promised to place before the House an amended article, and he, on behalf of the Drafting Committee, has proposed the present article 15A. As I was saying in the Magna Carta the words were "no person shall be arrested, etc., except according to the law of the land". That was the expression originally used. Later, it was incorporated in the Statute of Edward III in the words, "no person shall be arrested without due process of law". Centuries later when the American Colonies had separated from England and they framed their own Constitution, in the 14th Amendment to that Constitution they put in these words:

> "Nor shall any State deprive any person of his liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the law."

Many Judges of the Supreme Court have said that this clause has been the bulwark of the liberty of the people of the United States. It has been said that there is no other single clause in the Constitution which has done so much to preserve the liberty and the rights of the people as this particular clause apparently and it was from the American Constitution that Dr. Ambedkar had copied it in his original draft which he submitted to the Advisory Committee.

There are various decisions of the courts of America. But the best exposition of it is by a great American lawyer Webster as to the meaning of the expression "due process of law", who said that "due process of law means the law which *hears before it condemns;* a law which *proceeds upon enquiries* and a law which *renders judgment after trial*". These are the three essentials that you will not condemn a person before hearing him; you will not proceed against him without enquiry; you will not deliver judgment against him without trial.

Now there was great confusion in the American courts with regard to the interpretation of this phrase in regard to property. Some Judges took the extreme view, that it protected the right of private property to the fullest extent and condemned socialistic legislation as unconstitutional. I need not go into that because that question does not concern us today.

But I do not know of any case in which there has been any confusion or conflict with regard to the application of this phrase to personal liberty. In the context, its meaning has always been precise and clear.

[Dr. Bakhshi Tek Chand]

Let us now examine the reasons given by the Drafting Committee for substituting for this classic expression the phrase taken from the Japanese Constitution which was framed by eminent American lawyers. It has one obvious advantage. It steers clear of the expression "due process of law" so as to avoid any conflict of judicial decisions. I shall with your permission read the concerned articles.

"Article XXXI. No person shall be deprived of life or liberty, nor shall any other criminal criminal penalty be imposed, except according to *procedure established by law.*"

This article 31 has been taken *verbatim* in our Draft Constitution. But in the Japanese Constitution there are other clauses, which embody the substance of the 'due process of law' clause and safeguard the rights of the subject, but which, unfortunately, find no place in our Draft Constitution. I shall read those articles :

"Article XXXIII. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offence with which the person is charged, unless he is apprehended while committing a crime.

Article XXXIV. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article XXXV. The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued only for probable cause, and particularly describing the place to be searched and things to be seized, or except as provided by article XXXIII.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

Article XXXVI. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article XXXVII. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall, if the accused be unable to secure the same by his own efforts, be assigned to his use by the Government."

These are the additional provisions in the Japanese Constitution. They form one consistent, integrated whole, and incorporate the pith and substance of the phrase 'due process of law'. But what our Drafting Committee has done is to copy article XXXI only, and exclude from the Constitution of Free India anything corresponding to articles XXXII to XXXVII, which provide all the safeguards to ensure a fair trial, and to see that a person is not detained without being told as to what the cause of arrest is and without trial. Can it be said that this omission has been made for the sake of securing precision of expression only ?

When this clause came up for discussion before the House on 6th December 1948 an amendment was moved suggesting that the words "due process of law" be substituted for the words "according to procedure prescribed by law". The strongest supporter of this amendment at that time was our esteemed Friend Mr. Munshi. His speech on that occasion is to be found on page 851 to 853 of the proceedings of this House dated 6th December 1948, and I want to read portions from it.

Shri H. V. Kamath : Mr. President the honourable Member is awaiting your attention.

Mr. President: The honourable Member may proceed.

Dr. Bakhshi Tek Chand: I will read only a few sentences from that speech. Mr. Munshi said :

"I know some honourable Members have got a feeling that in view of the emergent conditions in this country this clause may lead to disastrous consequences. With great respect I have not been able to agree with this view."

* * * *

"We have unfortunately in this country legislatures with large majorities facing very severe problems, and naturally, there is a tendency to pass legislation in a hurry which give sweeping powers to the executive and the police. Now, there will be no deterrent if these legislations are not examined by a court of law. For instance I read the other day that there is going to be a legislation, or there is already a legislation, in one province in India which denies to the accused the assistance of lawyer. How is that going to be checked ? In an other province I read that the certificate of report of an executive authority—mind you it is not a Secretary of a Government, but a subordinate executive—is conclusive evidence of a fact. This creates tremendous difficulties for the accused and I think, as I have submitted, there must be some agency in a democracy which strikes a balance between individual liberty and social control."

"Our emergency at the moment has perhaps led us to forget that if we do not give that scope to individual liberty, and give it the protection of the courts, we will create a tradition which will ultimately destroy even whatever little of personal liberty which exists in this country. I therefore submit, Sir, that this amendment should be accepted."

Now, this was the position of Mr. Munshi. Why has he changed now ? I will next refer to the speech which Dr. Ambedkar himself delivered in this House on the 13th December 1948. That speech is printed on pages 999 to 1001. I will not read the whole of it, but only three or four sentences from page 1000—

"The question of "due process" raises, in my judgment, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is *ultra vires* or *intra vires* in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the authority of the power given to it by the Constitution, such law would be *ultra vires* and invalid. That is the normal thing that happens in all federal constitutions."

Further he says—

"The "due process" clause, in my judgment, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary could have that additional power of declaring the law invalid."

These were the views of Dr. Ambedkar in December last. Why has he changed since ? I shall not refer in detail to the speech of Shri Alladi Krishnaswami Ayyar in that debate. It was directed mainly in expounding the uncertainty of the meaning of the expression "due process of law", but he gave no substantial reasons why it should not be used in relation to 'personal liberty', as was sought to be done in the amendment.

Sir, that phrase is now sought to be substituted by the phraseology of Act XXXI of the Japanese Constitution, in article 15 of our Constitution, without the safeguards which that Constitution has incorporated in Act XXXII *et seq* to protect the rights of the individual. Why has not that been done ? In pursuance of the promise which Dr. Ambedkar gave at the time that he would

[Dr. Bakshi Tek Chand]

again come up with the matter before the House, he has produced this article 15-A which, if I may say so with due deference to him, is nothing but a cloak for denying the liberty of the individual. It really comes to nothing. The first two clauses of the proposed article do not go, as Pandit Thakur Das Bhargava pointed out, as far as the Criminal Procedure Code does today. The article then provides for an Advisory Board or Tribunal which will, within three months, advise the local governments as to whether the grounds on which a person is arrested are sufficient for his further detention. But in the draft placed before the House today there is no provision that the person affected will be given an opportunity of being told what the grounds for his detention are. No doubt you have Judges of the High Court on this Board, but what can the Judges do unless they hear the other side? They will only pass judgment *ex parte*. Therefore I submit that this provision is very defective. It is no protection at all. It is only intended to make a show that some sort of protection is given. I submit with great respect that this is not the proper way of dealing with this question.

I will now make a few more remarks with regard to some of the amendments. I do not want to carry my speech today after tomorrow. If the article is to be retained at all, the three amendments which have been suggested by the previous speakers should be accepted. First of all is the alternative amendment moved by Pandit Thakur Das Bhargava which is printed at page 4 of List I, which says that at the end of clause (2) of the proposed new article the words "and for reasons to be recorded" be added. If a man is to be arrested and remanded to custody, the Magistrate must record his reasons in writing. I do not think there can be any objection to this being incorporated in the Constitution. Then there is the other amendment by Pandit Thakur Das Bhargava that indiscriminate arrests should not be permitted. If we are copying the Japanese Constitution, then let the provisions of article XXXV of that Constitution be also included. If the executive has to have this power of arrest and detention, then at least let the person affected have an opportunity of submitting his explanation. This is all that I have to submit on the amendment.

One word more, Sir. So far I have drawn your attention to the various Constitutions of the world, English, American, and Japanese. I will now make a reference to the Charter of Human Rights which is now being considered by the United Nations Assembly. As honourable Members are aware, to the Committee dealing with this matter, our country had also sent a delegate.

Prof. N. G. Ranga (Madras : General) : Into how much of detail are we being taken in this matter?

Mr. President: He is now completing his argument.

Prof. N. G. Ranga: He said he would complete it twenty minutes ago.

Dr. Bakhshi Tek Chand: My honourable Friend Prof Ranga who has just come from America, does not want to hear anything about the Charter of Human Rights. He is welcome to have that opinion, I shall read only two or three lines.

Shri Mahavir Tyagi: It is quite important.

Dr. Bakhshi Tek Chand:

Article 3 provides : "Everyone has the right to life, liberty and security of person.

Article 7. No one shall be subjected to arbitrary arrest or detention.

Article 8. In the determination of his rights and obligations and of any criminal charge against him everyone is entitled in full equality to a fair hearing by an independent and impartial tribunal.

Article 9. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence, under national or international law at the time when it was committed."

I will read nothing more. This is the substance of Fundamental Human Rights for civilized nations. But in our Constitution are we going to incorporate provisions which lay down that persons can be arrested and detained without trial for three months, then there will be a sort of make-believe examination of the case by a tribunal which will give its opinion on *ex parte* examination of such papers as the executive might place before it and then the person concerned can be kept in further detention for any length of time? In some provinces it was originally six months, then it was varied to one year and then again to three years. In one province they can detain indefinitely. Are you going to incorporate such provisions in the first Constitution framed by Free India; so that when people compare this Constitution with those of other countries, they will say: "Here is a country which permits its legislatures to frame laws of this kind"? Will it. I submit, not be better to omit it altogether and leave it to the good sense of future Parliament or the good sense of the various Provincial legislatures to pass such laws as they like, and not to disfigure our Constitution with a provision like Act 15A?

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, my honourable Friend Dr. Bakhshi Tek Chand has gone over the whole ground which has been travelled at length by this House when it came to a conclusion after a very full debate and after an adjournment of the House that the expression "due process" must disappear from the article for the reasons which were then considered by the House at length. I do not propose again to repeat what I have said on that occasion. I might mention that the main reason why "due process" has been omitted was that if that expression remained there, it will prevent the State from having any detention laws, any deportation laws and even any laws relating to labour regulations. Labour is essentially a problem relating to persons and I might mention in the United States Supreme Court, in the days when the Conservative regime dominated the U.S.A. politics, enactments restricting the hours of labour constituted a violation of the "due process of law". An American would be employed for five hours, ten hours or twenty hours and make a slave of himself and yet it was held to be interfering with due process of law if there was a restriction of the hours of labour until the United States Supreme Court put a different construction in a later decision.

After a consideration of all these points, with due regard to the whole history of the expression "due process" in the United States Supreme Court, this House deliberately came to the conclusion to drop that expression "due process" from our articles instead of leaving it to the Supreme Court judges to mould the Constitution or to read up all the decisions of the Supreme Court and adopt such decisions as appealed to them according to their conservative or radical instincts as the case may be. Therefore, I do not propose to go into that history, at this stage. I myself took some part on that occasion and it is enough for me to say it is entirely irrelevant for the purpose of the present discussion. At the same time on that occasion it was felt that there should be some guarantee for personal liberty; some essential rules of fairplay

[Shri Alladi Krishnaswami Ayyar]

and justice should be adopted. It is because of some division of opinion and fighting over immaterial points that we were not able to insert any provisions in respect of those matters on that occasion.

The Honourable Dr. Ambedkar, who is as keen today on the problem of personal liberty as he has always been, has thought fit to bring forward this amendment and he thought that this article must find a place in the Constitution. My honourable Friend Dr. Bakhshi Tek Chand went so far as to say that he is ashamed, of being a party to the article 15A being passed. What is wrong with this article? Let us analyse. The first two clauses of the article are based upon the corresponding provisions of the criminal procedure and they are made into constitutional guarantees. The difference between that finding a place in the Criminal Procedure Code and that finding a place in a constitutional statute is that where as the Criminal Procedure Code is liable to alteration by the State Legislature or by the Central Legislature, when once it finds a place in the Constitution it cannot be changed excepting in the manner provided for the change of the Constitution. Therefore certain very important provisions which go to the fundamental principles are taken into article 15A. Therefore, I do not think any exception can be taken to those two clauses. There are corresponding provisions in the Criminal Procedure Code and they are now transferred practically into a constitutional provision in order to prevent any change being made by any legislature in regard to those provisions because they were regarded as fundamental.

Then the next question is if you guarantee personal liberty in the Constitution either by the use of the words "due process" or "procedure" or any such thing the State will be hampered even with regard to detention and in regard to deportation. It is agreed on all hands that the security of the State is as important as the liberty of the individual. Having guaranteed personal liberty, having guaranteed that a person should not be detained or arrested for more than 24 hours, the problem necessarily had to be faced as to detention, because detention has become a necessary evil under the existing conditions of India. Even the most enthusiastic advocate of liberty says there are people in this land at the present day who are determined to undermine the Constitution and the State, and if we are to flourish and if liberty of person and property is to be secured, unless that particular evil is removed or the State is invested with sufficient power to guard against that evil there will be no guarantee even for that individual liberty of which we are all desirous. That is the object of the provision.

What do those provisions say? You cannot detain for more than three months unless the matter is placed before some kind of tribunal. The tribunal is to consist of people who are qualified to be judges of the High Court. Are we to say that a retired judge is eligible, but not a distinguished member of the Bar who might not have a chance of becoming a Judge of the High Court is eligible for a place in that Court? If there is sufficient public spirit, I have no doubt members of the Bar who might have retired from the Bar or who might not have occupied the position of judges are eligible to be members of such tribunals, and it cannot be said that a person simply because he has not occupied a position of a judge is not good enough to be a member of the tribunal or to take a dispassionate view of the situation. Therefore, normally speaking, the tribunal will consist of people who were judges or people who are fit to be judges, and people of high character. And after all, there are judges and judges. The one reason why we say that that it is better to have

judges is that they have security of tenure; they occupy a particular place in society and they are accustomed to deal with cases from a detached point of view and it is better to have these people as members of the tribunal.

You need not put an embargo on people who may take an impartial view of the question, who may be guided by principles of justice and fair play, from being members of this tribunal, because they never happened to be Judges. I believe there is a sufficient number of people in this country who are fit to be in the tribunal other than Judges or people who are retired Judges. Imagine a man like Sir Tej Bahadur Sapru being alive and he being ineligible to be a member of the tribunal. I would have welcomed him as a member of the tribunal. The other day, Mr. Venkatarama Sastri was a member of the Board. A leading member of the Bar, who has occupied the position of Advocate General, he was a member of a Board which was constituted in Madras. He sat along with Judges who are much junior to him and possibly who could have sat under him and learnt some bit of law when they were at the Bar. Under those circumstances, we need not introduce a cast-iron provision to the effect that the members shall be only judges. There is absolutely no reason to believe that the members would not give an opportunity to the person before being satisfied that there is a case for detention if it is more than three months. Therefore, at any particular time, a person can only be detained for three months.

Beyond that time, there must be the *imprimatur* of this special tribunal which will take into account all the circumstances of the case, examine all the materials placed before them and come to the conclusion whether there is a satisfactory ground or not. Normally, I have absolutely no doubt that they will give notice to the party in every case. To say that you must give notice, it might be to surrender the very principle. There are cases where it is not susceptible of exact proof, but there are materials from certain quarters which will carry conviction to any impartial mind. At the same time, these people who are concerned in subversive activities, sometimes take care to see that no sort of evidence is preserved. Therefore, it is to provide against these extreme cases this provision is made. On the other hand, if you say that in every case there shall be notice, there shall be a charge, there shall be a hearing, that there shall be examination and cross examination, there shall be counsel, then this Board may convert itself into a magistrate's court with all the paraphernalia of the magistrate's court, and it will defeat the very purpose of the article. This is the object of saying that you must have competent men with a fair sense of justice, trained in the law. It is such people that will be there in the Board. After all, it will be very difficult for a lawyer who has been a Judge to get rid of his legal mode of approach. That is the reason for having a tribunal.

Beyond that, Parliament will intervene. Otherwise, that procedure is to be followed. There might be cases when Parliament will have to consider whether detention for more than the period referred to is called for in the interests of the State. Parliament which is elected on universal adult suffrage will have to pass a law. There are other guarantees in the Criminal Procedure Code (other than the Constitutional guarantees above referred to). The provisions of the Criminal Procedure Code are nowhere repealed or modified. The Constitutional guarantees constitute a minimum with which the legislature itself cannot interfere. The provisions in the criminal Procedure Code are liable to alteration by the legislature whereas this provision is not liable to alteration. Therefore, the question is which are the minimum rights that have got to be secured.

[Shri Alladi Krishnaswami Ayyar]

I do not think my honourable Friend, Mr. Tek Chand can show any Constitution which contains all these provisions. I am quite willing to throw out a challenge to him to show any well known Constitution, which contains all these detailed provisions. I venture to say there is none. There is no known Constitution which contains such detailed provisions, transferring all these provisions of the Criminal Procedure Code into their Constitution so that they may hamper the action of the legislature, the action of the courts, which will become the battle-ground for lawyers. Therefore, the Honourable Dr. Ambedkar has taken care to put in what may be considered to be the fundamental principles into article 15A. The other guarantees are there, the guarantees under the Criminal Procedure Code. There is no intention of interfering with the provisions of the Criminal Procedure Code. Both these could be exercised side by side, the Criminal Procedure Code and the Constitutional guarantee. I thought of stating more; but I do not want to take more of the time of the House. It is better that the matter is finished as soon as possible. That is the reason why I refrain from taking more time of the House.

Shri H. V. Kamath: May I request, you, Sir, to be so good as to throw some light on the duration of this session?

Mr. President: I have myself been considering that matter. There are certain matters which have to be held over for another session which will have to be held in October. The question is what we can dispose of now and what is to be held over for the October session. We have been considering the details and I think I shall be able to announce in the House tomorrow the details of the provisions which will have to be held over for the October session and those which we want to dispose of in this session. If we are able to get through our work quickly, we propose to finish this session by Saturday next. But, if by any chance, we are not able to do it, we may have to go over to the next day or the day following.

An honourable Member: The next day will be Sunday.

Mr. President: I do not know: if Members would sit on Sunday, I have no objection. Or we may sit on Monday.

Shri K. M. Munshi (Bombay: General): We may sit on Sunday, both morning and evening and finish it.

Pandit Lakshmi Kanta Maitra (West Bengal: General): The difficulty with some of us, orthodox Members, is that we have got the Mahalaya ceremony which comes off on the 22nd.

Mr. President: It is not Monday.

Pandit Lakshmi Kanta Maitra: We have got to go back to our places; we may not be able to find transport later. If you can finish by Saturday, it will be helpful.

Mr. President: It is in the hands of Members. I shall try to get through the work as quickly as possible.

Shri Deshbandhu Gupta (Delhi): Sir, when do we re-assemble in October?

Mr. President: As far as I can judge, this is not final, this is only provisional, we must begin about the 7th.

The Honourable Shri Satya Narayan Sinha (Bihar : General) : Not earlier than the 10th, Sir.

Mr. President : Then there will be no time. We have a time limit on the other side. Diwali comes oft on the 21st. If we have to complete these articles which will be left over, we must have sufficient time before we rise for Diwali Therefore, we have to begin the October session as early as possible. It all depends on the number of articles left over. Therefore, I said I would be able to say this with a little more definiteness tomorrow.

An honourable Member : If everybody speaks on every article, it may take two months.

Mr. President : I cannot prevent that.

We have got several time limits. We must finish the third reading at the latest by the 18th of November. For that purpose, we are thinking of beginning the session for the Third Reading on the 7th of November, so that we may get about ten days for the Third Reading. Between the beginning of the Third Reading and the ending of the Second Reading, the Drafting Committee would naturally require some time to put the things in order, as renumbering of the paragraphs, correcting of errors, getting the thing printed and placing the whole Constitution in the hands of the Members in time for their consideration on the 7th of November. Therefore, it is necessary to complete the Second Reading pretty well in advance of the beginning of the Third Reading. Therefore I am suggesting that if we start, say, about the 7th October, we would be able to complete the Second Reading by about the 18th or 19th October and then we give them a fortnight for completing their revision and for printing and distributing to Members, so that we might start the Third Reading on the 7th November. These are the various dead lines which we may not cross and therefore it is necessary to fit in the whole programme within this time.

The House will now stand adjourned till Nine to-morrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 16th September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 16th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—*contd.*

New Article 15A—contd.

(Shri Jaspat Roy Kapoor rose in his seat.)

Mr. President: Do you want to say anything?

Shri Jaspat Roy Kapoor (United Provinces: General): Sir, I want to speak on article 15A.

Mr. President: Yes, we shall continue the discussion of article 15A. Mr. Jaspat Roy Kapoor.

Shri Ram Sahai (Madhya Bharat): *[Sir, I would like to know if you could give us an idea of the remaining programme of the House. It would have been convenient to us if you had made an announcement in this connection at the time the Assembly commenced its sitting today. I may draw your attention, to the fact that you had told us, you would be making this announcement today.]

Mr. President: *[I did not make the announcement in the beginning on account of certain difficulties.] I would request Members not to prolong the discussion, because, after all, it deals with a subject which was discussed in the last session at great length, and we want to get through all this within today and tomorrow, if possible. If all this is discussed and finished, tomorrow there are certain other items which will come in later, namely, the Preamble and the first article.

Shri T. T. Krishnamachari (Madras: General): The Preambie won't be taken up now, but at the end.

Mr. President: Very well. The first article will come, and we shall have also the Bill. The House now knows the amount of work which has to be gone through between today and tomorrow and if you take that into consideration, I hope the Members will curtail the discussion as much as possible so that we might finish the discussion tomorrow and end the session tomorrow.

Shri Jaspat Roy Kapoor: Sir, I assure you that, I will scrupulously respect your wishes in fact it is no pleasure to refer to article 15A; the whole article is jarring to the ear and is one more illustration of the conservatism which characterises the chapter on Fundamental Rights. The chapter can more appropriately be called 'Limitations on Fundamental Rights" or after the words "Fundamental Rights" we can add the words "and limitations thereon". For the emphasis seems to be not so much on rights of liberty as on restrictions and limitations thereof.

*[ ] Translation of Hindustani speech.

[Shri Jaspat Roy Kapoor]

I will only refer to four or five points. There are, firstly, two classes of persons who may be arrested : (1) those arrested on a specific charge, and (2) those who are to be detained, not for any specific offence, but because their detention is thought necessary in the interests of the State. With regard to the first class of persons, they are being given no new rights whatever. The article says that no person shall be arrested without the authority of a magistrate. But that right every citizen has got under the Criminal Procedure Code. It may be said that that Code can be changed by Parliament or even by the provincial legislature. But still, trusting in the good sense of the legislatures as we do, we may take it that they are not going to provide for detention, even on a specific charge, beyond 24 hours without the authority of a magistrate. Therefore, the right conceded here is one which the citizen already enjoys. It is further provided that he shall be produced after 24 hours of his arrest before a magistrate. That provision also appears in the Criminal Procedure Code. Therefore this article confers nothing that is new or guarantees nothing which any legislature would not provide for.

With regard to the second class of persons, *i.e.*, persons who are to be detained for security purposes, they are being given no rights worth the name in this article. Clause 3(b) provides that "Nothing in this article shall apply to any person who is arrested under any law providing for preventive detention", which means that the elementary right of not being detained beyond 24 hours except under the authority of a magistrate is being denied to the person detained, and he can continue to be detained for any length of time, subject of course to certain provisions of the law under which he may be detained. But that is another thing. It may be said that no preventive law would provide for the arrest and detention of a person without the authority of a magistrate. That means that you are depending on the good sense of the legislature. If so, there is no occasion for guaranteeing anything in the chapter on fundamental rights. In this chapter we must provide for certain essential fundamental rights irrespective of the fact that the legislature may or may not be reasonable. So this right of not being detained except with the authority of a magistrate is not being conceded to a person who is to be detained for security purposes.

Then, the person detained may be continued in detention for any length of time, except that if it goes beyond three months the advice of an advisory board would be necessary. Even here we find that after the board has considered his case he can continue to be detained for any length of time. That I consider to be very unfair. I think we should provide for the periodical review of such cases. I gave notice of an amendment to that effect but could not move it, as I was unfortunately unable to be present here when its turn came. But if it appears to be necessary to Dr. Ambedkar I think he can make a provision here to that effect. What I suggest is that the case should be reviewed every three months or even after longer intervals, so that the person detained may have the satisfaction of knowing that his case is being periodically reviewed. Otherwise it will mean that if, after three months of detention, the Advisory Board feels that he should continue to be detained, his case will not be reviewed at all thereafter and he will be at the mercy of the executive for any number of years.

Shri Brajeshwar Prasad (Bihar : General) : Is it a fact that he will be detained for any number of years, or will a maximum limit be prescribed by Parliament.

Shri Jaspat Roy Kapoor : It is not obligatory on Parliament to prescribe any maximum limit. Clause (4) says that Parliament may, if it so chooses,

enact such a law, but it does not impose any obligation on Parliament. And besides a person detained under a law enacted by Parliament under clause (4) would not have, according to clause (3), proviso (b), the benefit of review of his case at all by the Advisory Board.

Shri Brajeshwar Prasad: If Parliament makes a law it will have to lay down a maximum limit.

Shri Jaspat Roy Kapoor: Yes, but is it obligatory on Parliament to make such a law? And even if it does make the law, where is it prescribed that the maximum *must* be fixed and even if it is fixed, is any period being suggested here? Must not this Assembly suggest to Parliament for its guidance that such and such a period shall be the maximum period of detention which must be provided in the law which Parliament may make? You are again leaving the whole thing to the good sense of Parliament. If so, why make an unnecessary show of this article 15A by saying that you are conceding certain fundamental rights, whereas, as a matter of fact, you are suggesting the extent to which the legislature can freely go to impose limitations on personal liberty? So far as detenus are concerned, they are given no protection in this chapter and I submit that this is very hard and strikes at the very root of fundamental rights and personal liberty. The person detained may be kept in detention without the sanction of the magistrate and for any length of time and without even reason for detention being told to him. There shall be only one review of his case and there shall be no periodical review. I submit, if nothing else is conceded by the Honourable Dr. Ambedkar, at least this one thing should be conceded, namely, that the cases of such persons shall be reviewed periodically after every three months, or it may be even after six months: otherwise, once a person is detained, and once the Advisory Board agrees to his detention for a period longer than three months, the fate of that person is virtually sealed and he is doomed. He is absolutely at the mercy of the Executive. After six months, after nine months and even after twelve months the conditions in the country may change. Something more may come to light and those changed circumstances, those new things must be placed before the Advisory Board, and the Advisory Board, in view of the changed conditions and the fresh facts coming to light and being placed before them, should be in a position to advise the Government whether continued detention for another six, nine or twelve months is necessary. This is a very simple and reasonable thing. Let not this last ray of hope, which may be created in the detenus be taken away altogether. We who have had the good fortune, I should certainly say, of being detained during the various *satyagraha* movements, know how many of us anxiously looked forward to the expiry of the period of six months, whereafter we used to think and hope that our cases would be reviewed by the authorities and that they might consider it advisable and necessary to release some of us. Let us not forget these feelings and the experiences which we have had, and let us not forget that though today we are in power, who knows tomorrow someone else may be in power and we may be in the position in which the present detenus are! So, whosoever may be detained, let him have these fundamental rights. Without even these rights being guaranteed here it is a huge joke to ask us to accept this article as even guaranteeing fundamental rights, whereas in fact it works more the other way about.

Shri M. Ananthasayanam Ayyangar (Madras: General): I would have very much liked to retain the words "due process of law" in the original article itself, but unfortunately our other friends differed and ultimately the House accepted the change of expression "procedure prescribed by law". My honourable Friend, the Chairman of the Drafting Committee himself felt that it was too wide and therefore there was not that guarantee of expression in article 15 as modified and which might not be a fundamental right, because Parliament can do whatever it likes. Therefore there is not anything like an

[Shri M. Ananthasayanam Ayyangar]

inherent right which Parliament cannot remove. Another fundamental to be incorporated or implemented in a clause in the Constitution must be such as cannot be taken away by a provision of Parliament except under exceptional circumstances. That kind of limitation is not there in article 15 as passed. That is why the Honourable Dr. Ambedkar and the Drafting Committee have thought fit to add these clauses by way of caution. It is no doubt true that these clauses find a place in the Criminal Procedure Code today but the necessity of incorporating these in the Constitution itself is this. It might be possible that what is now prevalent or what now obtains in the Code might itself be modified. As a matter of fact, many of my friends want some more restrictions to be imposed here, to prevent Parliament later on from modifying the rules and the Criminal Procedure Code in such a manner that the safeguards might be taken away. For instance, exception is taken to the words "as soon as may be". They want it to be done within 24 hours. I find there is a practical difficulty in this matter. Under section 107 of the Criminal Procedure Code, as soon as a man is arrested, he must with reasonable speed be taken before a Magistrate. It does not matter whether that Magistrate has jurisdiction over that case or not. There is that lacuna. But a Third Class Magistrate—unless a Second Class Magistrate is empowered—would not be authorised to commit or remand the prisoner into custody for a period of 15 days. Under the existing Criminal Procedure Code this is a defect. The man who is not in charge, who will not ultimately take the responsibility for hearing the case may remand to police custody for a further period of 15 days. There it is. In section 167 it is clear that the police who make an application that the accused must be further remanded to custody, must lay sufficient grounds before the Magistrate, the information that they have, the accusation against him, the charges that will be ultimately developed—all these matters have to be placed before the Magistrate to enable him to come to a conclusion as to whether it is necessary to remand the accused further for a period of 15 days. It may be possible for the police officer to give that information straightaway, in which case, the amendment asking for information within 24 hours is legitimate. But there may be cases where it may not be possible to give that information. The very object of remanding will be frustrated by giving the information straightaway within 24 hours. What is the object of remanding a man to custody? It is to prevent him from tampering with the evidence that might be possible. In very serious cases this is a handicap. The man accused very often interferes with evidence and makes it impossible for that evidence to come about.

Under these circumstances, I have doubts in my mind as to whether it will be prudent in every case to give information to the accused within 24 hours of whatever information the police may have. There may be cases where the police may abuse that power and in their enthusiasm merely on suspicion they may arrest a person and also desire a remand to custody for a period of 15 days. Here in our own Government, in a Government where there will be a majority in favour of the popular Government, that Government may not easily allow such abuses. The balance of convenience is in favour of allowing this clause to remain as it is instead of substituting it by a period of 24 hours. It may be dangerous to give information before the evidence is ripe, and can be placed before the Magistrate and the accused.

As regards the suggestion made that at the end of article 15(a)(i) the words "to consult a legal practitioner of his choice and also be defended in a court of law" be added, I agree with it. In many cases we know—as in the 1942 movement—there was more right to cross-examine witnesses.

Shri K. Kamaraj (Madras : General): If the choice of a person for instance a Communist of the day, is a Russian lawyer, would you allow it?

Shri M. Ananthasayanam Ayyangar: A Russian lawyer is good for Russia, but a different kind of lawyer will be good for us. Let us not be prejudiced against lawyers. As a matter of fact, but for lawyers, this Constitution would not have come into existence. They are contributing a lot to the world. I do not want to dilate upon this. We can quarrel every day with a lawyer but you cannot get rid of him nor dispense with his services. More often than not, he is the victim of reproach and unfortunate misunderstanding. He has done yeoman service to the cause of freedom. Therefore this power or this right must be conferred by Statute. I would urge upon my honourable Friend, Dr. Ambedkar, whether the right to be defended by a lawyer and the right of cross-examining witnesses ought not to be conferred here. In cases of emergency, nothing can be done. But normally, this is what ought to be conceded to any person who is arrested.

There is an amendment which was tabled by my honourable Friend Pandit Thakur Das Bhargava that there must be a clause to say that the trial must be speedy. The present provisions in the Cr. P. C. are sufficient and hence there need not be a clause to this effect. In the nature of it the expression "speedy" is indefinite. What is speedy in one case may not be speedy in another. So such a clause is unnecessary.

I am in favour of making it obligatory that in every case where there is a punishment imposed or a sentence of punishment made there must be at least one right of appeal, because we cannot entrust the liberty of a person into the hands of only one individual. The present criminal law has been made with a view to protect property much more than a person. It is unfortunate that the previous government and those who conquered us did not value the human personality as much as they did property. That has to be changed. We are not giving the right of vote according to the property of a man, not even according to his literacy. Under the Constitution every human being is entitled to vote. Therefore every human being is entitled to be protected at any cost : the human personality is sacred. Judging from that standpoint I would allow at least one right of appeal which should be incorporated in the Constitution itself.

As regards preventive detention my honourable Friend Dr. Bakshi Tek Chand has taken exception to the provision being made in the Constitution itself. He said that in no constitution in the world such preventive detention is provided for, meaning thereby that Parliament is not prevented from enacting a law subsequently, for the purpose of preventing the committal of any offence. It is not by virtue of this clause that Parliament is clothed with that power. We shall assume that, that power is not here. Unless you say definitely that there should be no preventive detention would it not be open to Parliament.....

Pandit Thakur Das Bhargava (East Punjab : General) : According to the present section the Parliament will not be able subsequently to enact that any person can be detained for less than three months. This gives power for three months practically to the local executive to put a man in prison without his being brought to trial. The Parliament subsequently will not be able to tamper with the period of three months. That is the difficulty.

Shri M. Ananthasayanam Ayyangar: The provision reads :

"An Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention."

From this I do not read that Parliament would not be empowered to change even the period of three months. All that it says is that it clothes the authorities with the power to detain for three months at the most. They cannot go beyond the period of three months without placing the matter before the

[Shri M. Ananthasayanam Ayyangar]

Advisory Board. It does not speak of the Parliament's right. The main point is this. When a man is arrested his case must be placed before the Advisory Board. I believe, in spite of the wording, that Parliament has the right to say that notwithstanding this clause immediately after a man is arrested for purposes of preventive detention, his case shall go before the Board and it would be open to the Board to come to any conclusion, even to say that the man may be let off even within three months.

Shri Jaspat Roy Kapoor: Will a person detained under a law enacted under clause (4) have the benefit of a review by the Board?

Shri M. Ananthasayanam Ayyangar: Yes.

Shri Jaspat Roy Kapoor: No He will not have that benefit.

Shri M. Ananthasayanam Ayyangar: The clause reads:

"Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained"

It is true that this apparently seems to apply only to cases where a man is sought to be detained beyond three months. If it is for a period below three months, whether Parliament has a right or not is not clear from this. As I read the article it is not intended to curtail the rights of Parliament. It may take away the right to get information from the police. It might be open to Parliament to empower the police not to give any such information at all. In those details Parliament's power of restricting the liberty of the citizen is taken away. Otherwise wherever an Advisory Board is appointed, whether Parliament prescribes the law or not, a man cannot be detained for more than three months unless the matter is decided by the Board. Parliament has to enact a law under what circumstances and what officer and of what rank can detain man for purposes of preventive detention.

I find here a lacuna. It is not clear to me whether it is open to the Advisory Board to review cases from time to time, say once in three to six months. The cases of people detained in 1942 were reviewed once in six months. There is no such provision in proviso (a) as worded here. The proviso ought to be suitably amended so as to give the power of review to the Board to look into these matters. The Chairman of the Drafting Committee has been able to imagine a number of hardships and has tried to make provision for all of them but there is one thing wanting. He has never been for even a period of three months in jail at any time and therefore he has not thought of the hardships suffered by others. Even the previous government made a provision to review cases once in six months, though it may be said that such a provision for review was useless. But that is a different matter. We must provide here for review from time to time. The Advisory Board should not sit once for all There may be other circumstances which may necessitate a man's release after a period of three or six months. So this provision must be subject to a law providing for review from time to time.

Lastly, our friends have tabled an amendment that the maximum period for which any such person may be detained may not be more than one year. While I agree that in the first instance it ought to be three months and should not exceed one year, there may be exceptional cases as in a state of emergency. In cases other than such there may be a restriction of one year.....

Pandit Thakur Das Bhargava: In an emergency these provisions will not have any force at all.

Shri M. Ananthasayanam Ayyangar: If these are intended in ordinary cases, there might be a political party whose agitation is accompanied by plucking off of eyes or cutting off of arms and other barbaric methods by friends who are as dark in colour as we are. I do not know what to do with them. These have become a part of their tactics and I do not know whether they are likely to change. Under those circumstances in the interest of the State is it not reasonable that we should make provision without limiting the period of detention? It might be that the officers or the executive might abuse this power. So I would say a year in the first instance, but in exceptional cases it may be continued for a year more. We should also fix the maximum period for which any such person should be detained. It may also be considered whether it ought not to be left to Parliament to fix the maximum according to the exigencies of the circumstances. If the period is now prescribed as one year, it may not be possible to change it except by an amendment to the Constitution which requires two-thirds majority. I am not fully in agreement with this. I therefore welcome a modification in the form suggested. Otherwise, the procedure 'as enacted by law' would throw open the flood-gates and Government will be able to curtail the liberty of the citizen and put him in jail even recklessly. If there is a political rival capable of fighting you at the elections the possibility is that you will clap him in jail. Therefore, this clause may be a little improved by provision that a lawyer might be engaged to defend a person Provision may also be made to enable the Advisory Board to review the cases within three months and also fix a period or empower Parliament to effect a change when necessary in this respect.

Shri Mahavir Tyagi (United Provinces: General): Sir, Dr. Ambedkar will please pardon me when I express my fond wish that he and the other members of the Drafting Committee had had the experience of detention in jails before they became members of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: I shall try hereafter to acquire that experience.

Shri Mahavir Tyagi: I may assure Dr. Ambedkar that, although the British Government did not give him this privilege, the Constitution he is making with his own hands will give him that privilege in his life-time. There will come a day when they will be detained under the provisions of the very same clauses which they are making, (*Interruption*). Then they will realise their mistake. It is all safe as long as the House is sitting and the Members are sitting on these Benches. But then let us not make provisions which will be applied against us very soon. There might come a time when these very clauses which we are now considering will be used freely by a Government against its political opponents.

Sir, in this article we are required to grant rights and privileges to the people, but along with them I am surprised to find that it has occurred to the Drafting Committee and their friends and advisers to provide herein penal clauses also. This is a charter of freedom that we are considering. But is this a proper place for providing for the curtailment of that very freedom and liberty? When freedom is being guaranteed, why does the Drafting Committee think it fit to introduce provisions for detaining people and curbing the freedom? This is an article which will enable the future Government to detain people and deprive them of their liberty rather than guarantee it.

Sir, life, liberty and pursuit of happiness are the three chief fundamental rights of every individual. The state comes into being not because it has any inherent right of its own, but because the individual, who has inherent rights of life and liberty, foregoes a part of his own rights and deposits it with the State. Every individual is born equal. That is one principle. So every

[Shri Mahavir Tyagi]

individual has the inherent right of freedom of life, of liberty and of option for the pursuit of happiness. These rights are inherent and inalienable. Even if one chooses to alienate these rights, I submit, he cannot do so because they are inherent in him and they are inalienable. But the individual voluntarily transfers some of his inherent rights and pools them to the cumulative store of social rights known as the State.

The State is thus organised and constituted, not by depriving people of their inherent rights, but by the voluntary will of the people to enhance those rights and enrich the individual freedom. Individuals agree to form a society in the hope and with the intention that society, with the stock of cumulative rights contributed by them will help the individual in becoming richer with his freedom and freer in his pursuit of prosperity and happiness. So that the State would safeguard his individual freedom against the interference of another individual.

Now we are making a Constitution guaranteeing these inherent rights. What relevancy is there for a detention clause in the Constitution which is meant to guarantee fundamental rights to the citizens? I am afraid the introduction here of a clause of this kind changes the chapter of fundamental rights into a penal code worse than the Defence of India Rules of the old government. I have suffered under the Defence of India Rules long detentions. I have suffered from such detention. How I wish Dr. Ambedkar was with me in jail after being arrested and hand-cuffed for a whole night? I wish he had had my experience. If he had been hand-cuffed along with me, he would have experienced the misery. I fear, Sir, the provisions now proposed by him would recoil on himself. Sir, as soon as another political party comes to power, he along with his colleagues will become the victims of the provisions now being made by him.

Shri Brajeshwar Prasad: Constitution or no-Constitution.

Shri Mahavir Tyagi: In Urdu there is a couplet which says:

'Kas rahe hain apni minqaron se halqa jalka'.

That is what really we are doing. We are making it easy and convenient and legal for the future Governments to detain us. That is the meaning. Sir, I do not wish to say more on this point. I only wanted to warn the House that if we pass this article as it is we will simply be making a provision which will be used against us.

Mr. President: That you have done. So far as the details are concerned, they have been dealt with by other speakers in great detail.

Shri Mahavir Tyagi: If you think so, I shall now merely refer to the defects of the provision.

Mr. President: The defects have been pointed out by other speakers in great detail. You will be only repeating them hereafter.

Shri Mahavir Tyagi: No, Sir, I will not repeat their arguments.

Here it is mentioned that "nothing in this article shall apply (a) to any person who for the time being is an enemy alien" this is agreed—and "(b) to any person who is arrested under any law providing for preventive detention." Now, Sir, such persons as are detained under any law of preventive detention will have the privilege, according to the proviso, of their cases being judged by an Advisory Board. Persons who are detained by the Government for more than three months, their cases will be judged or at least reviewed by an

Advisory Board, but the cases of such persons as come under clause (4) will not be reviewed at all. It is said "unless such person is detained in accordance with the provisions of any law made by Parliament under clause (4) of this article" which means, Sir, that all such cases of detention which come under such laws which are enacted by Parliament under clause (4) shall have no privilege of revision by any Advisory Board. I want to know why the privilege of report by the Advisory Board is not given to cases of detention under the provisions of any law made by Parliament under clause (4). When we are providing for an Advisory Board here, we could also include the cases of such persons as are detained under any law which Parliament may hereafter make under clause (4). My Friend, Pandit Thakur Das Bhargava, has really done a wrong to the House by pressing his demand for safeguards against the misuse of article 15. Instead of giving more guarantees, Dr. Ambedkar has only brought in a couple of clauses from the Criminal Procedure Code which are no new guarantees, and immediately along with those clauses he has brought in a clause for detention.

I say, Sir, that it is not the business of the Constituent Assembly to vest in the hands of the future governments powers to detain people. It is for the coming generations to do that, if they think it necessary and if they want to incur the displeasure of the people by enacting such laws. It is not the business of the Constituent Assembly. In no constitution of the world have I read of such criminal law being enacted by the constitution-makers. We are here to guarantee the rights of the people and not to make criminal laws to deprive people of their rights. We have given here no right of referendum no right of recall, to the people, and still every fundamental right which has been given has been restricted by something or the other. And in this article particularly it is not only restriction, but it is a case of contradiction, total contradiction of the rights. I can never agree to the incorporation of this article.

I would ask Dr. Ambedkar and the Drafting Committee if they are also prepared to arm, the people also with the power to overthrow a government which works destructively against the fundamental rights which they have granted to them. Surely the people have got the right to overthrow, abolish or alter such a government and to constitute another government which they think would be more likely to effect their safety and happiness.

Shri T. T. Krishnamachari: It is an extra-constitutional right.

Shri Mahavir Tyagi: The constitution must also say something about the power of the people. Have you given the people anywhere the right to overthrow the government which acts destructively against the rights of the people? That inherent right of the people you have not guaranteed. It is not for us to guarantee the rights of the Government alone. We have to see that government has rights but the people also must have rights. It will be a totalitarian government that we will be having immediately after we pass this Constitution, and I must warn the House that if they bring in so many restrictions on the rights of the people and arm the government with powers to be used against the people, the people may not like this dreadful concentration of power in the government. The government can only have those rights which individuals voluntarily surrender to the government. No government has a right to have powers which individuals are not prepared voluntarily to contribute to it. With these words, I request the Drafting Committee to withdraw this article altogether.

Dr. P. K. Sen (Bihar: General): Mr. President, Sir, after the eloquent appeal of my honourable Friend, Mr. Tyagi, it may be rather dull and drab for the House to hear me speak in a different vein. There is no question at all that the individual has rights which have got to be protected, but at the

[Dr. P. K. Sen]

same time I think, judging from the trend of this debate from the very beginning up till now, the House is agreed that there are circumstances which compel the world today—not only our country but every country—to take certain measures which may defend the State against subversive measures. The only question is how far and to what extent individual right, the fundamental right to liberty and freedom, and safety and security of the person, should be circumscribed in the interests of the security and safety of the State as a whole. It is the old old question of individual *versus* State and the extent to which the rights of either should be adjusted so that, not by destroying individual liberty but by circumscribing it to a certain extent, the welfare of the whole State may be secured.

Sir, I do not propose at all to go through all the details which have already been placed before the House by my honourable Friends, Pandit Thakur Das Bhargava and Dr. Bakhshi Tek Chand and several other speakers. The whole dispute as to whether it should be "due process of law" or "the procedure established by law", and the history of it all has been discussed. The only short point upon which I wish to address the House today is in support of the amendment brought forward by my honourable Friend, Dr. Bakhshi Tek Chand, in regard to informing the detenu, the person arrested, of the grounds on which he has been arrested. This is really the minimum that can be done and should be done. It has been hinted that the Honourable Dr. Ambedkar was inclined to accept the amendment but that he was overborne by "extraneous forces." It has even been suggested that Dr. Ambedkar has appeared in this House in double personality,—the one Dr. Ambedkar, plain and simple as he is,—intensely in sympathy with the individual as regards rights and liberties, -and the other somewhat like the ghost of himself, as it were, like the perturbed spirit in Hamlet hovering about and over his innate love of freedom and yet being overborne by other forces. I do not believe it, Sir. I do not believe that he is capable of it or that the Drafting Committee is capable of it. Let us not regard the Drafting Committee or those who are in charge of these articles before they are finally shaped as if they were an Opposition or as if we were in opposition to them. The simple question is this: Whether the modicum that should be allowed to the citizen has been allowed or not. I do believe that when a man has been detained, it is unquestionably his right to know the grounds upon which he has been arrested and detained. This is the minimum that can be done. The Board has already been provided for in the article constituted of judges of the High Court, or those who have been judges of the High Court or those who are qualified to be judges of the High Court. Such a Board is to go into the question as to whether or not the grounds are sufficient or not; and the whole affair as to whether three months should be the limit or whether the period could be enhanced or enlarged is to be in the hands of the Board. If that be so, it is the simplest thing in the world for the Board to know what the grounds of arrest are.

It is not suggested at all that the whole of the evidence should be placed before the person arrested, because it is a notorious fact that in regard to these persons who are charged with subversive activities the evidence is very difficult to find, the evidence may also be counteracted by concocted evidence, and therefore, it is not necessary at all for the purpose of acquainting him with the ground of his detention or arrest that he should be given all the materials or data of the evidence. That, I take it, is not suggested in the amendment. All that is suggested is that the moment a man is arrested the matter should be in the hands of this particular Board which will be

appointed, and that Board having gone into the matter should at once inform him of the ground of his arrest so that he may know where he is. It may be that there are circumstances which he can disclose from which it will be found that he was arrested on no ground at all. I therefore, most emphatically submit that this amendment should be accepted.

As regards the other points urged, I will not repeat them. There may be certain things in the provisions of the article which appear to be rather against the fundamental rights, but as I have said, having regard to the troublous times which not only this country, but all countries in the world are passing through, some special measures for the security of the State are necessary and I hope the House in considering article 15A will not lose sight of that fact and will not be carried away by emotion so as to think that it can make a clear sweep of the whole article (15A). That extreme view I am not prepared to subscribe to. I do submit, therefore, that the Drafting Committee would be pleased to consider this amendment very seriously and accept it. I thank you, Sir.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, Sir, the article placed before us by Dr. Ambedkar deals with two matters, the conversion of the ordinary rights enjoyed by accused persons under the Criminal Procedure Code into constitutional guarantees and the manner in which persons detained under preventive detention laws should be dealt with. So far as the first question is concerned, it has been so fully dealt with that I do not want to deal with it except to say that I agree with the proposal of Pandit Thakur Das Bhargava that if an accused person is allowed to be detained for more than 24 hours by the Magistrate, he should record his reasons for doing so in writing that the accused person should have the right of examining the prosecution witnesses and of producing his defence and that at least one appeal should be allowed against every conviction. It is true, Sir, that most of these rights are enjoyed under the present Criminal law by accused persons, but if any of the rights now enjoyed is to become a constitutional right, it is desirable that the Constitution should contain the most important of those rights without which there cannot be a fair trial.

Now I come to the second part of Dr. Ambedkar's amendment. Clause (3) of this amendment says :

"Nothing in this article shall apply—to any person who is arrested under any law providing for preventive detention :

Under the various provincial Public Security Acts a man has to be informed almost as soon as he is arrested of the reasons for his arrest and detention; yet when we are dealing with this matter in connection with the Constitution, we are not giving a detained person the right that he now enjoys under the Provincial Public Security Acts. I think therefore that whether a detainee's case goes before the Advisory Board or not, he should be informed of the grounds on which he is detained as soon after his arrest as possible and should be given an opportunity of submitting his explanation to the Government. I should further like to submit that when a case is placed before the Advisory Board, the detainee should be given an opportunity of submitting a further representation to the Board, should he so desire. Besides, the Board should be at liberty to ask the Government to place the explanation of the detenu before it. If the Government do not choose to inform the Board of the explanation submitted by the accused, the Board should be at liberty to set him free.

[Pandit Hirday Nath Kunzru]

The second suggestion that I should like to make in connection with clause (3) is that whether a State Government is required to place the cases of detenus periodically before the Advisory Board or not, there ought to be a limit to the period for which a man can be detained. After all, the judicial review provided for in this clause will proceed only on the basis of written charges and replies. No witnesses will be produced, the detainee will not be represented by counsel and he will not have an opportunity of cross-examining the prosecution witnesses. It is possible therefore that even the Advisory Board may arrive at a wrong decision. The materials placed before it by the Government justifying the detention of a person will consist, I suppose, of police reports and these reports, to put it mildly, may not always be correct. The Advisory Board will have to proceed only on the basis of police reports; and however wise its personnel, it may not always be able to arrive at correct decisions. I think, therefore, that a limit should be set to the period for which a man can be detained.

Now, I come to the case of a man detained under a Parliamentary statute. We are told that Parliament being the supreme legislative body in the country and representative of the entire country it may be supposed to be not merely willing, but anxious to do justice to all classes of people. There is, therefore, no reason why its *bona fides* should be questioned or its powers should be curtailed by the Constitution. We have, Sir, in the United States a body known as the Congress which, in that country, is as supreme as Parliament will be in this country. Nevertheless, the Constitution of the United States limits the powers of this body in respect of the arrest of persons, searches of dwelling places, and so on. We may, therefore, without casting any reflection on Parliament and without unduly derogating from its authority, provide in our Constitution some of the safeguards, or rather something remotely resembling the safeguards provided in the United States Constitution. Even if my proposal is accepted, that is, even if Parliament is required to fix a period for the detention of a person, we shall be far from having provided all those guarantees of liberty that the United States Constitution does.

The United States Government is today controlling the administration of Japan. A Military Commander exercises ultimate authority there. But notwithstanding the abnormal position that prevails in Japan, the Japanese people have been given in substance all those Constitutional guarantees that the people of the United States enjoy under the Constitution of that country. In order to give an illustration of what I mean I shall read out only one provision of the Japanese Constitution. This provision is embodied in article 35 and runs as follows :—

"The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon a warrant issued only for probable cause and particularly describing the place to be searched and the things to be seized, or except as provided for by article 33."

The exception provided for in article 33 relates to the arrest of a person while committing a crime.

The situation in India, even if it may not be supposed to be normal, is far better than the situation in Japan. But, the House has shown its unwillingness to give our people those guarantees of liberty that the people of Japan have been provided with notwithstanding the extraordinary situation existing there. If the article under discussion is passed, the Central Government and the Provincial Governments will have the right of detaining persons under special laws. We shall be far behind the United States Constitution or the Japanese Constitution in regard to this matter. In these circumstances, I think it is necessary that we should restrain the power

of the executive to detain persons without trial so as to ensure that the detainees are not kept in detention for an indefinite length of time. This is the least that we can do for those who are deprived of their liberty.

I do not know, Sir, whether my suggestions will find favour with the Drafting Committee and the House. But I have no doubt whatsoever that the safeguards that I have suggested can be provided without affecting in the least the power of the Executive to deal even with such emergencies as may not be constitutionally recognised as such. It will have the power to arrest people and detain them. All that it will not be able to do is to detain them without limit of time.

It may be said that it is quite possible that it may not be desirable in the public interest that a person who is regarded as highly dangerous by the Executive should be set at liberty even after six months or a year. It is possible to conceive of such a case. If Government comes across such a case it will be able to deal with it by setting the man concerned at liberty, watching his behaviour for some time and then re-arrest him after some time if he does not behave properly; but there is no justification whatsoever for allowing any Government even with the approval of the Advisory Board to go on detaining a man not merely for months but for years.

Shri B. M. Gupte: (Bombay: General): Intervening at this late stage of the debate I shall be very brief. With regard to the details, they have been discussed at great length and I shall not traverse the same ground over again. I will only say that I am entirely in favour of liberalizing the provision as far as it is possible to be done. With regard to the general nature of the provision I will say that it is not an article over which one can enthuse. It is after all an attempt to rescue something out of fire and it should be judged in that light. It is an attempt to rescue something out of fire that eliminated the phrase "due process of law". Article 15 concerns the most vital of all the Fundamental Rights, *viz.*, the right to life and personal liberty. Those of us who advocated the adoption of that phrase wanted to give that right the essence of Fundamental Right. And what is the essence of Fundamental Right? In the small field of the basic needs of the civilized man, the limitation on the sovereignty of the Legislature and to that extent the supremacy of the judiciary, are the essence of the Fundamental Right, unfortunately we were defeated. This provision does not at all seek to restore that supremacy. Dr. Ambedkar has rightly said that article 15 gave a *carte blanche* for the arrest of any person under circumstances that Parliament may think fit. That right was there and it is not claimed that this article substantially restricts that right. Dr. Ambedkar is satisfied that these provisions are sufficient to guard against illegal and arbitrary arrest: but are they sufficient to prevent the Parliament from making any provision with regard to preventive detention? That is the real test, and I submit that these safeguards are very minor safeguards. Clauses (1) and (2) of the article give no new rights at all. They are old rights—only they are made more difficult of abrogation. And the third point is in regard to the Advisory Committee. These are very minor safeguards and we can say that they are only small mercies. I am not against accepting them for whatever they are worth; but their real nature must be understood.

I do not blame Dr. Ambedkar or the Drafting Committee. We are all labouring in these matters under two handicaps. One of them is that many of the provisions come here as a result of prolonged discussion and negotiation between various schools of thought and various shades of opinion. It is often said that the thing is an integrated whole and we have to take it as a whole or reject it as a whole. We have to pay this price for agreement

[Shri B. M. Gupte]

and concoct. I do not therefore grudge it. But the other difficulty is greater. On occasions like this sympathies of most of us go out to the high principles which in the past we proclaimed from housetops. But there are other friends who occupy seats of authority and responsibility throughout the country. They warn us that the aftermath of war and partition has unchained forces which if allowed to gain upper-hand will engulf the country in anarchy and ruin. They therefore advocate that Parliament must be able to pass laws arming the Executive with adequate powers to check these forces of violence, anarchy and disorder. They are great patriots and our trusted leaders. Many of us are not convinced that dire results would necessarily follow the adoption of the phrase "due process of law". But the difficulty is this, that even if we were to stand for our own convictions there is no scope for experimenting in such matters. There is a saying in Marathi that whether a thing is a poison or not cannot be tested by swallowing it; because if it is a poison the man dies. So in such matters there is no scope for experiment and we have therefore to heed to the warnings given by our leaders.

This does not mean that these provisions could not be liberalised. Even Dr. Ambedkar himself has said that these provisions could be expanded to add some more safeguards; but in substance we have ultimately to respect the warnings of our leaders and in these circumstances what should be our attitude? Or at least what is my attitude? My attitude is one of indifference. These are minor safeguards. Let them come for whatever they are worth. I will not oppose them with the vehemence of Pandit Bhargava or Bakhshi Tek Chand because after all they can do no harm. At the same time, if they are withdrawn by the Drafting Committee because of the opposition to them, then also no tears will be shed over their exit.

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, while I support the new article 15A moved by Dr. Ambedkar, I shall make a few observations on the subject under consideration. I know that I will be exhausting the patience of the House only if I have also taken some time to speak on this matter. But I feel strongly that I should make a few points and remarks on the speeches made during the debate in this House.

I have heard the honourable Members who were the enthusiastic champions of individual freedom and individual liberty, even to the extent of placing the exigencies of individual liberty above the exigencies of the State, describing this article as the Crown of all our failures. Sir, the question before us is this, whether the exigencies of the freedom of individuals or the exigencies of the State is more important. When it comes to a question of shaking the very foundations of the State, which State stands not for the freeodm of one individual but of several individuals, I yield the first place to the State. I say this because I know that in my love and enthusiasm for individual freedom, I only stand for myself, and my interests; and the State is far superior, because it stands for the freedom and liberty of several individuals like myself. I do not think there can be a greater champion and advocate of individual freedom than DeValera the product of this century with the best democratic traditions. What is it that he has done? The very first thing that he did after becoming President was to pass a number of Public Security Acts. He had no other go. He had to do it, because a situation arose when he himself was to be murdered, what was he to do?

My friends who spoke here have criticised the power that is being exercised in the matter of arrest and detentions. But they have not examined the position when this power is to be exercised, and under what circumstances. The

power is to be exercised only in cases when the individual tampers with the public order, as is mentioned in Concurrent List or with the Defence Services of the country. I need only ask you, to go to my part of the country, Madras, Malabar, Vijayawada. I may tell you, and I may draw your attention that no wife, no mother is feeling secure; they are not sure when their husbands would come back, whether they would return home or not. Such is the position. Also the menfolk when they go out, are not quite sure by the time they return home, whether the wife or the daughters are safe there in the house. That is the position. In that case, what is the State to do? What is the Government to do, to assure some kind of safety and security to these people? Only in those conditions, when there is ample justification will the State resort to arrests and detentions.

This new article 15A introduced by Dr. Ambedkar is a very happy compromise. Think of the 1818 Regulation which had no time limit at all. Thereafter came the Public Security Acts of the various provinces. Now the Board has been introduced in this new article. The Board has got to go through these cases. Also in no case is the detention to go beyond three months, and if it has to exceed, then the Board has got to report. The Court has got to examine the papers and representations made by the Executive, very carefully. Dr. Ambedkar has very ably explained the limitations and the restrictions over this power, and I do not want to repeat them because I may be taking up too much time of the House. One point is that in no case is the detention to exceed three months. If it has to exceed, then the Board has to get a report and on that report only can the detention exceed; and also there is Parliament which would make the law, describing all such cases in which such detention has got to exceed this period. These are the restrictions which are there to limit this power.

Sir, I do not want to go into the various amendments introduced by my honourable Friend Pandit Thakur Das Bhargava. He said: Give the right of appeal, at least once, and also the provisions for periodical reviews and conditional releases and so on. Dr. Ambedkar will deal with these points. I will only mention one or two points raised by my friend Shrimati Purnima Banerji in her amendments. I must say that I am very much in sympathy with two of her amendments. One of them provided for the personal appearance of the person detained, before the Board, to give reasons and explanations. I think the Drafting Committee should have no difficulty in agreeing to that. After all, the Board will not lose much by at least having a look at the person detained and receiving his explanations and reasons. I do not know whether it raises any administrative difficulty, but that will be dealt with by the Drafting Committe. I have confidence in the Government. Can there be a greater advocate and champion of personal freedom than our government, our Prime Minister, and our Deputy Prime Minister who always are here to give relief to the poor and the needy and those who suffer?

Another amendment of Shrimati Purnima Banerji asks for the maintenance of the dependents of the person detained. Yes, here also I am very much in sympathy with her point, for if the person detained is a bread-winner, then his dependents, his immediate dependents have got to be provided. It would be better to give some sort of guarantee about this, instead of leaving it to Executive Power and to their sweet will. But how is it practicable? That is the question. There are many people who are poor, in our country. Her point is that about fifty per cent of the cases would result in releases or discharges. And she also says that the benefit of doubt might be given to the accused in these cases. Are the dependents of the man detained to suffer indefinitely? That is her question. But I say, this is a question which has always been considered by the government of the province and in deserving

[Shrimati G. Durgabai]

cases, the necessary relief is being provided. But in another way it might be argued that this is putting a premium on delinquency; if he is assured of provision for his family he might go on committing crimes and challenging the foundations of the State. I think it is better to leave this matter to the provincial Governments or which ever Governments might deal with these cases.

Then, Sir, I think the words "legal practitioner" in article 15A(1) require some explanation. We know that Mr. Kasim Razvi engaged counsel from England whose appearance was refused. Now should it be open to this man to engage any one from any place? If there are rules to cover this point I have no objection: otherwise I suggest that after the words "legal practitioner" the words "qualified or authorised to appear in these cases" may be added.

Sir, I commend this article for the acceptance of the House.

Mr. President: I understand Dr. Ambedkar has to make certain suggestions to meet the criticisms that have been made against this article. I would therefore give him a chance to speak at this stage and if any further question arises we can consider it.

Babu Ramnarayan Singh (Bihar: General): Does he agree to remove the article altogether?

Mr. President: No.

The Honourable Dr. B. R. Ambedkar: Sir, I really did not think that so much of the time of the House would be taken up in the discussion of this article 15-A. As I said, I myself and a large majority of the Drafting Committee as well as members of the public feel that in view of the language of article 15, *viz.*, that arrest may be made in accordance with a procedure laid down by the law, we had not given sufficient attention to the safety and security of individual freedom. Ever since that article was adopted I and my friends had been trying in some way to restore the content of due procedure in its fundamentals without using the words "due process". I should have thought that Members who are interested in the liberty of the individual would be more than satisfied for being able to have the prospect before them of the provisions contained in article 15-A and that they would have accepted this with good grace. But I am sorry that is not the spirit which actuates those who have taken part in this debate and put themselves in the position of not merely critics but adversaries of this article. In fact their extreme love of liberty has gone to such a length that they even told me that it would be much better to withdraw this article itself.

Now, Sir, I am not prepared to accept that advice because I have not the least doubt in my mind that that is not the way of wisdom and therefore I will stick to article 15-A. I quite appreciate that there are certain points which have been made by the various critics which require sympathetic consideration, and I am prepared to bestow such consideration upon the points that have been raised and to suggest to the House certain amendments which I think will remove the criticism which has been made that certain fundamentals have been omitted from the draft article 15-A. In replying to the criticism I propose to separate the general part of the article from the special part which deals with preventive detention; I will take preventive detention separately.

Now turning to clause (1) of article 15-A, I think there were three suggestions made. One is with regard to the words "as soon as may be". There are amendments suggested by Members that these words should be deleted and in place of those words "fifteen days" and in some places "seven days"

are suggested. In my judgment, these amendments show a complete misunderstanding of what the words "as soon as may be" mean in the context in which they are used. These words are integrally connected with clause (2) and they cannot, in my judgment, be read otherwise than by reference to the provisions contained in clause (2), which definitely say that no man arrested shall be detained in custody for more than 24 hours unless at the end of the 24 hours the police officer who arrests and detains him obtains an authority from the magistrate. That is how the section has to be read. Now it is obvious that if the police officer is required to obtain a judicial authority from a magistrate for the continued arrest of a person after 24 hours, it goes without saying that he shall have at least to inform the magistrate of the charge under which that man has been arrested, which means that "as soon as" cannot extend beyond 24 hours. Therefore all those amendments which suggest fifteen days or seven days are amendments which really curtail the liberty of the individual. Therefore I think those amendments are entirely misplaced and are not wanted.

The second point raised is that while we have given in clause (1) of article 15-A a right to an accused person to consult a legal practitioner of his choice, we have made no provision for permitting him to conduct his defence by a legal practitioner. In other words, a distinction is made between the right to consult and the right to be defended. Personally I thought that the words "to consult" included also the right to be defended because consultation would be utterly purposeless if it was not for the purpose of defence. However, in order to remove any ambiguity or any argument that may be raised that consultation is used in a limited sense, I am prepared to add after the words "to consult" the words "and be defended by a legal practitioner", so that there would be both the right to consult and also the right to be defended. A question has been raised by the last speaker as to the meaning of the words "legal practitioner of his choice". No doubt the words "of his choice" are important and they have been deliberately used, because we do not want the Government of the day to foist upon an accused person a counsel whom the Government may think fit to appear in his case because the accused person may not have confidence in him. Therefore we have used the words "of his choice". But the words "of his choice" are qualified by the words "legal practitioner". By the phrase "legal practitioner" is meant what we usually understand, namely, a practitioner who by the rules of the High Court or of the Court concerned, is entitled to practise.

Now, Sir, I come to clause (2). The principal point is that raised by my Friend Mr. Pataskar. So far as I was able to understand, he wanted to replace the word "Magistrate" by the words "First class Magistrate". Well, I find some difficulty in accepting the words suggested by him for two reasons. We have in clause (2) used very important words, namely, "the nearest Magistrate" and I thought that was very necessary because otherwise it would enable a police officer to keep a man in custody for a longer period on the ground that a particular Magistrate to whom he wanted to take the accused, or the Magistrate who would be ultimately entitled to try the accused, was living at a distance far away and therefore he had a justifiable ground for detaining him for the longer period. In order to take away any such argument, we had used the words "the nearest Magistrate". Now supposing, we were to add the words "the nearest First Class Magistrate" : the position would be very difficult. There may be "the nearest Magistrate" who should be approached by the police in the interests of the accused himself in order that his case may be judicially considered. But he may not be a First Class Magistrate. Therefore, we have really to take a choice : whether we shall give the accused the earliest opportunity to have his matter decided and looked into by the Magistrate nearabout, or whether we should go in search of a First Class Magistrate. I think

[The Honourable Dr. B. R. Ambedkar]

"the nearest Magistrate" is the best provision in the interests of the liberty of the accused. I might also point out to my Friend, Mr. Pataskar, that even if I were to accept his amendment—"the nearest First Class Magistrate"—it would be perfectly possible for the Government of the day to amend the Criminal Procedure Code to confer the powers of a First Class Magistrate on any Magistrate whom they want and thereby cheat the accused. I do not think therefore that his amendment is either desirable or necessary and I cannot accept it.

Now, those are the general provisions as contained in article 15(a), and I am sure. . . . . .

Pandit Thakur Das Bhargava: Kindly consider. . . .

The Honourable Dr. B. R. Ambedkar: Now, my Friend, Pandit Thakur Das Bhargava has raised the question of the right of cross-examination.

Pandit Thakur Das Bhargava: And for reasons recorded.

The Honourable Dr. B. R. Ambedkar: Well, that I think is a salutary provision because I think that the provision which occurs in several provisions of the Criminal Procedure Code making it obligatory upon the Magistrate to record his reasons in writing enables the High Court to consider whether the discretion left in the Magistrate has been judicially exercised. I quite agree that that is a very salutary provision, but I really want my friend to consider whether in a matter of this kind, where what is involved is remand to custody for a further period, the Magistrate will not have the authority to consider whether the charge framed against the accused by the police is *prima facie* borne out.

Pandit Thakur Das Bhargava: At present also under section 167(3) these words are there. It is today incumbent upon every Magistrate to whom a person is taken to record the reasons if he allows the detention to continue.

The Honourable Dr. B. R. Ambedkar: That is quite true. They are there But are they very necessary?

Pandit Thakur Das Bhargava: Absolutely necessary!

The Honourable Dr. B. R. Ambedkar: Personally, I do not think they are necessary. Let us take the worst case. A Magistrate, in order to please the police, so to say, got into the habit of granting constant remands, one after the other, thereby enabling the police to keep the accused in custody. Is it the case that there is no remedy open to the accused? I think the accused has the remedy to go to High Court for revision and say that the procedure of the Court is being abused.

Pandit Thakur Das Bhargava: How can a poor person go to the High Court?

The Honourable Dr. B. R. Ambedkar: I do not want to close my mind on it. If there is the necessity I think the Drafting Committee may be left to consider this matter at a later stage, whether the introduction of these words are necessary. As at present advised, we think those words are not necessary.

Now I come to the second part of article 15(3) dealing with preventive detention. My Friend, Mr. Tyagi, has been quite enraged against this part of the article. Well, I think I can forgive my Friend, Mr. Tyagi, on that ground because after all, he is not a lawyer and he does not really know what is happening. He suddenly wakes up, when something which is intelligible to a common mind, crops up without realizing that what crops up and what makes

him awake is really merely consequential. But I cannot forgive the lawyer members of the House for the attitude that they have taken.

What is it that we are doing? Let me explain to the House what we are doing now. We had before us the three Lists contained in the Seventh Schedule. In the three Lists there were included two entries dealing with preventive detention, one in List I and another in List III. Supposing now, this part of the article dealing with preventive detention was dropped. What would be the effect of it? The effect of it would be that the Provincial Legislatures as well as the Central Legislature would be at complete liberty to make any kind of law with preventive detention, because if this Constitution does not by a specific article put a limitation upon the exercise of making any law which we have now given both to the Centre and to the Provinces, there would be no liberty left, and Parliament and the Legislatures of the States would be at complete liberty to make any kind of law dealing with preventive detention. Do the lawyer Members of the House want that sort of liberty to be given to the Legislatures of the States and Parliament? My submission is that if their attitude was as expressed today, that we ought to have no such provision, then what they ought to have done was to have objected to those entries in List I and List III. We are trying to rescue the thing. We have given power to the Legislatures of the State and Parliament to make laws regarding preventive detention. What I am trying to do is to curtail that power and put a limitation upon it. I am not doing worse. You have done worse.

Coming to the specific provision contained in the second part, I will first....

Pandit Thakur Das Bhargava: Who made those Lists?

The Honourable Dr. B. R. Ambedkar: I made them: you passed them!

I had these limitations in mind. Now I come to the proviso to clause 3(b).

Shri Mahavir Tyagi: Will you help laymen to understand as to why you have not provided for the revision by the Advisory Board of the cases under clause (4)?

The Honourable Dr. B. R. Ambedkar: I cannot explain to him the legal points in this House. This House is not a law class and I cannot indulge in that kind of explanation now. The honourable Member is my friend; if he does not understand he can come and ask me afterwards.

Now I will deal with the proviso which is subject to two sorts of criticisms. One criticism is this: that in the case of persons who are being arrested and detained under the ordinary law as distinct from the law dealing with preventive detention, we have made provision in clause (1) of article 15A that the accused person shall be informed of the grounds of his arrest. I said we do not make any such provision in the case of a person who is detained under preventive detention. I think that is a legitimate criticism. I am prepared to redress the position, because I find that, even under the existing laws made by the various provincial governments relating to preventive detention, they have made provision for the information of the accused regarding the grounds on which he has been detained. I personally do not see any reason why when provinces who are anxious to have preventive detention laws have this provision, the Constitution should not embody it. Therefore I am prepared to incorporate the following clause after clause (3) in article 15:

"(3a) Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article, the authority making an order shall ....."

Babu Ramnarayan Singh: Sir, Dr. Ambedkar says that provinces want the inclusion of this clause. . . .

Mr. President: He has not said anything of that sort. What he has said is that several of the Acts which have been passed by the provinces for preventive detention contain certain provisions. He wants to incorporate a similar provision in this article.

Babu Ramnarayan Singh: I wanted to know whether we are passing legislation at the dictates of the provinces.

Mr. President: Nothing of the sort.

The Honourable Dr. B. R. Ambedkar: I find that Mr. Ramnarayan Singh is somewhat disaffected with the provincial government to which he belongs.

As I was saying I think this provision ought to do:

After clause (3) of article 15A the following clause be inserted:

"(3a) Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article the authority making an order shall as soon as may be communicate to him the grounds on which the order has been passed and afford him the earliest opportunity of making a representation against the order.

(b) Nothing in clause (3a) of this article shall require the authority making any order under sub-clause (b) of clause (3) of this article to disclose the facts which that authority considers to be against the public interest to disclose."

These are the exact words in some of the Acts of the provinces and I do not see any reason why they should not be introduced here, so that this ground of criticism that we are detaining a person merely because his case comes under preventive detention, without even informing him of the grounds on which we detain him. Now that is met by the amendment which I have proposed.

The other question is. . . . . .

The Honourable Shri K. Santhanam (Madras: General): Is it in addition to the provision in clause (1)? There is already a provision that no person shall be detained in custody without being informed.

The Honourable Dr. B. R. Ambedkar: It does not deal with persons arrested for preventive detention.

The Honourable Shri K. Santhanam: Does it not include a person who is arrested for preventive purposes? I thought clause (1) includes every kind of detention.

The Honourable Dr. B. R. Ambedkar: No. That is not our understanding anyhow. The cases are divided into two categories.

Shri Mahavir Tyagi: He is a lawyer.

The Honourable Dr. B. R. Ambedkar: That is in a court of law, not here.

Mr. President: He is not a lawyer.

The Honourable Dr. B. R. Ambedkar: I think it would be much better to say: Nothing in clauses (1) and (2) shall apply to clause (3). That is the intention. So I have met that part of their criticism.

Now I come to the question of three months' detention without enquiry or trial. Some Members have said that it should not be more than 15 days and others have suggested some other period and so on. I would like to tell the House why exactly we thought that three months was a tolerable period and 15 months too long. It was represented to us that the cases of detenus may be considerable. We do not know how the situation in this country will develop, what would be the circumstances which would face the country when the Constitution comes into operation, whether the people and parties in this

country would behave in a constitutional manner in the matter of getting hold of power, or whether they would resort to unconstitutional methods for carrying out their purposes. If all of us follow purely constitutional methods to achieve our objective, I think the situation would have been different and probably the necessity of having preventive detention might not be there at all.

But I think in making a law we ought to take into consideration the worst and not the best. Therefore if we follow upon that position, namely, that there may be many parties and people who may not be patient enough, if I may say so, to follow constitutional methods but are impatient in reaching their objective and for that purpose resort to unconstitutional methods, then there may be a large number of people who may have to be detained by the executive. Supposing there is a large number of people to be detained because of their illegal or unlawful activities and we want to give effect to the provisions contained in sub-clause (a) of that proviso, what would be the situation? Would it be possible for the executive to prepare the cases, say against one hundred people who may have been detained in custody, prepare the brief, collect all the information and submit the cases to the Advisory Board? Is that a practical possibility? Is it a practical possibility for the Advisory Board to dispose of so many cases within three months, because I will say that the provisions contained in sub-clause (a) of the proviso are peremptory in that if they want to detain a person beyond three months they must obtain an order from the Advisory Board to that effect.

Therefore, having regard to the administrative difficulties in this matter, the Drafting Committee felt that the exigencies of the situation would be met by putting a time limit of three months. There is no other intention on the part of the Drafting Committee in prescribing this particular time limit and I hope having regard to the facts to which I have referred the House will agree that this is as good and as reasonable a provision that could be made.

Now I come to the Advisory Board. Two points have been raised. One is what is the procedure of the Advisory Board. Sub-clause (a) does not make any specific reference to the procedure to be followed by the Advisory Board. Pointed questions have been asked whether under sub-clause (a) the executive would be required to place before the Advisory Board all the papers connected with the case which have led them to detain the man under preventive custody.

The pointed question has been asked whether the accused person would be entitled to appear before the Board, cross-examine the witnesses, and make his own statement. It is quite true that this sub-clause (a) is silent as to the procedure to be followed in an enquiry which is to be conducted by the Advisory Board. Supposing this sub-clause (a) is not improved and remains as it is, what would be the consequences? As I read it, the obtaining of the report in support of the order is an obligatory provision. It would be illegal on the part of the executive to detain a man beyond three months unless they have on the day on which the three months period expires in their possession a recommendation of the Advisory Board. Therefore, if the executive Government were not to place before the Advisory Board the papers on which they rely, they stand to lose considerably, that is to say, they will forfeit their authority to detain a man beyond three months.

Therefore, in their own interest it would be desirable, I think necessary, for the executive Government to place before the Advisory Board the documents on which they rely. If they do not, they will be taking a very grave risk in the matter of administration of the preventive law. That in itself, in my judgment, is enough of a protection that the executive will place before it.

[The Honourable Dr. B. R. Ambedkar]

If my friends are not satisfied with that, I have another proposal and that is that, without making any specific provisions with regard to procedure to be followed in sub clause (a) itself, to add at the end of sub-clause (4) the following words :—"and Parliament may also prescribe the procedure to be followed by an Advisory Board in an enquiry under clause (a) of the proviso to clause (3) of this article." I am prepared to give the power to Parliament to make provision with regard to the procedure that may be followed by the Advisory Board. I think that ought to meet the exigencies of the situation.

Sir, these are all the amendments I am prepared to make in response to the criticisms that have been levelled against the different parts of the article 15A.

I will now proceed to discuss some miscellaneous suggestions.

Shri Jaspat Roy Kapoor: In that case, probably sub-section (b) of the proviso to clause (2) will go?

The Honourable Dr. B. R. Ambedkar: Nothing will go.

Dr. Bakhshi Tek Chand (East Punjab : General) : You have agreed that the grounds of the detention will be communicated to the person affected and his explanation taken.

The Honourable Dr. B. R. Ambedkar: And he will also be given an opportunity to put in a written statement.

Dr. Bakhshi Tek Chand: Will you agree also to the other point to which I drew attention, namely, that as in the Madras Act, the explanation will be placed before the Board?

The Honourable Dr. B. R. Ambedkar: All papers may be placed before him. That is what I say.

Dr. Bakhshi Tek Chand: All papers may not be placed before him. I have some experience. They will say that this is a very small matter. If you give him an opportunity to submit an explanation within a specified time, why do you fight shy of incorporating this provision? In sub-clause (2) of sub-section (1) of section 3 of the Madras Act there is provision that the explanation will be placed before the Board.

The Honourable Dr. B. R. Ambedkar: That, I consider, is implicit in what I said.

Dr. Bakhshi Tek Chand: Why not make it clear? It is not there in the Bombay Act or in the United Provinces Act.

The Honourable Dr. B. R. Ambedkar: As I stated, in the requirement regarding the submission of papers to the Advisory Board under sub-clause (a) is implicit the submission of a statement by the accused. If that is not so, I am now making a further provision that Parliament may by law prescribe the procedure, in which case Parliament may categorically say that these papers shall be submitted to the Advisory Board. Now I am not prepared to make any further concession at all.

Shri Mahavir Tyagi: Dr. Ambedkar will please give me one minute?

The Honourable Dr. B. R. Ambedkar: Not now.

Shri Mahavir Tyagi: I want to know whether the detenus under clause (4), according to the law made by Parliament or by the provinces, will have the benefit of their case being reviewed by the tribunal?

Sir, I want to know whether the detenus who will be detained under the Act which Parliament will enact under clause (4) will have the privilege of their case being reviewed by the tribunal proposed?

The Honourable Dr. B. R. Ambedkar: My Friend Mr. Tyagi is acting as though he is overwhelmed by the fear that he himself is going to be a detenu. I do not see any prospect of that.

Shri Mahavir Tyagi: I am trying to safeguard your position.

The Honourable Dr. B. R. Ambedkar: I will now deal with certain miscellaneous suggestions made.

Pandit Thakur Das Bhargava: What about the safeguards regarding cross-examination and defence?

The Honourable Dr. B. R. Ambedkar: The right of cross-examination is already there in the Criminal Procedure Code and in the Evidence Act. Unless a provincial Government goes absolutely stark mad and takes away these provisions it is unnecessary to make any provision of that sort. Defending includes cross-examination.

Pandit Thakur Das Bhargava: They even try to usurp power to this extent.

The Honourable Dr. B. R. Ambedkar: If you can give a single instance in India where the right of cross-examination has been taken away, I can understand it. I have not seen any such case.

Sir, the question of the maximum sentence has been raised. Those who want that a maximum sentence may be fixed will please note the provisions of clause (4) where it has been definitely stated that in making such a law, Parliament will also fix the maximum period.

Pandit Hirday Nath Kunzru: The word is 'may'.

The Honourable Dr. B. R. Ambedkar: 'May' is 'shall'.

Pandit Hirday Nath Kunzru: Parliament may or may not do that.

The Honourable Dr. B. R. Ambedkar: That is true, but if it does, it will fix the maximum.

Another question raised is as regards the maintenance of the detenus and their families.

Shri Jaspat Roy Kapoor: What about periodical reviews?

The Honourable Dr. B. R. Ambedkar: I am coming to that. That is not a matter which we can introduce in the Constitution itself. For instance, it may be necessary in some cases and may not be necessary in other cases. Besides, clause (4) gives power to Parliament also to provide that maintenance shall be given.

Personally, myself, I think the argument in favour of maintenance is very weak. If a man is really digging into the foundations of the State and if he is arrested for that, he may have the right to be fed when he is in prison; but he has very little right to ask for maintenance. However, *ex gratia*, Parliament and the Legislature may make provision. I think such a provision is possible under any Act that Parliament may make under clause (4).

With regard to the review of the cases of detenus, there again, I do not see why it should not be possible for either the provincial Governments in their own law to make provision for periodical review or for Parliament in enacting a law under clause (4) to provide for periodical review. I think this is a

[The Honourable Dr. B. R. Ambedkar]

purely administrative matter and can be regulated by law.

My Friend Mr. Ananthasayanam Ayyangar, said that I really do not have much feeling for the detenus, because I was never in jail, but I can tell him that if anybody in the last Cabinet was responsible for the introduction of a rule regarding review, it was myself. A very large part of the Cabinet was opposed to it. I and one other European member of the Cabinet fought for it and got it. So, it is not necessary to go to jail to feel for freedom and liberty.

Then there is one point which was raised by my Friend, Mr. Kamath. He asked me whether it was possible for the High Courts to issue writs for the benefit of the accused in cases of preventive detention. Obviously the position is this. A writ of *habeas corpus* can be asked for and issued in any case, but the other writs depend upon the circumstances of each different man, because the object of the writ of *habeas corpus* is a very limited one. It is limited to finding out by the court whether the man has been arrested under law, or whether he has been arrested merely by executive whim. Once the High Court is satisfied that the man is arrested under some law, *habeas corpus* must come to an end. If he has not been arrested under any law, obviously the party affected may ask for any other writ which may be necessary and appropriate for redressing the wrong. That is my reply to Mr. Kamath.

Sir, I hope that with the amendments I have suggested the House will be in a position to accept the article 15A.

Shri H. V. Kamath (C. P. & Berar : General) : My question is whether we have provided in the article for this purpose.

The Honourable Dr. B. R. Ambedkar : It is not necessary. Everybody knows it. If you get into trouble, you can engage a lawyer who will let you know everything.

Shri H. V. Kamath : I shall engage yourself.

Mr. President : Is it necessary to have any further discussion ?

The Honourable Dr. B. R. Ambedkar : The question may now be put.

Shri T. T. Krishnamachari : The House has discussed this for six hours already.

Sardar Hukam Singh (East Punjab . Sikh) : From this corner I have been trying to catch your eye but without success. I would like to say a few words if you would permit me.

Shri Brajeshwar Prasad : I have been standing since yesterday.

Prof. Shibban Lal Saksena (United Provinces : General) : This is a very important article in the Constitution and deals with personal freedom and liberty. The debate on this should not be curtailed.

Mr. President : I am entirely in the hands of the House. Closure has been moved. The question is :

"That the question be now put."

The motion was adopted.

Mr. President : I do not think I can give Dr. Ambedkar another right of reply.

The Honourable Dr. B. R. Ambedkar : I do not think so, Sir. Nobody said anything.

Mr. President: I will now put the amendments to the vote.

The Honourable Dr. B. R. Ambedkar: They might all be withdrawn.

Mr. Naziruddin Ahmad (West Bengal: Muslim): New clauses have just been added. Will they be put to the vote now?

Mr. President: Yes, just now.

Mr. Naziruddin Ahmad: It will be difficult to follow them without copies.

Dr. Bakhshi Tek Chand: They are not new amendments in any sense and it is not necessary to have further time to discuss them. Only some amendments of Dr. Bhargava have been accepted in part. There has been sufficient discussion on them.

Mr. President: I was just going to say that myself.

The question is:

"That after article 15 the following new articles be added:—

'15A. No procedure within the meaning of the preceding section shall be deemed to be established by law if it is inconsistent with any of the following principles:—

(i) Every arrested person if he has not been released earlier shall be produced before a Magistrate within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the Court of the Magistrate and informed of the nature of the accusation for his arrest and detained further only by the authority of the Magistrate for reasons recorded.

(ii) Every person shall have the right of access to Courts to being defended by counsel in all proceedings and trials before courts.

(iii) No person shall be subjected to unnecessary restraints or to unreasonable search of person or property.

(iv) Every accused person is entitled to a speedy and public trial unless special law or public interests demand a trial in camera.

(v) Every person shall have the right of cross-examining the witness produced against him and producing his defence.

(vi) Every convicted person shall have the right of at least one appeal against his conviction.'

'15B. No procedure within the meaning of Section 15 shall be deemed to be established by law in case of preventive detention if it is inconsistent with any of the following principles:—

(i) No person shall be detained without trial for a period longer than it is necessary.

(ii) Every case of detention in case it exceeds the period of fifteen days shall be placed within a month of the date of arrest before an independent tribunal presided over by a judge of the High Court or a person possessed of qualification for High Court Judgeship armed with powers of summary inquiries including examinations of the person detained and of passing orders of further detention, conditional or absolute release and other incidental and necessary orders.

(iii) No such detention shall continue unless it has been confirmed within a period of two months from the date of arrest by an order of further detention from such tribunal in which case quarterly reviews of such detentions by independent tribunal armed with powers of passing of orders of release conditional or otherwise and other necessary and incidental orders shall be made.

(iv) Such detention shall in the total not exceed the period of one year from the date of arrest.

(v) Such detained person shall not be subjected to hard labour or unnecessary restrictions otherwise than for wilful disobedience of lawful orders and violation of jail rules.'"

The amendment was negatived.

Mr. President: Then No. 3. Is it necessary to read the amendment)?

Pandit Thakur Das Bhargava: They need not be read. Such of the amendments as have been accepted may be taken and the others rejected.

Mr. President: The question is:

"That in amendment No. 1 above, for clauses (1) and (2) of the proposed new article 15A, the following be substituted :—

'15A. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the procedure for criminal proceedings and trials of accused persons contravenes any of the following established principles and rights—

(a) the right of production of the person under custody before Magistrate within 24 hours of his arrest (excluding the reasonable period of journey from the place of arrest to the court of Magistrate) and further detention only with the authority of the magistrate for reasons recorded;

(b) the right of consultation after arrest and before trial and the right of being defended by the Counsel of his choice;

(c) the right of full opportunity for cross-examination of witnesses produced against the accused and production of his defence;

(d) the right of at least one appeal in case of conviction.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 3 above, after clause (d) of the proposed new article 15A, the following clauses be added :—

(e) right to freedom from torture and unnecessary restraints and from unreasonable search of person and property;

(f) right to a speedy and public trial unless special law and public interest demand a trial in camera.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, in clause (1) of the proposed new article 15A, for the words 'a legal practitioner of his choice' the words 'and be defended by a legal practitioner of his choice in all criminal proceedings and trials' be substituted."

The amendment was negatived.

Mr. President: Then No. 7.

Shri T. T. Krishnamachari: Dr. Ambedkar has accepted a portion of this amendment. It need not be voted upon. If it is rejected, then Dr. Ambedkar will not be able to accept a portion of it.

The Honourable Dr. B. R. Ambedkar: Mine are independent amendments.

Mr. President: The question is:

"That in amendment No. 1 above, in the proposed new article 15A, for clause (2), the following be substituted :—

'(2) Every arrested person if he has not been released earlier shall be produced before a Magistrate within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the court of the Magistrate and detained further only by the authority of the Magistrate for reasons recorded.'"

or alternatively

"That in amendment No. 1 above, at the end of clause (2) of the proposed new article 15A, the following be added :—

'and for reasons recorded.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, after clause (2) of the proposed new article 15A, the following clauses be added:

'(2a) Every person accused of any offence or against whom criminal proceedings are being taken shall have the full opportunity of cross-examining the witnesses produced against him and producing his defence.

(2b) Every person sentenced to imprisonment shall have the right of at least one appeal against his conviction.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, for clauses (3) and (4) of the proposed new article 15A, the following be substituted:—

'15B. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the prevention or detention contravenes any of the following principles,—

(1) Such detention without trial shall only be allowable for alleged participation in dangerous or subversive activities affecting the public peace, security of the State and relation between different classes and communities inhabiting India or membership of any organisation declared unlawful by the State.

(2) Such detention shall not be longer than two months unless an independent tribunal consisting of two or more persons being High Court judges or possessing qualifications for High Court judgeships and armed with powers of enquiry including examination of the detainee recommend continuance of detention within the said period of two months.

(3) Such detention shall not exceed the total period of one year.

(4) Such detention shall be free from unnecessary restrictions and hard labour otherwise than for wilful disobedience of lawful orders and violation of jail rules:

Provided that the Parliament shall never be precluded from prescribing other reason and circumstances which may necessitate such detention and the conditions of such detention.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, in the proviso to clause (3) of the proposed new article 15A, for the word 'three' the word 'two' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the word 'Board' the words 'with powers of inquiry including examination of persons detained' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, at the end of sub-clause (b) of the proviso to clause (3) of the proposed new article 15A, the following be added:

'but in no case more than six months'

or

'but in no case more than a year'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, after the word 'circumstances' the words 'and the conditions' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, for the words 'three months' the words 'one month' or 'two months' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), for clause (1) of the proposed new article 15A, the following be substituted : -

'(1) Every person arresting another in due course of law shall, at the time of the arrest or as soon as practicable thereafter, inform that person the reasons or grounds for such arrest, nor shall he be denied the right to consult a legal practitioner of his own choice.'"

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A, after the words 'as soon as may be' the words 'being not later than fifteen days' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), sub-clause (b) of clause (3) of the proposed new article 15A be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), the proviso to clause (3) of the proposed new article 15A be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), in Sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the words 'a High Court has' the words 'after hearing the person detained' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the words 'such detention' the words 'but so that the person shall in no event be detained for more than six months' be added."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), the following proviso be added to clause (4) of the proposed new article 15A :—

'Provided that if the earning member of a family is so detained his direct dependents shall be paid maintenance allowance.'"

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A, for the words 'as soon as may be' the words 'before the expiration of seven days following his arrest' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article 15A, for the words 'as soon as may be' the words 'within twenty-four hours' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article 15A, after the word 'magistrate', wherever it occurs, the words 'of the First Class' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), for clause (2) of the proposed new article 15A, the following be substituted:—

'(2) Every person who is arrested shall be produced before the nearest magistrate within twenty-four hours and no such person shall be detained in custody longer than twenty-four hours without the authority of a magistrate'."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article 15A, after the word 'magistrate' occurring at the end, the words 'who shall afford such person an opportunity of being heard' be added."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), after clause (2) of the proposed new article 15A, the following new clause be added:—

'(2a) No detained person shall be subjected to physical or mental ill-treatment'."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), clause (3) of the proposed new article 15A be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (b) of the operative part of clause (3) of the proposed new article 15A, after the word 'law' the words 'of the Union' be inserted.'

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, the words 'or are qualified to be appointed as' be deleted"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), at the end of clause (3) of the proposed new article 15A, the following new proviso be added:—

'Provided that in the case of any such person so recommended for detention as stated in sub-clause (a) of clause (3), the total period of his detention shall not extend beyond nine months provided the Advisory Board has in its possession direct and ample evidence that such person is a source of continuous danger to the State and the Society.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), after clause (4) of the proposed new article 15A, the following new clause be added:—

'(5) Notwithstanding anything contained in this article, the powers conferred on the Supreme Court and the High Courts under article 25 and article 202 of this Constitution as respects the detention of persons under this article shall not be suspended or abrogated or extinguished'."

The amendment was negatived.

I think these are all the amendments which we moved yesterday. Dr. Ambedkar has moved certain amendments today and I would put them to vote now.

Mr. President: The question is:

"That in clause (1) of article 15A, after the word 'consult' the words 'and be defended by' be inserted"

The amendment was adopted.

Mr. President: The question is:

"That in clause (3) of article 15A, for the words 'Nothing in this article' the words, brackets and figures 'Nothing in clause (1) and (2) of the article' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That after clause (3) of article 15A, the following clauses be inserted:—

'(3a) Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article the authority making an order shall as soon as may be communicate to him the grounds on which the order has been made and afford him the earliest opportunity of making a representation against the order.

(3b) Nothing in clause (3a) of this article shall require the authority making any order under sub-clause (b) of clause (3) of this article to disclose the facts which such authority considers to be against the public interest to disclose'."

The amendment was adopted.

Mr. President: The question is:

"That at the end of clause (4) of article 15A, the following be added:—

'and Parliament may also prescribed by law the procedure to be followed by an Advisory Board in an enquiry under clause (a) of the proviso to clause (3) of this article'."

The amendment was adopted.

Mr. President: The question is:

"That proposed Article 15A, as amended, stand part of the Constitution."

The motion was adopted.

Article 15A, as amended, was added to the Constitution.

Mr. President: I am sorry I forgot to put Dr. Bakhshi Tek Chand's amendment to vote. Of course it was not necessary. It is covered by Dr. Ambedkar's amendments.

Article 209 A

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after article 209, between Chapters VII and IX of Part VI the following be inserted:—

"Chapter VIII

Subordinate Courts.

209A(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

Appointment of District Judges

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Recruitment of other than district judges to the Judicial service.

209B. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor in accordance with rules made by him in this behalf after consultation with the State Public Service Commission and with the High Court.

Control over Subordinate Courts.

209C. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court but nothing in this article shall be construed as taking away from any such person the right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

209D. (1) In this Chapter—

Interpretation.

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, Chief Presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

Application of the provisions of this Chapter to certain classes of Magistrates.

209F. The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in this behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification'."

Sir, the object of these provisions is two-fold : first of all, to make provision for the appointment of district judges and subordinate judges and their qualifications. The second object is to place the whole of the civil judiciary under the control of the High Court. The only thing which has been excepted from the general provisions contained in article 209-A, 209-B and 209-C is with regard to the magistracy, which is dealt with in article 209-E. The Drafting Committee would have been very happy if it was in a position to recommend to the House that immediately on the commencement of the Constitution, provisions with regard to the appointment and control of the Civil Judiciary by the High Court were also made applicable to the magistracy. But it has been realised, and it must be realised that the magistracy is intimately connected with the general system of administration. We hope that the proposals which are now being entertained by some of the provinces to separate the judiciary from the Executive will be accepted by the other provinces so that the provisions of article 209-E would be made applicable to the magistrates in the same way as we propose to make them applicable to the civil judiciary. But some time must be permitted to elapse for the effectuation of the proposals for the separation of the judiciary and the executive. It has been felt that the best thing is to leave this matter to the Governor to do by public notification as soon as the appropriate changes for the separation of the judiciary and the executive are carried through in any of the province. This is all I think I need say. There is nothing revolutionary in this. Even in the Act of 1935, appointment and control of the civil judiciary was vested in the High Court. We are merely continuing the same in the present draft.

Prof. Shibban Lal Saksena : I have got an amendment which is an alternative to this. It is number 166 in the consolidated list of amendments.

Mr. President : I will take it up after these amendments. Amendment No. 21; Mr. Kuladhar Chaliha.

Shri Kuladhar Chaliha: (Assam: General): Mr. President, Sir, I beg to move:

"That in amendment No. 20 above, in clause (2) of the proposed new article 209A, after the words 'seven years' and 'pleader' the words 'enrolled as' and 'of the High Court of the State or States exercising jurisdiction' be inserted respectively."

Sir, the object of this amendment is that unless a lawyer has practised in the same province in which he is going to be appointed as a Judge, it will be very difficult for him to appreciate the customs, manners and the practices of the country. We have in our country strange results from the appointment of I.C.S. officers in the beginning of British administration. So also in cases when officers from outside the province were brought in. I am not limiting thereby the enrolment of advocates from any province. They may come and practise. Only I am saying that he should have resided in the province for a period of seven years. The results from the appointment of persons from outside the province were like this. In our part of the country, there is a custom for the New Year day for young men to go and dance and sing and go on amaying and sky-larking for some time, and then stage-manage on the bank of a river or a stream that she has been kidnapped or taken by force. The parents brought criminal complaints that their girls had been kidnapped and the persons were sentenced very heavily by the Judges who did not know the elementary condition of life there. Some time later, the Government had to issue circulars that in such cases, the matter should be allowed to be compromised. Probably, in other provinces also, this would be taken as a very serious offence and the persons would be given four to seven years rigorous imprisonment. In our country for such cases a preliminary enquiry has to be made and a chance has to be given for compromise. In 99 per cent. of the cases, compromises were effected after giving some solatium to the parents. In the same way, as regards marriages, we have a very simple custom of tying the nuptial knot and blessings by the people present in the village completes a marriage. The People who come from Bengal and other provinces or Europeans, who have read the Hindu Law and other things, put into force the strict laws of those countries and the result was the nullification of marriages. This may happen in Orissa or Bihar. People may not know the customs in Ranchi and other places and they may commit mistakes. I have not prevented any man from coming from any other province and practising in the High Court of the province. The only thing I insist is that they should live there for seven years so that they may be acquainted with the customs in the country, to become eligible for appointment as district judges.

The interpretation clause has complicated the matter as it includes not only district judges, but also additional district Judges and assistant sessions Judges. They will have to deal with matters which are absolutely local. Therefore, if an advocate or lawyer has not practised in the High Court of the province where they are going to be appointed as judges, there will be failure of justice. My amendment is a very simple one and there will be no harm done if the Drafting Committee sees its way to accept this amendment.

Pandit Thakur Das Bhargava: Sir, I beg to move:

"That in amendment No. 20 above, in the proposed new article 209E, after the word 'may' where it occurs for the first time, the words 'at any time' be inserted."

Mr. President: You are not moving No. 22.

Pandit Thakur Das Bhargava: I am not moving 22; I am moving 23 and 24. Sir, I beg to move:

"That in amendment No. 20 above, at the end of the proposed new article 209-E, the following proviso be added:

'Provided that the Governor or the Ruler as the case may be shall,—

(i) in the case of States mentioned in Part I of the first Schedule after the lapse of three years from the commencement of this Constitution if the Legislature of the State passes a resolution recommending the making of such direction, or if no such resolution is passed after the lapse of ten years from the commencement of this Constitution; and

(ii) in the case of States mentioned in Part III of the First Schedule after the lapse of seven years from the commencement of this Constitution, if the Legislature of the State passes a resolution recommending the making of such direction and if no such resolution is passed, after the lapse of ten years from the commencement of this Constitution, by public notification make such directions'."

While reading, I am very sorry, Sir, I have discovered a mistake in para. (i) of amendment No. 24, The word 'ten' should be 'five' years. So far as I remember, I gave 'five' in my original. It may be by a slip of the pen I may have given the word 'ten'. What I intended was 'five'. I do not know if 'five' or 'ten' was given in the original. I would beg of you to amend it to 'five'.

Mr. President: Very well.

Pandit Thakur Das Bhargava: Sir, in regard to this amendment, the result would be that so far as article 209E is concerned, it will remain with the sweet will of the Governor whether he makes the direction contemplated in article 209E. I should like to bind the Governor or Ruler of the State that if the legislatures of the States mentioned in Part I of the First Schedule make a recommendation within three years, the Governor shall be bound to give effect to that recommendation and in case they do not do so, then, the Governor will be bound after the lapse of five years to make the direction contemplated in article 209E. Similarly, in the case of States mentioned in Part III of the First Schedule, after the lapse of seven years, if the legislature does not make a recommendation, then, the ruler will be bound to make the direction after the lapse of ten years. During the first seven years, it rests with the legislature to make a recommendation for this direction to be implemented.

Now, Sir, this question of the separation of the judiciary from the executive is a very very old one. It has been the main plank of the resolutions of the Indian National Congress in the days of foreign domination. Now, when we have attained freedom, the people of the country expected that this reform which was over-due, shall be implemented as soon as possible. While we passed some directive principles, we also included a recommendation of this nature. Now when we read article 209E every person is bound to consider that at some time or other the Governor will make this directive. Now 209E is in the nature of a pious wish. Dr. Ambedkar when he introduced this said there is nothing revolutionary about this Chapter. I think he was quite right; but unfortunately there is nothing even evolutionary about it because we wanted that with the advent of Swaraj, the Judiciary will be independent of the Executive control and the people will get Justice; but if it is not to be as soon as it is possible, I would rather like that the realities of the situation were appraised rightly and the period that I have prescribed was to be the ultimate period during which this reform should have been implemented.

What happens at present is known to all members of this House. At present the Magistrates are under the control of the District Magistrates who are also the Chief Officers of the Police, in the Districts. Therefore, the Magistrates do not work with that independence and impartiality which we should expect if we want even-handed justice to be meted out to the people. The District Magistrate in whom all powers are centred, if he wants to pull up the Magistrates, can call them to his own Court. The promotions of the Magistrates depend upon the recommendation of the Police and if the police makes a report against him it will affect his promotion.

Mr. President: Is it necessary to go over those grounds? There is nobody here who says that there should be no separation. The question is only of convenience and time.

Pandit Thakur Das Bhargava: Confining myself to this aspect only, I will only submit that I know that there are certain parts of India in which, as the words imply, the rule of the law is being established only now and in regard to those cases, I have fixed the limit of ten years. Otherwise in Bombay, Madras and U.P. and certain other parts of the provinces even now this reform can be implemented. Therefore I have given the period of three years in regard to parts mentioned in Part I and ultimately five years, and seven years and ten years to other States mentioned in Part II. My humble submission is if you do not accept even this amendment then it means 209-E will for ever remain a pious wish as it will be a Directive Principle. There is no point in having this prospect dangling before our eyes as will-o'-the-wisp which is never to be implemented. When we passed the Directive Principles I remember there was a row in the House—some people wanted it to be immediately effective and others said that the time is not ripe. Therefore to have a golden mean between the two I am suggesting these stages and this period. I would be very happy if Dr. Ambedkar accepted this amendment of mine.

Mr. President: 117—Member not in the House Pandit Kunzru.

Pandit Hirday Nath Kunzru: Mr. President, I move:

"That in amendment No. 20 of List I (Eighth Week), in clause (1) of the proposed new article 209A, the words 'and the posting and promotion of' be omitted."

I also move with your permission:

"That in amendment No. 20 of List I (Eighth Week) in the proposed new article 209C, after the words 'grant of leave to' the words 'district judges in any State and' be inserted."

The object of my amendments is to allow High Courts to be responsible for the transfer and promotion of District judges in the same manner as they will be for the transfer and promotion of Subordinate Judges and other Subordinate Judicial officers. My amendments do not touch the question of appointment. The Governor will appoint District Judges in consultation with the High Court. All that I desire is that District Judges after their appointment by the Governor should be under the control of the High Court. I have for my amendment the authority of no less a person than the Chairman of the Drafting Committee—my honourable Friend Dr. Ambedkar. The language of articles 209A and 209C....

Shri T. T. Krishnamachari: They are all tentative. Do not throw your words on this here again.

Pandit Hirday Nath Kunzru: I am entitled to quote from or refer to the articles of which my honourable Friend Dr. Ambedkar gave notice in the last session and they are printed on the last but one page of Volume I of the Printed amendments. If I say anything that is incorrect, my honourable Friend Dr. Ambedkar will certainly be able to refute me but I do not see why I should not refer to an amendment given notice of by him that appears to me to be quite sound. Dr. Ambedkar has not told us why he has departed from the phraseology of his earlier amendments. They provided that while the appointment of District Judges should be under the control of the Governor, their promotion and transfer should be under the control of the High Court. Now, in my opinion, it is necessary that the High Court should have control over all those officers who are concerned with the judicial administration. District Judges are judicial officers. There is no reason, therefore, why control in respect of their transfer

and promotion should not be made over to the High Court. I think that if High Courts are made responsible for this, the judicial administration will improve. We have found repeatedly in the past, that the absence of control by the High Courts over the posting and the promotion of District judges has weakened their authority and weakened also the judicial administration. The District Judges feeling that the High Court had no control over them, generally looked up to the executive. I do not mean to say that no District Judge paid any regard to the provisions of the law, or that the District Judges as a rule decided cases in accordance with the convenience of the executive. But any lawyer that we might consult would, I think, tell us that demands had been repeatedly made by associations representing various parties that District Judges should be placed under the control of the High Court. They had gone so far as to ask that their appointment too should rest with the High Court. I have not gone so far. My amendment is a conservative one. All that it seeks to achieve is that District Judges should be transferred and promoted by the High Court in the same way as subordinate judge would be.

The question of promotion may seem to raise some difficulty. It may be thought that it means only promotion from District Judge to High Court Judge, but it does not mean this. We have already provided for the appointment of judges of the High Court in the section dealing with the power of appointment of the judges of the High Court. The word "promotion" here can only refer to the promotion of District Judges before they are made High Court Judges. Judges are promoted now from one grade to another, and if the grades continue to be as they are at present, the High Court will be able to promote the judges as the Executive Government does now. It does not seem to me, therefore, that the use of the word "promotion" will create any difficulty.

I have already said, Sir, that my amendments do not seek to make High Courts responsible for the appointment of District Judges. I could have done this; I could have put forward an amendment asking that the High Courts should have this power too. In Ceylon, Section 55 of the Constitution provides:

> "...that the appointment, transfer, dismissal and disciplinary control of all judicial officers should be vested in the Judicial Service Commission."

The Judicial Service Commission will consist of the Chief Justice, a judge of the High Court and one other person who is or has been a judge of the Supreme Court. But as I have said, my amendment does not seek to introduce in the Constitution the provision that exist in the Ceylon Constitution. It leaves the appointment of District Judges in the hands of the Government and their dismissal is to be regulated in accordance with such rules as may exist. My amendment, therefore, is a very moderate one and does not create any difficulty at all. On the contrary, it will strengthen the judicial administration by enabling the High Court to have control, to a large extent, over all those officers that will be engaged in the performance of judicial duties.

Shri R. K. Sidhva (C. P. & Berar: General): Sir, could you kindly call me again? I had been out on some office business when my name was called; but I have to move an amendment which is important.

The Honourable Dr. B. R. Ambedkar: Absence cannot be an excuse.

Mr. President: I am afraid it is too late now.

Shri R. K. Sidhva: It is rather an important amendment, as I want to show. In the event of difference of opinion between the High Court Judges and.....

Mr. President: And in showing that, you will have to speak of course. How will you show that, without speaking?

Shri R. K. Sidhva: Sir, I will take only two minutes.

Mr. President: Very well. But please do not take more than two minutes.

Shri R. K. Sidhva: Mr. President, Sir, I am very thankful to you for kindly permitting me to move my amendment. I had gone out on some office work, and not on private business. I beg to move:

"That in amendment No. 20 of List I (Eighth Week), at the end of clause (1) of the proposed new article 209A, the following be added:—

'where there is a difference of opinion regarding an appointment between the Governor or Ruler of the State and the High Court, the opinion of the former shall prevail'."

My amendment is self-explanatory. It has been suggested that opinions are to be gathered from three agencies, government's opinion, comprising of the full Cabinet or the Home Minister the Governor and the High Court Judges. If the Governor and the Government agree, and if the High Court Judges do not agree, then my amendment says that the Government's and the Governor's opinion should prevail. Sir, this is only fair, because the High Court Judges should not be given all the power. The opinion of the Government and the Governor should prevail. With these words I commend my amendment for acceptance.

Mr. President: Prof. Shibban Lal Saksena had given notice of a number of amendments to the original article as it is printed in Printed List Vol. I, where Dr. Ambedkar had proposed some new articles as 209A, 209B and 209C. And Prof. Saksena had given notice of amendments to these articles. But now that these articles have not been moved, the question of substituting anything for them does not arise.

Prof. Shibban Lal Saksena: Sir, you had allowed such amendments in the past.

Mr. President: But you had notice of this substitution motion, as other Members had, and they have given notice to this new article now before the House. You could have given notice of your amendments also. Wherever there was a question which was germane, and where there was not sufficient notice of the amendment proposed, I allowed old amendments to be taken. But in this case the Member had sufficient notice of the amendment which was moved by Dr. Ambedkar.

Prof. Shibban Lal Saksena: So many amendments have been allowed to be moved to amendments which were not moved.

Mr. President: They could be fitted in and so they may have been allowed. But there has been sufficient time in this case and other Members have given notice of amendments to the amendment moved by Dr. Ambedkar. So I do not think I will allow it. But if you want to speak about it, you can.

Prof. Shibban Lal Saksena: Yes, I would like to speak, Sir. What I wanted to be substituted for this article has already been expressed in my amendment No. 106 contained in the old list. So far as the present draft is concerned, Dr. Ambedkar has himself confessed that the Magistracy will not be under the High Court. I am very glad for the frankness with which he admitted in regard to 15A that he wanted "due process of law" but he has not been able to get what he wanted. Similarly, he has confessed that he wanted the judiciary to be entirely under the High Court, but he has not been able to have it. He is giving us some compromise against his wishes for satisfying the Home Ministry. I realize the difficulty, but as we are making the Constitution for the future generations, we should at least have it on record that we are not in agreement with the views of the Home Ministry, whether it be at the Centre or in the Provinces. Articles 15 and 15A are a complete denial of liberty of person. They are the darkest part of the Constitution. Under article 209E which Dr. Ambedkar has proposed, we are negativing the principle which has

already been accepted under the Directive Principles, namely, that the judiciary shall be separate from the executive. I feel that although we have put it there, we do not really mean to implement it. In the original article, three years time-limit was put and during the discussion, the Prime Minister said that it would be done earlier than three years. But even the ten years limit proposed by Mr. Bhargava is not being accepted.

I feel therefore that the Drafting Committee has not been able to get the Home Ministries to agree to a separation of the judiciary from the executive. The present provisions are a complete denial of the civil liberties of the person. I had in my amendment suggested that the Supreme Court and the Chief Justice should be the ultimate guardian of the liberties of the subjects and all the High Courts and subordinate judges should be ultimately amenable to their control. But the article as now framed is really a reproduction of all that was contained in the Government of India Act and there is in fact no separation of the judiciary from the executive. If this provision is put in, I fear that there will be no such separation unless there is an amendment of the whole Constitution, because after these provisions in the Constitution I am sure no province will care to go in for separation of the executive and the judiciary. The amendment moved by Mr. Bhargava says that this separation should be done at least in some provinces quickly and in the some after three, five or ten years. Even that has not been accepted. That shows that all provincial Home Ministries do not want such separation. If that is also the view of the independent Central Government of India, I am afraid that liberty of the person will not be guaranteed and we shall still continue to be under the old system of Government which has so far prevailed. We are probably still living in the past. I hope that Dr. Ambedkar will see the wisdom of accepting the amendment of Mr. Bhargava and at least let those provinces which are advanced to have this separation of judiciary from the executive effected much quicker.

Shri Brajeshwar Prasad: Sir, I rise to oppose the amendment moved by my Friend Mr. Sidhva. I am definitely of opinion that where there is a conflict between the High Court and the Government, the opinion of the High Court should prevail.

Secondly, I am opposed to the words "in consultation with the High Court". I definitely hold the view that appointments, postings and promotions must be removed from the purview of the provincial governments. I know of cases where High Court Judges have been removed and transferred because certain members of the Congress who hold high influence in the Governments did not pull on with some judges. The High Courts did enter into controversy with the provincial governments and the High Courts were frustrated. Therefore, I am definitely of the view that this measure is not in conformity with the needs of the situation. The need is that the provincial administration must be purified, must be free from corruption, must be free from nepotism. In article 209D the words "in accordance with the rules made by him in this behalf after consultation with the State Public Service Commission and with the High Courts" are not clear. My knowledge of English is poor. I cannot see whether the words "after consultation with the State Public Service Commission" govern the word "rules" or the word "appointments", whether the Governor has to frame the rules in consultation with the High Court and the Public Service Commission or the appointments are to be made in consultation with the State Public Service Commission and the High Court. I am of opinion that rules should be made in consultation with the Public Service Commission and the High Courts and appointments also made in consultation with the Public Service Commission and the High Courts.

Shri R. K. Sidhva: May I know whether my Friend does not trust his own Government and his own Governor?

Shri Brajeshwar Prasad: I have no faith in provincial autonomy. This is my general proposition which I have clearly expressed on the floor of this House times without number. I need not go into the reasons once again.

Dr. P. S. Deshmukh: (C. P. & Berar : General) : I am glad you realize that.

Shri Brajeshwar Prasad: The realization will also come to you at a later stage. I want that all classes of Magistrates should be outside the purview of the Council of Ministers as regards appointment, posting and promotion. It ought to be laid down in clear and explicit terms that this reform should be implemented within two years from the date of the commencement of this Constitution. This article does not lay down in clear and explicit terms when these reforms will come into operation. I am referring to article 209E.

There is another restriction attached to this article. The words used have been "subject to such exceptions and modifications as may be specified in the notification." Sir, the plea of administrative difficulties is merely designed to cover the lust for political power and patronage. I do not want that this restriction should find a place in the article. I hold these views because there is a necessity for purifying the provincial administration. It will secure also the liberty of the individual. It will strengthen the foundations of the State and it will generate a feeling of loyalty towards all Governments in India if the reforms, as I have suggested, are incorporated.

Shri P. S. Nataraja Pillai (Travancore State) : It is only to clear a doubt I stand here, Sir. I would like to ask whether it is intended by this article to exclude Schedule 3 States from the provisions of article 209A or is it that they are to be included ?

Shri R. K. Sidhva: My amendment says so !

Shri P. S. Nataraja Pillai: In article 209A, B and E, the wording used is "Governor of the State" and the word 'Ruler' is omitted. But in one of the amendments moved by Pandit Thakur Das Bhargava, I think, he suggested that all these articles will apply also to Schedule 3 State. I would like to clear the doubt whether this is intended to apply to Schedule 3 States as well and if so, the necessary changes may be made.

I would like also to support the amendment moved by Mr. Chaliha, as far as the subordinate judiciary is concerned. If I may say so, for my State, the land tenure laws, the special customs prevalent there even in money transactions and the laws in force make it necessary that the recruitment should be limited to lawyers who practise in those High Courts that exercise jurisdiction in that area. If the words as used here are adopted, the lawyers practising in any High Court may be eligible for recruitment to any High Court. Unless you limit the recruiting of lawyers of High Courts of those areas to those District Courts, it will create difficulties. I want that suggestion to be considered.

The Honourable Dr. B. R. Ambedkar: With regard to the observations of the last speaker, I should like to say that this chapter will be part of the Provincial Constitution, and we will try to weave this language into that part relating to States in Part III by special adaptation at a later stage.

There are two amendments—one by Mr. Chaliha and the other by Pandit Kunzru—which call for some explanation.

With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons : one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itself

because it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment.

The amendment of my Friend, Pandit Kunzru, raises in my judgment a very small point and that point is this : whether the posting and promotion of the District Judges should be with the Governor, that is to say, the government of the day, or should be transferred to 209C to the High Court? Now the provision as contained in the Government of India Act, 1935 was this that the appointment, posting and promotion of the District Judge was entirely in the hands of the Governor. The High Court had no place in the appointment, posting and promotion of the District Judge. My Friend Mr. Kunzru, will see that we have considerably modified that provision of the Government of India Act, because we have added the condition namely, that in the matter of posting, appointment and promotion of the District Judges, the High Courts shall be consulted. Therefore the only point of difference is this: whether the High Court should have exclusive jurisdiction which we propose to give in the matter of posting, promotion and leave etc. of the Subordinate Judicial Service other than the District Judge, or, whether the High Court should have jurisdiction in these matters over all subordinate Judges including the District Judge. It seems to me that the compromise we have made is eminently suitable. The only difference ultimately will be that in the case of Subordinate Judges any notification with regard to posting, promotion and grant of leave will issue from the High Court, while in the case of the District Judge any such notification will be issued from the Secretariat. Fundamentally and substantially, there is no difference at all. The District Judge will have the protection of the High Court because the consultation is made obligatory and I think that ought to satisfy the exigencies of the situation.

Mr. President: The question is :

"That in amendment No. 20 above, in clause (2) of the proposed new article 209A, after the words 'seven years' and 'pleader' the words 'enrolled as' and 'of the High Court of the State or States exercising jurisdiction' be inserted respectively."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 20 above, in the proposed new article 209E, after the word 'may' where it occurs for the first time, the words 'at any time' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 20 above, at the end of the proposed new article 209E, the following proviso be added :—

'Provided that the Governor or the Ruler as the case may be shall,—

(i) in the case of States mentioned in Part I of the First Schedule after the lapse of three years from the commencement of this Constitution if the Legislature of the State passes a resolution recommending the making of such direction, or if no such resolution is passed after the lapse of ten years from the commencement of this Constitution; and

(ii) in the case of States mentioned in Part III of the First Schedule after the lapse of seven years from the commencement of this Constitution, if the Legislature of the State passes a resolution recommending the making of such direction and if no such resolution is passed, after the lapse of ten years from the commencement of this Constitution, by public notification make such directions'."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 20 of List I (Eighth Week), at the end of clause (1) of the proposed new article 209A, the following be added :—

'where there is a difference of opinion regarding an appointment between the Governor or Ruler of the State and the High Court, the opinion of the former shall prevail'."

The amendment was negatived.

Mr. President: There are two amendments by Pandit Kunzru, Nos. 132 and 133. The question is:

"That in amendment No. 20 of List I (Eighth Week), in clause (1) of the proposed new article 209A, the words 'and the posting and promotion of' be omitted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 20 of List I (Eighth Week), in the proposed new article 209C, after the words 'grant of leave to' the words 'district judges in any State and' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That proposed articles 209A, 209B, 209C, 209D and 209E stand part of the Constitution."

The motion was adopted.

Articles 209A, 209B, 209C, 209D and 209E were added to the Constitution.

Article 215

Mr. President: It is suggested that we take up Article 215.

Shri Brajeshwar Prasad: Sir, I move:

"That for amendments Nos. 2732 to 2737 of the List of Amendments, the following be substituted :—

'That for article 215, the following be substituted :—

"215. (1) Any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President in his discretion either directly or acting through a Chief Commissioner or other authority to be appointed by him.

(2) The Chief Commissioner or other authority to be appointed by the President in his discretion shall be the delegate of the President who shall have the power in his discretion to resume or modify such powers as he himself had conferred.

(3) The President shall have the power to take any part of the Union of India under his immediate authority and management by placing it in Part IV of the First Schedule.

(4) No Act of Parliament shall apply to any territory in Part IV of the First Schedule unless the President in his discretion by public notification so directs and the President in giving such a direction with respect to any Act may direct that the Act shall in its application to the territories in Part IV of the First Schedule, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(5) The President may in his discretion make regulations for the peace, order and good government of any such territory and any regulations so made may repeal or amend any Act of the Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament."'"

Sir, I move without offering any comments.

Shri T. T. Krishnamachari: Sir, I have only one matter to place before you. House and through the House to be transmitted to the appropriate authorities.

This article refers to those areas which will be enumerated in Part IV of Schedule I and which would be directly under the administration of the Central Government. I would like one particular area which is not included in the Draft Constitution under Part IV of Schedule I to be included in that area. The particular area I have in mind is one that was provisionally included in Schedule V under Madras and by virtue of the amendment that the House has now accepted to Schedule V it is left to the President to enumerate what are the areas to be covered by Schedule V. I refer to those islands called Laccadive Islands, including Minicoy and Amindivi which form a cluster of islands on the western side of India in the Arabian Sea. Those islands are supposed to be scheduled areas and the administration is vested in the Government of Madras.

In suggesting that the Centre should take over these islands under its own care I would at once disclaim any idea of casting any reflection on the administration of these islands by the Government of Madras. The fact really is that the islands are far away from the Madras Coast and the provincial government has hardly got the equipment necessary to look after the administration of an area like this, because they have not got any naval vessels or a private merchantile fleet either. What is being done at the present moment is, I understand, that a sub-collector visits these islands once a year along with a medical officer and that is about all the connection that the Government of Madras has with these islands. I have no desire here to emphasise the strategic value of these islands. They may or may not have such a value. But it seems perfectly obvious that the idea was a relic of the past by which the administration of these islands was vested in a provincial government which is a somewhat onerous responsibility for this administration and should no longer continue to be so. I do think that whatever value these islands might have for the future of the Union as such, it is a responsibility that must be taken over by the Centre and the administration of these islands must be looked after by the Centre in the same way as they would be looking after the administration of other areas covered by article 215, which find mention in Part IV of Schedule VII.

I hope these remarks of mine will be transmitted to the appropriate quarter by the Secretariat of the Constituent Assembly and when we come to consider Schedule I, Part IV appropriate amendments will be made on the suggestion of the Ministry concerned.

The Honourable Dr. B. R. Ambedkar: I have nothing to say, Sir.

Sardar Hukam Singh: Sir, I have no amendment to move. I have one objection to clause (2) of this article, to which I want to draw the attention of the President of the Drafting Committee. The phraseology looks to me as derogatory to the sovereignty of the Parliament and I would request him, if possible to change the words:

"The President may make regulations for the peace and good government of any such territory and any regulation so made may repeal or amend any law made by Parliament."

I take objection to the provision that the President may amend any law made by Parliament, which we say is sovereign. Our purpose will be served if we say that regulation will provide that any Act of Parliament would not be applicable to such territory or it shall be applicable to the territory with any modifications.

I only want to bring this to the notice of the Chairman of the Drafting Committee.

Mr. President: Sardar Hukam Singh has made certain suggestions with regard to paragraph 2. He says that it is derogatory to the authority of Parliament to say that the President will repeal or amend any law made by Parliament and that the words should be so modified as to indicate that the power of Parliament is not in any way subordinated.

The Honourable Dr. B. R. Ambedkar: That is so. It is a kind of adaptation. In regard to the autonomous districts of Assam the Governor of Assam has similar power to adapt the laws made by Parliament when he thinks fit so to do. The whole law made by Parliament cannot be applied to certain peculiarly constituted territories unless they are adapted.

Sardar Hukam Singh: Is that a sufficient answer, Sir? My suggestion was that it is derogatory to the sovereignty of Parliament to say that the President would repeal an Act passed by Parliament.

Mr. President: The suggestion is about a word and not about the power?

The Honourable Dr. B. R. Ambedkar: The President is part of Parliament. There is no difficulty at all.

Mr. President: I will now put the amendment of Shri Brajeshwar Prasad to vote.

The question is:

"That for amendments Nos. 2732 to 2737 of the List of Amendments, the following be substituted:—

'That for article 215, the following be substituted:—

"215. (1) Any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President in his discretion either directly or acting through a Chief Commissioner or other authority to be appointed by him.

(2) The Chief Commissioner or other authority to be appointed by the President in his discretion shall be the delegate of the President who shall have the power in his discretion to resume or modify such powers as he himself had conferred.

(3) The President shall have the power to take any part of the Union of India under his immediate authority and management by placing it in Part IV of the First Schedule.

(4) No Act of Parliament shall apply to any territory in Part IV of the First Schedule unless the President in his discretion by public notification so directs and the President in giving such a direction with respect to any Act may direct that the Act shall in its application to the territories in Part IV of the First Schedule, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(5) The President may in his discretion make regulations for the peace, order and good government of any such territory and any regulations so made may repeal or amend any Act of the Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament."'"

The amendment was negatived.

Mr. President: The question is:

"That article 215 stand part of the Constitution."

The motion was adopted.

Article 215 was added to the Constitution.

Article 303

Mr. President: Article 303. We can now take up the definition article 303.

Mr. President: I was just going to enquire whether we should not proceed with this article in the same way as we did with the Lists in Schedule VII and pass item by item.

I shall take the items as they appear in the draft. Amendment No. 3211 in the List of Amendments, Vol. II, may be moved.

Shri H. V. Kamath: It is verbal amendment. I leave it to the Drafting Committee.

(Amendments Nos. 3212 and 3213 were not moved.)

Mr. President: The question is:

"That sub-clause (a) of clause (1) stand part of article 303."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: As regards (b), I would just like to make one point. We are proposing to drop from the Constitution two Parts which we had originally proposed in which certain communities had been enumerated as Scheduled Castes and certain communities as Scheduled Tribes. We thought that was cumbering the Constitution too much and that this could be left to be done by the President by order. That is our present proposal. It seems to me that, in that event, it will be necessary to transfer the definition clauses of the Scheduled Castes and the Scheduled Tribes to some other part of the Constitution and make provision for them in a specific article itself, saying that the President shall define who are the Scheduled Castes and who are the Scheduled Tribes. Now it seems to me that the question has been raised with regard to articles 296 and 299 which have been held over. It may be that the definition of 'Anglo-Indian' and 'Indian Chritian' which is referred to in (b) and (c) may have to be reconsidered along with that proposition. I request you to hold them over for the present.

Shri V. I. Muniswami Pillai (Madras: General): The whole thing regarding the Scheduled Castes, etc. may be held over.

Mr. President: I take it that the House agrees to hold over the consideration of items (b) and (c).

[Sub-clauses (b) and (c) were held over.]

Mr. President: There are no amendments to item (d).

The question is:

"That sub-clause (d) be adopted."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That sub-clause (e) of clause (1) of article 303 be deleted."

Mr. President: There is no Chief Judge now. There used to be subordinate High Courts which were called Chief Courts and they used to have Chief Judges. The question is:

"That sub-clause (e) of clause (1) of article 303 be deleted."

The amendment was adopted.

Sub-clause (e) of clause (1) was deleted from article 303.

Mr. President: Then (f), There is no amendment to this. The question is :

"That sub-clause (f) of clause (1) stand part of article 303."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for sub-clause (g) of clause (1) of article 303 the following sub-clause be substituted, namely :-

'(g) 'corresponding Province', 'corresponding Indian State' or 'corresponding State' means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;' "

We have only included Indian States.

Shri H. V. Kamath: Are we still going to retain the distinction between 'State' and 'Indian State'?

The Honourable Dr. B. R. Ambedkar: The distinction is this: A State now means a constituent part of the Union. An Indian State means a State which is outside the Union but under the paramountcy or control of the Union.

Shri R. K. Sidhva: Is the Cutch State which is now administered by the Centre an 'Indian State'? So also Bhopal?

The Honourable Dr. B. R. Ambedkar: An Indian State is defined at a later stage.

Mr. President: There is a definition of an Indian State given later on in amendment No. 140.

Shri T. T. Krishnamachari: There seems to be some confusion in the minds of Members. The terms "corresponding province" and "corresponding Indian State" these are terms pertaining to the period before the commencement of the Constitution. The term "corresponding State" comes into existence after the commencement of the Constitution. The difference between the two is only this. I hope there will now be no confusion on this matter.

Mr. President: The question is :

"That for sub-clause (g) of clause (1) of article 303 the following sub-clause be substituted, namely :—

'(g) "corresponding Province", "corresponding Indian State", or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;' "

The amendment was adopted.

Mr. President: The question is :

"That sub-clause (g) of clause (1), as amended, stand part of article 303."

The motion was adopted.

Mr. President: Then (h). There is no amendment to this. The question is :

"That sub-clause (h) of clause (1) stand part of article 303."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That in sub-clause (i) of clause (1) of article 303, the words 'but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act' be omitted."

Such Acts as the Merchant Shipping Act might have to be retained until Parliament otherwise provides.

Shri H. V. Kamath: With regard to this (i), there is evidently a slight lacuna. It speaks of laws and bye-laws. But only 'rule' is mentioned. Why not 'bye-rule' as well ?

The Honourable Shri K. Santhanam: I have got an amendment to this. If it has been considered by the Drafting Committee and found to be unnecessary, I do not want to move it. The point that I want to bring to the notice of the Drafting Committee is that there are areas like Baroda which have been merged with other provinces. Now, in the case of Baroda, what will be the interpretation of the word "existing law" ? Will it mean only the laws which are in existence in the province of Bombay or will they include also the laws passed by the Baroda Government or Legislature before integration, because as things are, according to the present term, it might include the laws passed by the previous Baroda Legislature or Government, even though they may have been superseded by the present Bombay laws. If that point is made clear, I do not want to press my amendment. Otherwise, I would want my amendment to be considered by the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: Whether a law is in force or not would depend upon various considerations. First of all, the merger itself may have provided that certain laws shall not be in operation. It may be that the Bombay Government after that territory has been merged, may retain the laws for that particular territory known as Baroda, or its own legislation might abrogate it. Therefore any existing law means the law that is in force at the date of the commencement of the Constitution.

The Honourable Shri K. Santhanam: I do not press my amendment.

Mr. President: The question is :

"That in sub-clause (i) of clause (1) of article 303, the words 'but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act' be omitted."

The amendment was adopted.

Mr. President: The question is :

"That sub-clause (i) of clase (1), as amended, stand part of article 303."

The motion was adopted.

Mr. President: Then (j). There is no amendment to this. The question is :

"That sub-clause (j) of clause (1) stand part of article 303."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That after sub-clause (i) of clause (1) of article 303, the following sub-clause be inserted :—

'(jj) 'foreign State' means any State other than India but does not include a State notified in this behalf by the President'."

The Honourable Shri K. Santhanam: Would Dr. Ambedkar kindly explain what is meant by the latter portion of this sub-clause (jj)? Will he give an illustration of that?

Shri T. T. Krishnamachari: If it is so desired the President might exclude certain States from the category of foreign States. Although it might be premature to say so, it may be according to this scheme under which would be subjected any such arrangement that the new commonwealth relationship might entail. The idea is that the Indian Government of this future could exclude such States from the conception of the foreign State, the President will have the authority to do so. The honourable Member might be aware of the peculiar position of Eire *vis-a-vis* Britain and also *vis-a-vis* India. Actually though there is nothing really on the statute book or anything covered by a treaty, we do not treat Eire exactly as a foreign State.

The Honourable Shri K. Santhanam: Sir, the definitions that we are making have got legal significance. Either a State is a foreign State or it is not. If it is not a foreign State, it is governed by the provisions of this Constitution and the laws made under the provisions of this Constitution. The example given by my honourable Friend, Mr. T. T. Krishnamachari does not come in either. We cannot by saying that Britain is not a foreign State possibly bring it under this Constitution or the laws thereunder. It is a question of convention apart from legal definitions. Therefore, I do not think we should have the words "but does not include a State notified in this behalf by the President." We have already given power to Parliament to include other territories in the territories of India. It should not be left open to the President by some notification to say that some State which does not come under the territory of India by parliamentary legislation is part of India. Technically, the meaning of saying "by notification of the President" that it is not a foreign State, is that it will be part of the Indian State. Unless you give some definition for a State which is neither foreign nor within India, I think this may lead to all kinds of confusion, if not difficulty. I do not think it is very advisable to have this sub-clause (jj) at all. It is wholly unnecessary and we should not try o bring matters of convention into matters of definition. I do not think we are going to suffer at all by not having this (jj).

The Honourable Dr. B. R. Ambedkar: Sir, the position is this: If one were to stop with the word "India", it means what a Foreign State ordinarily means. Every State is foreign to another State. That is quite clear from the first part of the definition. Therefore, there can be no quarrel with that part of the definition. In fact that definition may not be necessary even, but in view of the fact that we have used the words "Foreign State" in some part of our Constitution and in view of the fact that it may be necessary for certain purposes to declare that a Foreign State, although it is a Foreign State in the terminological sense of the word is not a Foreign State for certain purposes, it is necessary to have this definition and to give the power to the President to declare that for certain purposes a State of that kind will not be a Foreign State. The case of Malaya, I understand, is very much in point. Therefore, it really means that for certain purposes the President may declare that although a State is a Foreign State in the sense that it is outside India, for certain purposes will not be treated as a Foreign State. It is for that purpose that this definition is sought to be introduced.

The Honourable Shri K. Santhanam: This sub-clause does not authorize the President to notify for certain purposes. It gives a definition.

The Honourable Dr. B. R. Ambedkar: That will, of course be remembered duly by the President when he issues the notification.

Mr. President: The question is:

"That after sub-clause (j) of clause (1) of article 303, the following sub-clause be inserted:—

'(jj) 'foreign State' means any State other than India but does not include a State notified in this behalf by the President'."

The amendment was adopted.

Many honourable Members: What about the programme?

President: I might inform the House that there are certain provisions of the Constitution which have to be dealt with and as soon as we finish those, we have to deal with one Bill which has already been introduced. When all this work is finished, we shall adjourn and it depends upon the House how long it will take to finish the business. I can mention the articles if you like. Articles Nos. 99, 184, 303, 304, 305, Schedule VIII, Schedule IX, Article 1, New Schedule IIIA, Schedule IV, new article 264A. Then there is a motion of which notice has been given by Mr. Munshi regarding the Hindi version of the Draft Constitution, and lastly there is Dr. Ambedkar's Bill. This is what we have to get through in this session.

Pandit Govind Malaviya (United Provinces: General): May I know, Sir, if it is settled that we are going to have another session of the Assembly in early October?

Mr. President: We are going to have another session in October.

Pandit Govind Malaviya: When we are going to have another session so soon, could we not put all this off till then?

Mr. President: I have found that there has been a tendency when approaching the close of this session to shove everything to the next session; till yesterday I thought we would be able to deal with all the transitory provisions, but I was informed that we could not take them and we should shove them off to the next session. Today I am told that we could not dispose of the Preamble and we should shove it off. Now you propose that all the rest of the work should be shoved off. It will not be possible because.....

Pandit Govind Malaviya: Sir, I say so for this reason. Originally it was thought that this session would be a short session say, for a fortnight. We have now gone on for seven weeks! If we are going to meet early in October again, probably it will not matter very much if we put off these items till then. But, it you think that we must complete some of this work which you have mentioned, then may I suggest, Sir, that, possibly, we could have both morning and evening sessions today and tomorrow and finish by then whatever work we can, and then we may adjourn.

Many Honourable Members: Yes, Yes.

Mr. President: The difficulty is this that we have got certain holidays to take into consideration. We have to take the convenience of the Legislative Assembly, which is to meet in November, and we have to pass the remaining articles of the Constitution for the Second Reading and then the whole Constitution in the Third Reading, and in between the completion of the Second Reading and the Third Reading, the Drafting Committee will naturally require some time which cannot be less than, say, three weeks or so, for putting things in order and getting them ready for the Members for the Third Reading. Therefore, all this difficulty arises because we have some sort of a time-limit on the other side and we have to fit in all these as far as possible. Therefore, I am trying to finish as much of the work as possible in this session so that in the October session we may not have more left than is absolutely necessary. Even as it is, what is left for the October session is this. We have

[Mr. President]

a Chapter with regard to the States, which we have not yet dealt with, that is to say, about the Indian States, merger and all that. So, a new Chapter or amendments to some of the articles which have been proposed in the Draft Constitution will have to be done. That will take, I think, some little time. Then we shall have to deal with transitory provisions which have not been taken up today because I understand there is some difficulty with regard to that. There are two articles relating to minorities, articles 296 and 299 which we have left over. Then there is Schedule I that is regarding the territories. That may not be very difficult. Then, there, is Scheduled II dealing with salaries and emoluments : I do not know—it may evoke some amendments. That would take some time. Schedule III-B is a list of the constituencies for the Council of States. Then, there are two articles which are of a substantial nature, article 283-A relating to protection to services which has been held over and article 280-A relating to financial emergency. Apart from these, there are two more or less formal articles relating to commencement and repeal

Shri R. K. Sidhva : These will not take more than a week or ten days.

Mr. President : I am not allotting more than ten days for these. If we start on the 10th, we would go up to the 20th. Diwali begins on the 21st. The work we have to do, we must finish before the Diwali session finishes. If we have to sit for ten days, we shall have to begin about the 6th or so.

Shri R. K. Sidhva : Cannot we sit this afternoon and tomorrow and finish as much as possible ?

Mr. President : I am told that there are some articles of which the draft has not yet been finalised.

Pandit Thakur Das Bhargava : We can have two sittings tomorrow.

Mr. President : Tomorrow we will have two sittings.

Pandit Thakur Das Bhargava : And one sitting on Sunday.

Mr. President : I have no objection. If honourable Members agree, I do not mind. Or we can sit on Monday. Just as you like.

Shri V. T. Krishnamachari : I suggest we sit on Sunday and finish on Sunday.

Mr. President : I have no objection. Is it the wish of the House that we sit on Sunday.

Several Honourable Members : Yes.

Mr. President : We shall sit on Sunday.

Shri R. K. Sidhva : Is it a condition that all work should be finished on Sunday or we carry over the rest ?

Mr. President : That condition cannot be fulfilled by me. That must be fulfilled by you. The House stands adjourned till nine of the clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Saturday, the 17th September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 17th September, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

Mr. President: The first item is the Bill. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I move:

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, introduced on the 14th September 1949, be taken into consideration by the Assembly".

I would like to say just one or two words and inform the House as to why this Bill has become a necessity and what the Bill proposed to do in substance. The necessity for the Bill arises because of two circumstance. One is the provision contained in clause (3) of the proposed Article 308. This article 308 is to be found in the midst of what are called transitional provisions. Clause (3) of article 308 provides that—

"On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India, including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative, shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of, by the Supreme Court,"

which means that on the date on which the Constitution comes into operation, the jurisdiction of the Privy Council will completely vanish.

The second circumstance which has necessitated the Bill is that it is proposed that this Constitution should come into operation sometime about the 26th January, 1950. The effect of these two circumstances is that the Privy Council will have no jurisdiction to entertain any appeal or petition after the 26th January 1950, assuming that that becomes the date of the commencement of the Constitution. But what is more important is this that the Privy Council will not even have jurisdiction to deal with and dispose of appeals and petitions which may be pending before it on the 26th January, 1950. Now taking stock of the situation as it will be on the 26th January 1950 the position is this. There are at present seventy civil appeals and ten criminal appeals pending before the Privy Council. The Calendar of cases which is prepared for the next sitting of the Privy Council has set down twenty appeals for hearing and disposal. It is also a fact that that is probably the only sitting which the Privy Council will hold for the purposes of disposing of the Indian appeals before the date on which the Constitution comes into operation.

According to the information which we have, this list of cases which is prepared for hearing at the next session of the Privy Council contains about twenty appeals, which means that on the 26th January, 1950, sixty appeals will remain pending undisposed of; and the question really that we are called upon to consider is this. What is to be done with regard to these sixty appeals which are likely to remain pending before the Privy Council on the 26th January, 1950?

[The Honourable Dr. B. R. Ambedkar]

There are, of course, two ways of dealing with this matter. One way was to continue the jurisdiction of the Privy Council and dispose of all the appeals that are now pending before it. That was the procedure that was adopted in the Irish Constitution by article 37 whereby it was stated that nothing in their Constitution would affect the jurisdiction of the Privy Council to deal with matters that may be pending before them on the date of the Constitution. But as I pointed out, in the proposed article 308 clause (3), we do not propose to leave any jurisdiction to the Privy Council. We propose to terminate the jurisdiction of the Privy Council on the 26th January, 1950. The only way out, therefore, is to provide that the jurisdiction of the Privy Council shall terminate, that their jurisdiction shall be conferred on the Federal Court and that they shall transfer all the cases which are pending before them on the 10th October, except the twenty cases to which I made a reference earlier to the jurisdiction of the Federal Court. This is what the Bill does.

Now, Sir, coming to the specific provisions of the Bill, it will be noticed that clause 2 abolishes the jurisdiction of the Privy Council over all courts in the territory of India. Clause 3 abolishes the jurisdiction of the Privy Council over the Federal Court, and clause 5 is the converse of clauses 2 and 3, because it proposes to confer the Privy Council jurisdiction on the Federal Court. Clause 4 deals with the matters that are pending before the Privy Council. Although clause 5 confers the Privy Council's jurisdiction on the Federal Court, clause 4 is a saving clause and saves the jurisdiction of the Privy Council in certain appeals and petitions which are pending before it. They may be classified under four heads : (1) Appeals and petitions in which judgment has been delivered, but Order in Council has not been made before the 10th October, (2) appeals entered in the Cause List for Michaelmas sitting which begins on the 12th October, (3) petitions which are already lodged and may be lodged before the 10th October, and (4) appeals and petitions on which judgment has been reserved by the Privy Council although the hearing has been completed. In clause 6, all those matters which do not come under clause 4 stand automatically transferred to the Federal Court even though they may be pending before the Privy Council. Clauses 7 and 8 are mere matters of construction.

While curtailing the jurisdiction of the Privy Council it is felt that it is desirable to repeal and amend certain sections of the Government of India Act, 1935 which are necessary as a matter of consequence and which are also necessary to remove some of the anomalies in the Government of India Act with regard to the jurisdiction and powers of the Federal Court. As I have said, clause 3 repeals Sections 208 and 218 of the Government of India Act which deal with the Privy Council and appeals from the Federal Court, and appeals from a court outside India. Both these changes are consequential.

It is proposed to amend Section 205 which deals with the appellate jurisdiction of the Federal Court, and Section 209 which deals with the form of judgment and the drawing up of decrees, 210 which deals with jurisdiction of the Federal Court over other courts and Section 214 which deals with jurisdiction of the Federal Court over courts outside India.

It is proposed, therefore, by these consequential and other necessary amendments to make the jurisdiction of the Federal Court complete and independent. This measure, undoubtedly, is an interim measure, because these powers will last only up to the 26th January 1950 when the Constitution comes into operation. On the 26th January 1950, the powers of the Federal Court will be those that are set out in the Constitution.

Sir, I move.

Mr. President: The motion is:

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, introduced on September 14, 1949, be taken into consideration by the Assembly."

Does any Member wish to say anything about it?

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I have great pleasure in supporting the motion moved by Dr. Ambedkar. It is but meet that the jurisdiction of the Privy Council which is the symbol of our judicial slavery should end as soon as possible. I do not understand if there is any connection between the declaration of our country as a Republic and the Privy Council. When the Independence Act was passed, that was indication enough for us that we should abolish the jurisdiction of the Privy Council. I understand that in Canada also, while the connection is as good as before, attempts are being made to sever that connection. I read in today's *"Hindustan Times"* as follows:

> "In the speech from the throne at the opening of Canada's 21st Parliament, yesterday the Governor-General Viscount Alexander announced that two Bills would be introduced aimed at cutting Dominion ties with Westminster.
>
> One would be a Bill to amend the Supreme Court Act so that the Supreme Court of Canada would become the final court of appeal for Canada."

Therefore, I do not understand why this very thing which we are doing today could not have been done much earlier. When in 1947 a Bill was placed before the legislative part of the Constituent Assembly for the enlargement of the powers of the Federal Court, Ajmer-Merwara was not included in the list of those High Courts from which appeals to the Privy Council were to be substituted in future to the Federal Court, as Ajmer-Merwara was a Judicial Commissioner's court. But at that time many of us indicated that steps should be taken at once to see that this jurisdiction of the Privy Council was abolished.

Similarly in regard to criminal cases we have been trying for the last two years to see that the jurisdiction of the Privy Council is taken away. In the Legislative Assembly we brought in a Bill—Dr. Hari Singh Gour gave the notice and I introduced the Bill—and subsequently it was referred to Select Committee at my instance. But before the Select Committee it was found that that part of the Constituent Assembly had no power to enact a measure like that. Therefore, before the last session of the Constituent Assembly was over, Mr. Naziruddin Ahmad and I sent in a Bill, for abolition of powers of the Privy Council, to this House before August. We wanted that this jurisdiction should be abolished all at once. But unfortunately no notice was taken of that Bill. I am very glad that after all, now, on the last day of the session, this Bill has been brought.

In welcoming this Bill I would like to say that this is not the only point, namely, that our judicial slavery ends, about which we were so impatient. But I congratulate the Drafting Committee for their draft which is certainly much better than the draft which I placed for their consideration. This might also be one of the reasons why they have taken so much time in considering the question. The draft, as it stands, consists of two parts; one relates to the abolition of the jurisdiction powers of the Privy Council and the other relates to the conferment of the corresponding jurisdiction on the Federal Court. I am very glad that clause 5 finds a place as the subject-matter of it did not as a matter of fact find a place in article 308. Article 308 only operates to abolish the jurisdiction of the Privy Council. But it failed

[Pandit Thakur Das Bhargava]

to confer the jurisdiction of the Privy Council on the Federal Court. Now, clause 5 seeks to place that jurisdiction which was enjoyed by the Privy Council on the Federal Court. The jurisdiction enjoyed by the Privy Council in regard to criminal matters was a very special kind of jurisdiction which could only be enjoyed by the Privy Council of a State in which there was monarchy. Now, the words in clause 5 are "the same jurisdiction to entertain and dispose of Indian appeals and petitions as His Majesty in Council has, whether by virtue of His Majesty's prerogative or otherwise". So under clause 5 these powers have now been transferred to the Federal Court.

When I come to my amendment I will have occasion to say how this is different from the ordinary jurisdiction in regard to appeals etc. At this stage I need not dilate upon that. The only point that I want to bring to your notice in this connection is that whereas in clause 9 we have got some statement of the powers of the Federal Court on the civil side, there is no corresponding statement in regard to the criminal powers of the Federal Court after they have been conferred on it under clause 5. And I have tried to fillI up that lacuna.

Similarly, in regard to clause 4 relating to the exceptions which have been made so far as the Privy Council jurisdiction is to continue for certain appeals, my humble submission is that as a matter of fact we should not allow any jurisdiction to continue in the Privy Council in regard to cases in which the Privy Council has so far done nothing. My opinion is that cases in which the Privy Council has done nothing should be transferred at once to the Federal Court. After all a petition for appeal consists of two main parts. Firstly the petition is lodged mechanically with the Registrar and the Registrar has done nothing to it except the formal record of the lodgment of the appeal. Then at the first hearing the question is gone into and sanction is accorded. It is but meet that in regard to these cases in which the appeals have only been lodged, the entire proceedings should take place in India because nothing has been done in respect of them in the Privy Council so far.

In regard to cases where something has been done, where they have been finally put before the Privy Council, where—I can understand—people have spent lakhs of rupees on counsels etc., those cases—twenty of them, as has been indicated by Dr. Ambedkar—may be heard by the Privy Council. But there is absolutely no reason why the cases in which only the petitions have been lodged before the Privy Council should be allowed to be gone into by the Privy Council and the question of sanction or ban decided. I for one do think that so far as the legal aspect of the matter is concerned we should see that the entire proceedings in those cases take place in India. Clause 5(2) says that even if the sanction is accorded, further proceedings are to take place here. But I understand that the more legal and more just thing is that the entire proceedings should be had in India.

In regard to pending cases, so far as any cases remain which are not disposed of by the Privy Council and which are not taken cognizance of, in the sense that they are not taken and finished in this session in 1949, I hope all these unfinished cases will come here, because there is no object in keeping any connection with the Privy Council any further. I have put in an amendment, but at this stage I do not want to take up the time of the House. Sir, I support the motion before the House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I welcome the motion for consideration of the Bill. The matter has already been unduly delayed, but after all I am happy that it has come at last.

I have two points to submit at this stage. One is the question as to what would happen to those appeals which were appeals against a decision of the Federal Court. This Bill absolutely prohibits the Privy Council from

deciding them and they must lapse. I submit this will cause much hardship. I submit that appeals which have been admitted by the Privy Council on the ground of leave having been given by the Federal Court or special leave given by the Privy Council itself, should not be killed in this fashion because when the appeals were lodged and were admitted the appellants acquired something like a vested right in the sense that they had a right to be heard and their contentions decided in a formal manner. This right is being taken away. Many must have spent a lot over them. This will create real hardship.

The other point to which at this stage I wish to draw the attention of Dr. Ambedkar is clause 10. With regard to clause 10 the procedure laid down in the Civil Procedure Code is retained. Those provisions are sections 109, 110, 111 of the Code of Civil Procedure and order XLB of the same Code. So far as these sections are concerned, they will now be, by virtue of this Bill, entirely obsolete. They deal with certain preliminaries relating to appears to the Privy Council from the judgment of the High Court. Those provisions are entirely covered by an earlier enactment of the Central Legislature passed in 1941 that is, Act XXI of 1941, and also by clause 9, sub-clause (2), of the present Bill. I submit that clause 10 of the Bill will result in a clash between the provisions of the Civil Procedure Code and Act XXI of 1941. By the Adaptation Order of 1937, section 111-A and Rule 17 to order XLV of the Civil Procedure Code were added. But by the Act of 1941, section 111-A of the Civil Procedure Code and Rule 17 of Order XLV were repealed and by that Act the Federal Court was enabled to make their own rules. By virtue of that power, the Federal Court has already made rules and they would cover procedural matters relating to appeals. In the face of those rules which are self-complete, there would be a clash between those rules and the provisions of the Code of Civil Procedure. I should like to ask the honourable Member to consider the desirability of retaining clause 10. I shall give the details when it comes up, but I merely draw attention to the unnecessary character of this clause.

Sir, generally I support the Bill.

Shri B. N. Munavalli (Bombay States) : Mr. President, Sir, the Bill as it stands has been very carefully worded and has met all the difficulties that were being felt up till now. The Honourable Pandit Thakur Das Bhargava stated that all those appeals which have not been heard in the Privy Council should be transferred to the Federal Court. But we must look to the procedure of the Privy Council also. In the case of certain appeals which have already been registered, it is but natural that certain work with regard to them must be attended to there. So, although the appeals are not heard by the Privy Council, still it stands to reason that the appeals which have been registered should be left with the Privy Council for decision. But now when the Bill comes into force on the 10th of October 1949, all the appeals will vest with the Federal Court. Also, if there are any appeals to the Privy Council which the High Court has certified, provision has been made there also for appeal to the Federal Court. Under these circumstances, I do not think there is any reason why there should be any changes in the Bill as piloted by Dr. Ambedkar.

My honourable Friend Mr. Naziruddin Ahmad said that the right of the persons who might have appealed against the decision of the Federal Court to the Privy Council had been taken away. But really speaking it is not so. The fact is that if they have already gone in appeal to the Privy Council and if those appeals have been registered, they will be heard by the Privy Council. That being the case, there is no grievance whatsoever. The Bill provides for every contingency and meets the grievances that were left unredressed up till now. So I am in agreement with the Bill and wholeheartedly support it.

Dr. Bakhshi Tek Chand (East Punjab : General) : Mr. President, Sir, I rise to support the proposition that has been moved by Dr. Ambedkar and to oppose the amendment of my honourable Friend, Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava : No amendment has not been moved yet.

Dr. Bakhshi Tek Chand : Oh, the amendment has not been moved yet.

Today is, if I may say so, a memorable day in the history of this country. It is exactly after 175 years that the judicial connection of this country with England comes to an end. It was, Honourable Members may be aware, in 1774, when, by an Act of Parliament passed in the previous year, a Supreme Court was established at Fort William in the Province of Bengal. By that Act provision was made for taking appeals from the judgments, decrees and orders of the Supreme Court to His Majesty's Privy Council in England. In 1800 a Supreme Court was established in Madras and in 1823 another Supreme Court in Bombay, and appeals from these three Courts were regularly taken to England. In 1883 the British Parliament passed the Judicial Committee Act by which the Privy Council appointed a Committee only, to hear and dispose of appeals from India and the colonies, consisting only of persons with judicial or legal experience from amongst its members. From 1833 up to now this jurisdiction has been exercised by that august body.

During this period, if I may say so, the Privy Council has been a great unifying force in the judicial administration of this country, and I would like, with your permission to express our high appreciation of the work which it did. At a time when there were no Indian Judges in the High Courts, and when the number of Indian lawyers was very limited, the Privy Council unravelled the mysteries of Hindu Law, it enunciated ten principles of Mohammadan law, and formulated with clarity the customs which were prevalent in this country. Their Lordships of the Privy Council have from time to time elucidated the various Indian laws with an absolutely detached mind. They have laid down the principles on which the judicial administration of the country was based. No doubt there have been lapses and mistakes, occasionally but, on the whole, the Privy Council has been a great unifying factor and on many occasions has reminded the courts of the country of those fundamental principles of law on which the administration of justice in criminal matters is based. This long connection, in the fullness of time is coming to an end, as it must, now that we have attained freedom. That is the first observation which I have to make.

With regard to the provisions of the Bill, we have, as has been pointed out, about eighty or to be more exact, seventy-nine appeals pending before the Privy Council. Of these, thirty-one appeals in civil matters have been brought as a right and the records relating to those appeals had been received in England before 1st February 1948 when the Federal Court enlargement of jurisdiction came into force. There are thirty-eight civil appeal from the High Court in India in which special leave has already been granted and the appeals admitted for hearing before the Privy Council. With regard to criminal matters there are only ten appeals in which special leave has already been granted. As honourable Members are aware, no appeal in a criminal case lies to the Privy Council as of right. It is only by special leave of their Lordships that criminal matters can be heard there. In ten cases, such leave has already been granted and the cases are ripe for hearing. This is the entire list of pending cases though out of these seventy-nine cases, records of fifty-two cases have already been received in England and petitions of appeal have been lodged in forty-one.

Another branch of cases which could under the existing law, go to the Privy Council are appeals from the Federal Court in India in matters in which interpretation of the Government of India Act, 1935, or of the Orders in Council made thereunder or of the independence Act, may be involved. No appeal from the Federal Court is, however, pending at present before the Privy Council. Therefore this question does not arise.

Out of these seventy-nine appeals, it is likely that about twenty only will be heard before the twenty-sixth of January next year when, it is expected that the new Constitution will come into force. If even these cases are brought over to India at this stage it will be a very great hardship to the litigants who have spent thousands of rupees in having the records printed and sent up to England, in engaging solicitors and briefing counsels there. Therefore, it is a very salutary provision that as many of them as can be disposed of by the 26th of January, should be allowed to be heard and decided there. Those which are not finished by that time will automatically be transferred to India.

The other matter relates to criminal appeals. These are cases, in which as I have said already special leave has been granted. They are mostly cases in which the appellants are under sentence of death or transportation for life or other long terms of imprisonment. The trials of these persons were held long ago and after a lengthy process, their cases have reached the Privy Council and are ready for being disposed of shortly. It will be very undesirable—if I may say so, cruel—to bring those cases back to India for final disposal here, and delay the final decision for several months more and put the appellants to additional expense.

There is a third class of cases with regard to which my honourable Friend, Pandit Thakur Das Bhargava has made some remarks. These are cases in which petitions for leave to appeal in criminal matters have been lodged before the Privy Council but such petition have not been heard yet. Now, what will be the position with regard to them? Two possible courses are open. The first is that provision be made for the immediate transfer of these petitions to the Federal Court. This alternative appears to be supported by Pandit Thakur Das Bhargava. The other is as the Bill provides, that they may be set down for the preliminary hearing before their Lordships. I submit that this provision in the Bill is an eminently reasonable one. The petitioners in these cases, most of whom are under sentence of death which have been confirmed by the High Courts, have applied to the Privy Council for leave to appeal. Their petitions are already lodged there and the preliminary hearing will take place in a few days. At the hearing their Lordships may refuse leave in some cases. In that event, there will be an end of the matter. The other possibility is that they may grant leave and then the appeals be admitted for final hearing. Provision has been made in the Bill that if leave is so granted the cases will be automatically transferred to India and the final disposal of those appeals will be in India before the Federal Court or the Supreme Court, as the case may be. I think, Sir, that is an eminently reasonable and practical provision and I submit that it ought to be accepted. It is not desirable to prolong the agony of these condemned persons much longer but to have the cases heard and finished as soon as possible.

Another suggestion made by an Honourable Member is that the Federal Court should be invested with juridiction to entertain petitions for leave with effect from the 20th September instead of the 10th October as laid down in the Bill. I may submit that this really does not make any material difference. According to the Privy Council rules, the Michaelmas term will begin on the 10th of October, and there is no chance of any petition being heard before that date as the Privy Council is in vacation in these days. No list of cases which are set down for hearing during the Michaelmas term under the rules of the

[Dr. Bakshi Tek Chand]

Privy Council can be issued after 23rd September except by special orders of their Lordships. Therefore this provision in the Bill is also eminently satisfactory and proper. I submit that the Bill as introduced contains very salutary transitory provisions which will make arrangements for the hearing of a small number of cases during the interval with the least expenses to litigants, and for the transference of the bulk of them to the Supreme Court in India. I therefore support the motion.

Mr. President: Is it necessary to prolong the discussion on this motion?

Honourable Members: No, Sir.

Mr. President: The question is:

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, introduced on September 14, 1949, be taken into consideration by the Assembly."

The motion was adopted.

Clause 2

Mr. President: Clause 2. The first amendment (No. 8) is in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in sub-clause (1) of clause 2 for the words 'entertain, and save as hereinafter provided to dispose of, appeals', the words 'entertain and, save as hereinafter provided, to dispose of appeals'

or, alternatively,

'entertain and (save as hereinafter provided) to dispose of appeals'

or, alternatively,

'entertain, and (save as hereinafter provided) to dispose of appeals' be substituted."

Sir, these are of a drafting nature, but they cannot be left to the Drafting Committee which has nothing to do with this Bill, nor can they be referred to the Honourable Member-in-charge under our rules.

I next move:

"That in sub-clause (1) of Clause 2, for the word 'court' the word 'Court' (with a Capital 'c') be substituted."

I am not moving amendment No. 10, because Pandit Thakur Das Bhargava, who is more concerned with it, will move it.

Sir, I move now my next amendment No. 12—

"That in sub-clause (2) of Clause 2,

(a) for the words 'The appeals and petitions', the words 'An appeal or a petition', and

(b) for the words 'Indian appeals', the words 'Indian appeal', and for the words 'Indian petitions' the words 'Indian petition' be substituted."

These are all of a drafting nature.

Pandit Thakur Das Bhargava: Sir, my amendment No. 10 is really consequential to amendment No. 14. If amendment No. 14 is not carried, amendment No. 10 will not arise. So, with your permission I will move amendment No. 10 after the House has disposed of Clause 3 to which my amendment No. 14 relates.

Mr. President: I do not know how that can be done.

The Honourable Dr. B. R. Ambedkar: Sir, it is contained in clause 3 if my friend will read it. 'Federal court' is provided for in sub-clause (2) of clause 3. That is why the words "(other than the Federal Court)" are there in clause 2.

Pandit Thakur Das Bhargava: In this list it is in clause 2 and my amendment applies to it only.

Mr. President: You can leave it out for the present.

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment. It is quite unnecessary.

Shri B. Das (Orissa: General): I beg to move:

"That in sub-clause (1) of Clause 2, the words 'or otherwise' be deleted."

Sir, it is very humiliating to me that, after you declare India a Republic on 26th January, 1950 certain powers of the King should be continued. Our legal authorities Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar think that the Privy Council enjoys powers in criminal cases. Sir, we have disestablished the King. Where then is His Majesty's prerogative? I do not want any loophole should be left whereby the authority of the British nation should be perpetuated over us through the insertion of the words 'or otherwise'. This is a simple issue, if the Privy Council is not to decide any of our cases, why should we take shelter under the words 'or otherwise'? My friends the eminent lawyers like Mr. Munshi may say that I do not know law. But I know my political rights. I do not want that I should in any way be subjected to the sovereignty of India's former masters the British King or the King's Councillors.

The Honourable Dr. B. R. Ambedkar: Sir, I do not think this amendment is very necessary, because the jurisdiction of the Privy Council may be derived also from the prerogative conferred by Statute. Therefore the words 'or otherwise' are quite necessary. We want to put an end completely to the jurisdiction not merely arising from the prerogative but from other sources also.

Mr. President: I will now put the amendments to vote.

The question is:

"That in sub-clause (1) of Clause 2, for the words 'entertain, and save as hereinafter provided to dispose of, appeals' the words 'entertain and, save as hereinafter provided, to dispose of appeals'

or, alternatively,

'entertain and (save as hereinafter provided) to dispose of appeals'

or, alternatively,

'entertain and (save as hereinafter provided) to dispose of appeal' be substituted.'

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (1) of Clause (2), for the word 'court' the word 'Court' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (1) of Clause (2), the words 'or otherwise' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause 2 of Clause 2,

(a) for the words 'The appeals and petitions', the words 'An appeal or a petition', and

(b) for the words 'Indian appeals' the words 'Indian appeal', and for the words 'Indian petitions' the words 'Indian petition' be substituted."

The amendment was negatived.

Mr. President: Now I will put clause 2 to vote. The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, I am not moving any of my amendments.

Pandit Thakur Das Bhargava: Mr. President, I move:

"That for sub-clause (2) of clause 3, the following be substituted:—

'(2) Any legal proceedings pending by virtue of section 208 immediately before the appointed day before His Majesty in Council shall be transferred to the Federal Court and the Governor-General shall, in consultation with the Chief Justice of India, make proper and suitable arrangements for their disposal and all such proceedings pending before the Federal Court shall abate on the appointed day.'"

In regard to this clause I submit that it is easy to realise that if you have given any right to any people they should not be divested of them ordinarily speaking. Now, as regards the orders of the Federal Court there are many persons who are aggrieved. The present remedy is that they could get redress from the Privy Council. Some of these people must have made their petitions and appeals against these proceedings. Clause 2 only seeks to abate those proceedings. Since we are passing an Act by virtue of which the powers of the Privy Council shall cease there is no reason why these persons should be divested of those rights. But I see one difficulty. If the judges have participated in the decisions against which relief is sought in the Privy Council it may be difficult to provide disposal of such proceedings or appeals by the same judges. But that difficulty can be obviated by having an order that such judge who did not participate in the original orders may constitute a Division Bench, or something else may be improvised. It is not beyond the capacity of the Chief Justice of India or of the Governor-General to make some arrangement for the disposal of such cases.

Shri T. T. Krishnamachari (Madras: General): My friend's remarks can be cut short if I explained there are really no appeals pending before the Privy Council from the Federal Court.

The Honourable Dr. B. R. Ambedkar: There is no pending appeal.

Pandit Thakur Das Bhargava: I heard from Dr. Ambedkar and Dr. Bakhshi Tek Chand that there is no appeal pending, but there may be other proceedings. My submission is that if there are proceedings whereby remedy is possible to be given the persons concerned should not be deprived of their rights, merely because we are doing away with the jurisdiction of the Privy Council.

Mr. Nazirudin Ahmad: Sir, I beg to move:

"That after sub-clause (2) of Clause 3, the following proviso be added:—

'Provided that if special leave is granted on an Indian petition by the Judicial Committee of the Privy Council in a criminal matter, the appeal may be disposed of by the Judicial Committee before the commencement of the Constitution of India to be passed by the Constituent Assembly of India.'"

The only thing that I wish to submit in this connection is that, if an accused has gone up to the Privy Council and his appeal is admitted by special leave or by leave of the inferior court, then in that case it would be a hardship for an accused person to spend large sums once in London in engaging lawyers and again in India in engaging other lawyers. There would be further difficulty if the matter depends upon technical questions of law. One court admitting the appeal on some technical grounds, and another court in deciding them. The change of lawyers as that of the courts would create practical difficulties. So long as our Constitution does not come into force, I would only submit that in a criminal matter, in order to avoid hardship to the accused persons, if there is an appeal before the Privy Council, the latter should be permitted to hear the appeal, provided the hearing is completed before the Constitution comes into force.

The Honourable Dr. B. R. Ambedkar: I do not think it is necessary to accept the amendment moved by my Friend, Pandit Thakur Das Bhargava. As my Friend, Mr. Krishnamachari, has stated, there are really no appeals pending before the Privy Council from the Federal Court, and consequently it is quite unnecessary to make any saving as proposed by my Friend, Pandit Thakur Das Bhargava, because nobody is really adversely affected, there being no pending cases.

With regard to the amendment moved by my Friend, Mr. Naziruddin Ahmad, I cannot understand why we should depart from the principle which has been laid down that any criminal matter which is lodged before the Privy Council before the appointed day may be heard by them for purposes of admission but they would be returned to the Federal Court for final disposal. He wants to make a departure from it but I have not been able to see that the reasons he has advanced warrant it. Therefore I cannot accept his amendment.

Mr. President: The question is:

"That for sub-clause (2) of clause 3, the following be substituted.—

'(2) Any legal proceedings pending by virtue of section 208 immediately before the appointed day before His Majesty in Council shall be transferred to the Federal Court and the Governor-General shall, in consultation with the Chief Justice of India, make proper and suitable arrangements for their disposal and all such proceedings pending before the Federal Court shall abate on the appointed day.'"

The amendment was negatived.

Mr. Naziruddin Ahmad: I would like to withdraw my amendment No. 17.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4

Mr. Naziruddin Ahmad: I do not want to move my amendments Nos. 18 and 19.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for sub-clause (b) of clause 4, the following sub-clauses be substituted.—

'(b) any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order; or

[The Honourable Dr. B. R. Ambedkar]

(c) any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee; or';

and sub clause (c) be re lettered as sub-clause (d)."

What probably requires some explanation is sub-clause (c). Although we have stated in the main clause that business or cases entered upon the calendar for the Michaelmas term may be left with the Privy Council for disposal, it is not quite certain how many of them may remain undisposed of. Therefore we propose to give permission to the Privy Council at the outset to say that, although a matter or a case is entered upon the cause list for the Michaelmas term, they will not be able to hear some of the matters, so that there may be no balance of pending cases left. In that event, those cases which the Privy Council directs that they will not be able to hear would also become automatically transferred to the Federal Court. It is to provide for that sort of contingency that I am adding this sub-clause (c) in terms of the amendment.

Pandit Thakur Das Bhargava: Sir, I move:

"That sub clause (c) of clause 4 be deleted."

This sub-clause relates to Indian petitions lodged before the appointed day to the register of the Privy Council. Now, in regard to these petitions, I am very sorry that I have not been able to change my opinion even after hearing my Friend, Dr. Bakshi Tek Chand. I would like very much to fall in line with his line of argument but I am sorry there are several points which are troubling my mind, and so I have been forced to move this amendment. In my opinion, when a petition is lodged before the Privy Council, the occasion for engaging senior and costly counsels arises when the hearing for sanction takes place and not when the appeal is lodged. The appellants or applicants will be saved this cost if sub-clause (c) is deleted.

Secondly, I understand the whole reason for the transference of these powers is that we want that our own judges may decide our cases according to our standards of justice and our mental outlook and thought and therefore I think that every Indian who has filed an appeal will have the mental satisfaction of his case being decided by the courts in India. The fact that appeals have been filed need not be a reason for continuing these appeals in a country other than India. The mere fact that an appeal has been lodged cannot constitute a good reason for continuing the appeals in that court. Moreover, it is an accepted proposition that the same judges who heard the case at the time of granting leave should decide the case ultimately. Now we have just got an example of this principle when Dr. Ambedkar moved his amendment No. 20 substituting sub-clauses (b) and (c) and it is but meet that the case must remain in the same hands. If at the time when the special leave is given any remark in respect of any legal principle involved or any fact in the case is made by the judge who admitted the case, it would be difficult for any judge subsequently to get over the effect of those remarks and the accused will either be deprived of the advantages of these remarks or will be unduly prejudiced by them if another judge was called upon to decide the case later. Therefore on all these grounds nothing will be lost if all these cases which are in a preliminary stage where only an appeal has been lodged are transferred back to the courts here. I am clearly of opinion that clause (c) of clause 4 should be deleted.

(Amendment No. 22 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment of Pandit Thakur Das Bhargava.

Mr. President: The question is:

"That for sub-clause (b) of Clause 4, the following sub-clauses be substituted—

'(b) any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order; or

(c) any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee; or';

and sub-clause (c) be re-lettered as sub-clause (d)."

The amendment was adopted.

Mr. President: The question is:

"That sub-clause (c) of Clause 4 be deleted."

The amendment was negatived.

Mr. President: The question is:

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5

Mr. Nazirudding Ahmad: Sir, I wish to move amendments Nos. 23 and 29. They are both of a drafting nature. I beg to move:

"That in sub-clause (1) of Clause 5, for the word "jurisdiction" the words "power and jurisdiction" be substituted."

This expression has been used in some of the newly drafted articles to the Draft Constitution. This would make the sentence full and complete.

I beg to move:

"That in sub-clause (3) of Clause 5, for the words 'certificate of the Registrar' the words 'certificate in this behalf by the Registrar' be substituted."

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in sub-clause (3) of Clause 5, for the brackets, letters and word '(b) (c)' the brackets, letters and word '(b), (c) or (d)' be substituted."

It is purely consequential.

Mr. President: The question is:

"That in sub-clause (3) of Clause 5, for the brackets, letters and word '(b) (c)' the jurisdiction' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (3) of Clause 5 for the brackets, letters and word 'b) (c)' the brackets, letters and word '(b), (c) or (d)' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (3) of Clause 5, for the words 'certificate of the Registrar' the words 'certificate in this behalf by the Registrar' be substituted."

The motion was negatived.

Mr. President: The question is:

"That clause 5, as amended, stand part of the Bill."

The motion was adopted.

Clause 5, as amended, was added to the Bill.

Clause 6

Pandit Thakur Das Bhargava : Sir, I beg to move :

"That in clause 6, after word 'appeals' the words 'or petitions' be inserted."

Shri T. T. Krishnamachari : That follows the scheme which Pandit Thakur Das Bhargava has in regard to the deletion of sub-clause (c) of clause 4. Since that has not been accepted by the House, I am afraid there is no point in putting this amendment to vote.

Mr. President : I will put it to vote anyway.

The question is :

"That in clause 6, after word 'appeals' the words 'or petitions' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That Clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clause 7

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That in Clause 7, the comma after the word 'effect' be deleted."

This comma seems to be offensive to the eye. The context is "shall have effect accordingly". There is no need for a comma after the word "effect".

Mr. President : I do not think this need be put to vote, this question of comma'.

The Honourable Dr. B. R. Ambedkar : This will be looked into. This need not be put to vote.

Mr. President : The question is :

"That Clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Clause 8

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That in Clause 8, for the word 'petition' the words 'Indian petition' be substituted."

With regard to this we have defined "Indian petitions" in sub-clause (2) of Clause 2. There we have said "the appeals and petitions aforesaid are hereinafter referred to as "Indian appeals" and "Indian petitions", respectively. Here the words are used together, 'Indian appeals and petitions'. According to this clause strictly, they should be "Indian appeals" and "Indian petitions".

Then I move :

"That in Clause 8, the comma after the word 'effect' occurring in line 3, and the comma after the word 'Council' occurring in line 4 be deleted."

These words are unnecessary and impede the reading.

Shri B. Das: Sir, I beg to move:

"That Clause 8, be renumbered as sub-clause (1) of that clause, and the following new sub-clause be added :—

(2) Any such order or decree made after the appointed day must be simultaneously made by the Supreme Court in India after the date of promulgation of the Constitution Act."

Sir, my.....

Shri T. T. Krishnamachari: My honourable Friend is labouring under a misapprehension. He thinks that the appointed day is 26th of January; the appointed day is the 10th of October.

Shri B. Das: Quite so; you please listen to me and you will understand what my objection is.

Sir, it has been very irksome to me that the date of declaration as Republic of India has been postponed and we are labouring under the control of the British Raj, the United Kingdom Government in one shape or another. One hopes that after the 26th of January, 1950, there will be no domination by the United Kingdom Government or His Majesty in Council or anybody in matters relating to India, unless, somehow through the back-door of Commonwealth, matters come in as unfortunately we have provided for in an article yesterday.

I agree with my honourable Friend, Mr. T. T. Krishnamachari that the appointed day is earlier. But, can we guarantee that all orders will be passed by the Privy Council near about the appointed day and no others will be held up till the 26th January? If some orders are held up, because the Privy Council reports to His Majesty in Council, and His Majesty in Council may sit over it and pass their order on the 27th of January and such orders may come on the 27th of January, how will that order be announced in India? Then, there are petitions and orders on these petitions may be passed on the 26th of January 1950. Suppose it takes time to be communicated to India after the 26th of January. When we are a Republic, we do not recognise any jurisdiction of the Privy Council or the so-called His Majesty in Council. Therefore, the proper thing is, if any such order is held up, the Privy Council or His Majesty in Council should forward it to our highest judicial court, the Supreme Court, and if they announce it publicly in England on the 27th of January, simultaneously, the Chief Justice of the Supreme Court should announce it in India.

We do not want any further subordination in any shape or manner to the Privy Council. It went on fattening the British lawyers at the cost of India. One is glad, and I am very glad that British lawyers are going to be lean in the future because the huge amounts of money that flowed from India to the U.K. will not flow in future. But, at the same time, I am more proud of my sovereignty; I am more proud of my independence. Let Dr. Ambedkar and Mr. Munshi say—I would not accept Mr. T. T. Krishnamachari's word on it—that no such orders will be withheld after the 26th of January. They may be withheld. Therefore, I have moved my modest amendment which is purely political and constitutional. I am not raking up any legal point: I have no right to say anything on legal matters. But I do say it will be an insult to me if an order is not simultaneously issued by the Supreme Court for any order that His Majesty in Council or the Privy Council may issue after the 26th of January 1950, the date of India's becoming a Republic. That is my very modest amendment. I hope my honourable Friend, Dr. Ambedkar, will see the justice of it and to save our honour, and not to burden us with further indignities and humiliations through association with the British, my amendment should be accepted.

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment.

Mr. President: Amendment No. 33 need not be put.

The question is :

"That clause 8 be renumbered as sub-clause (1) of that clause, and the following new sub-clause be added :—

"(2) Any such order or decree made after the appointed day must be simultaneously made by the Supreme Court in India after the date of promulgation of the Constitution Act.""

The amendment was negatived.

Mr. President: The question is :

"That Clause 8, stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9

The Honourable Dr. B. R. Ambedkar: Sir, with your permission, I would like to move the amendment which have been put in a somewhat different form because I thought that the amendments as tabled rather create a confusion. If you will allow me, I have put all these in a consolidated form. There is no substantial change at all. It is just a matter of form and I thought that the House would be in a better position to get at the idea of what we are doing in clause 9.

Mr. President: Yes.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

For clause 9, the following clause be substituted :—

"9. (1) In section 205 of the Government of India Act, 1935 (hereinafter referred to as the said Act), for sub-section (2) the following sub-section shall be substituted, namely :— Amendments of the Government of India Act, 1935.

"(2) Where such certificate is given, any party in a case may appeal to the Federal Court on the ground that any question as aforesaid has been wrongly decided and, with the leave of the Federal Court, on any other ground."

(2) In Section 209 of the said Act, for sub-sections (1) and (2) the following sub-sections shall be substituted, namely :—

"(1) The Federal Court in the exercise of its appellate jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, including an order for the payment of costs, and any decree so passed or order so made shall be enforceable throughout the territory of India" Act V 1908

I should like to add one or two words to be interpolated, which have been omitted :

"In the manner provided in that behalf in the Code of Civil Procedure, 1908, or in such other manner as may be prescribed by or under a law of the Dominion Legislature, or subject to the provisions of any such law, in the manner prescribed by rules made by the Federal Court."

"(3) In clause (a) of sub-section (3) of section 210 of the said Act, for the word, brackets and figure "sub-section (2)", the word, brackets and figure "sub-section (1)" shall be substituted."

"(4) In section 214 of the said Act, after sub-section (1) the following sub-section shall be inserted, namely :—"

I should like to add a few words at the beginning.

"(1A) Subject to the provisions of the Code of Civil Procedure, 1908, or any law made by the Dominion Legislature, the Federal Court may also from time to time, with the approval of the Governor-General, make rules of court for regulating the manner in which any decree passed or order made by it in the exercise of its appellate jurisdiction may be enforced." Act V of 1908.

The object of clause 9 is to make the Federal Court a complete and independent Court. There were certain limitations under the existing Government of India Act, 1935 which prevented the Federal Court from drawing up its own decrees. It had to send the matter to the Trial Court. All these limitations it is necessary to withdraw because the Federal Court is going to take the place of the Privy Council.

Mr. Naziruddin Ahmad: I beg to move:

"That in sub-clause (1) of Clause 9, in the proposed sub-section (1) of section 209 of the Government of India Act, 1935, for the words 'is necessary' the words 'as it may consider necessary, be substituted."

The context where this occurs says 'make such order as is necessary'. I wish to make it 'as it may consider necessary'. This is the proper form. With regard to the large amendment moved by Dr. Ambedkar my difficulty is that there have been slight changes in the new draft which has been circulated and then again in moving sub-clause (4) of clause 9 some further changes have been made. I am not in a position to see the exact effect of this new change orally introduced. I think he has introduced the words—Subject to the provisions contained in the Civil Procedure Code 1908 or to any law or provision of law hereafter made by the Dominion Legislature. I think with regard to the latter condition, this is absolutely unnecessary. This clause 9 attempts to amend Section 205 of the Government of India Act. This Government of India Act will expire—we hope—on the 26th January or thereabout with the passing of India's Free Constitution. Therefore this amendment introduced by clause 9 of the present Bill will have a very short life. It will give a new lease of life to the amended Section 205 of the Government of India Act which is again also to expire on the 26th January. During this short period I do not know whether it is intended to introduce any law affecting Section 205. If this is to be done, it is to be done now in this House in the "Constitution" Section and not in the other aspect of this House *viz.*, the "Legislative" Section. I feel that unless it is intended to introduce any fresh legislation to affect the situation within this short interval, I do not think there is any necessity for these conditions. I do not know what these words really imply. Do they imply anything practical or merely a kind of a safeguard against a thing which does not really exist? I want only clarification. I do not move my other amendments Nos. 40 and 41.

Pandit Thakur Das Bhargava: Sir, I beg to move:

"That in sub-clause (1) of Clause 9, after the proposed new sub-section (1) of section 209 of the Government of India Act 1935, the following new sub-section be inserted :—

'(1A) The Federal Court in the exercise of its criminal jurisdiction conferred on it by section 5 of this Act shall notwithstanding anything to the contrary in any law, be entitled to pass any order of release or set aside any sentence or pass any other appropriate order which it considers just under the circumstances if it regards the provisions of the relevant law depriving life or personal liberty to be not consistent with reason and justice or the procedure observed as unfair or the detention as unreasonable or unjust.'"

With your permission as an alternative I beg to move the following:

No. 43.

The Honourable Dr. B. R. Ambedkar: That amendment, I submit, is outside the scope of the Bill. The Bill deals merely with the transfer of jurisdiction.

Pandit Thakur Das Bhargava: It is not a question of transfer of jurisdiction. I only give what is contained in clause 5 and am defining what jurisdiction shall be conferred, not leaving it to investigation as to what the prerogative of His Majesty was, I am only making these powers in a concrete form from what it is in the abstract.....

The Honourable Dr. B. R. Ambedkar: This Bill does not propose to give any direction to the Federal Court as to the manner in which they should exercise the jurisdiction with which they become vested under the present Bill.

Pandit Thakur Das Bhargava: When a Bill specifically speaks of conferring jurisdiction, it is the business of the law to expound and define what the jurisdiction is. I only condense the contents of that jurisdiction and make it absolutely clear what that jurisdiction means.

Shri K. M. Munshi (Bombay: General): May I rise to a point of order? This is -really speaking- bringing in the due process of law by the back-door, which was disposed of more than once and debated over and over again in this House. The proposal was disposed of some months ago and disposed of day before yesterday. The idea is to vest the Supreme Court with that power. This is, therefore, entirely out of Order, apart from the stand taken by Dr. Ambedkar.

Pandit Thakur Das Bhargava: My submission is that it is certainly not out of order on merits. The amendment says the Federal Court shall exercise all its criminal jurisdiction conferred by Section 5. Section 5 says:

"As from the appointed day,the Federal Court shall, in addition to the jurisdiction conferred on it by the Government of India Act, 1935, and the Federal Court (Enlargement of jurisdiction) Act, 1947, but subject to the provisions of this section have the same jurisdiction to entertain and dispose of Indian appeals and petitions as His Majesty in Council has, whether by virtue of His Majesty's prerogative or otherwise, immediately before the appointed day."

Up to now this prerogative of the Crown or His Majesty included this power of due process. At present this being enjoyed by the Privy Council. Clause 9(1) defines civil side powers. Clause 9(1) of the Bill reads as follows:

"It shall in the exercise of its appellate jurisdiction pass such decree or make such order as is necessary for doing complete justice."

So, in regard to civil law the powers are given in 9(1). So this is perfectly in order.

Mr. President: This Bill is intended to transfer whatever power and jurisdiction the Privy Council has to the Federal Court. If the Privy Council has got the power you suggest in this amendment, that will be transferred to the Federal Court. If it is not, the question is whether in this Bill you can enhance or extend the power of the Federal Court.

Pandit Thakur Das Bhargava: It is beyond my intention to enhance that power in clause 9(1). Power has been described as the power necessary for doing complete justice on the civil side. Similarly I want to declare what that power is in the exercise of the prerogative on the criminal side. Such powers are contained in the unwritten convention of England and we do not know specifically the full content of these powers but those conventions shall have to be imported and interpreted to define the powers of the Federal Court. This is the time to interpret those powers and I am only making what is implicit in this clause explicit.

Mr. President: Is that implicit what you want to make explicit? If it is there, then it is quite unnecessary. If it is not there, you cannot add to it.

Pandit Thakur Das Bhargava: Dr. Ambedkar has moved a motion which shows what orders are necessary on the civil side in order to do justice. My suggestion is that the same thing may be done on the criminal side also. The civil side is being provided for. Why not the criminal side also?

Shri Alladi Krishnaswami Ayyar (Madras : General) : We have mentioned what powers are necessary for doing complete justice. What my honourable Friend wants is to add to the existing powers, and that is not permissible.

Pandit Thakur Das Bhargava : While they have made provision on the civil side, they are silent on the criminal side. If the House does not agree, to my definition of these powers I am agreeable to cutting off the last three lines and say that in the exercise of its power, the Federal Court will be able to set aside any sentence or release any person.

Mr. President : This is a matter which we can consider when we are considering the powers of the Federal Court and then you might move an amendment giving the power you mention, to the Federal Court. But here we are concerned only with the transfer of whatever power is vested in the Privy Council, to the Federal Court. Therefore the question you have raised does not arise here and I think it is out of order.

Pandit Thakur Das Bhargava : So far as amendment 43 is concerned it deals with the special jurisdiction on the criminal side and you are not inclined to give permission to move it. But so far as 39 is concerned, which I have already moved, I do not think any objection can be valid. I am only declaring what on the criminal side, the powers ought to be according to the right interpretation of clause 5.

Mr. President : As regards 39, let me see.

Pandit Thakur Das Bhargava : Objection is taken only to 43, but not to 30.

Mr. President : How does it stand on a different footing? It also says "The Federal Court.....shall .....be entitled to pass any order..... which it considers just under the circumstances.....".

Pandit Thakur Das Bhargava : It only shows what are the powers for doing complete justice on the criminal side.

Mr. President : I do not think this is the proper place where you can put this in. If you want to confer any power on the Federal Court, you can do it independently or when we are dealing with the powers of the Federal Court. but not while we are transferring whatever powers are possessed by the Privy Council, to the Federal Court.

Pandit Thakur Das Bhargava : All that I can submit, Sir, is that if it is permissible to mention the civil side under 209 (1), it is equally permissible to mention what are the powers on the criminal side also.

Mr. President : What are you referring to ?

Pandit Thakur Das Bhargava : I am referring to clause 9 sub-clause (1) of the Bill.

Mr. President : It is nowhere stated, "Notwithstanding any law to the contrary etc."

Pandit Thakur Das Bhargava : I want only the substance of the article to be put in and not the exact words.

Mr. President : You cannot bring it in this round-about way. If it is to be brought in it must be done in the proper way.

Pandit Thakur Das Bhargava : I may seek permission to eliminate the words "notwithstanding anything to the contrary in any law".

Mr. President : The question is whether it is something in addition to the existing powers of the Federal court or not. If it is an addition to the existing powers of the Federal Court, then we cannot take it up. I have given my ruling.

Shri Shankarrao Deo (Bombay : General) : Sir, you have already given your ruling and I do not know why the Member is persisting.

Pandit Thakur Das Bhargava : Sir, I have not caught what Mr. Shankarrao Deo is saying.

Mr. President : I cannot allow it. It is ruled out.

Well, these are all the amendments. Does any one wish to say anything? Well, I will put the amendments. First I put the amendment moved by Dr. Ambedkar. I suppose I need not read it. It is No. 37.

The question is :

That for clause 9, the following clause be substituted.

Amendments of the Government of India Act, 1935.

9. (1) In section 205 of the Government of India Act, 1935 (hereinafter referred to as the said Act), for sub-section (2) the following sub-section shall be substituted, namely :—

"(2) Where such certificate is given, any party in a case may appeal to the Federal Court on the ground that any question as aforesaid has been wrongly decided and, with the leave of the Federal Court on any other ground."

(2) In section 209 of the said Act, for sub-section (1) and (2) the following sub-section shall be substituted, namely :—

'(1) The Federal Court in the exercise of its appellate jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, including an order for the payment of costs, and any decree so passed or order so made shall be enforceable throughout the territory of India in the manner provided in that behalf in the Code of Civil Procedure, 1908, or in such other manner as may be prescribed by or under a law of the Dominion Legislature, or subject to the provisions of any such law, in the manner prescribed by rules made by the Federal Court.'

Act V of 1908.

(3) In clause (a) of sub-section (3) of section 210 of the said Act, for the word, brackets and figure "sub-section (2)", the word, brackets and figure "sub-section (1)" shall be substituted.

(4) In section 214 of the said Act, after sub-section (1) the following sub-section shall be inserted, namely :—

"(1A) Subject to the provisions of the Code of Civil Procedure, 1908, or in any law made by the Dominion Legislature, the Federal Court may also from time to time, with the approval of the Governor-General, make rules of court for regulating the manner in which any decree passed or order made by it in the exercise of its appellate jurisdiction may be enforced."

Act V of 1908.

The amendment was adopted.

Mr. President : Then I put No. 38, Mr. Naziruddin Ahmad's amendment.

The question is :

That in sub-clause (1) of Clause 9, in the proposed sub-section (1) of section 209 of the Government of India Act, 1935, for the words "is necessary" the words "as it may consider necessary" be substituted.

The amendment was negatived.

Mr. President : Then I put the clause as amended by Dr. Ambedkar's amendment :

The question is :

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

Clause 9, as amended, was added to the Bill.

Clause 10.

Mr. President: Then we take up clause 10. Mr. Naziruddin Ahmad has an amendment. Do you want to move it?

Mr. Naziruddin Ahmad: No, Sir, but I would like to speak a few words. I wish to oppose clause 10 on the ground, first, that it is unnecessary, and secondly, that it creates some amount of confusion. My reasons are that the Federal Court was constituted by the Government of India Act, 1935. In 1937, by the Adaptation Order in accordance with that Act, the Civil Procedure Code was amended. One amendment was the introduction of Section 111-A of the Civil procedure Code relating to the appeals to the Federal Court, and the other amendment was the addition of a new Rule 17 of Order XLV, which dealt generally with appeals to the Privy Council. The changes introduced by the Adaptation Order separated Federal Court appeals from those to the Privy Council. Before these adaptations, there were appeals to the Privy Council as well as to the Federal Court. But the procedure laid down in Sections 109, 110 and 111 of the Civil Procedure Code and in Order XLV of that Code was cumbrous. They were necessitated because some preliminary steps were necessary to be taken in India before an appeal to the Privy Council be taken. The Privy Council was situated at a distance of six thousand miles and therefore preliminary steps had to be taken in India. But after the creation of the Federal Court, as the Federal Court is situated within India, all the paraphernalia necessary in connection with Privy Council appeals ceased to be necessary. It was on account of this situation, and on account of the inconvenience caused to the parties who have once to go to the High Court and again to the Federal Court that Act XXI of 1941 was passed. That Act introduced radical changes in the existing law so far as appeal from the High Courts to the Federal Court was concerned by enabling that court to regulate its procedure by its own rules.

With regard to that Act XXI of 1941 there are only three sections to which I need refer. Section 2 repealed section 111A which had been introduced by the Adaptation Order. Section 2 also repealed rule 17 of Order XLV which, as I have pointed out, had also been introduced in Order XLV of the Civil Procedure Code by the Adaptation Order of 1937. Section 3 of Act XXI of 1941 gave power to the Federal Court to make Rules. On account of this the Federal Court made Rules in 1942 which have been amended and brought up to date from time to time. In these Rules all matters relating to appeals to the Federal Court have been exhaustively dealt with, both in civil and criminal cases. Therefore, the sections of the Civil Procedure Code which I have referred to, namely, sections 109, 110 and 111, and Order XLV which dealt with appeals to the Privy Council are inapplicable to the Federal Court.

What remain of these sections and of Order XLV merely relate to appeals to the Privy Council, and on account of the abolition of the jurisdiction of the Privy Council they would be dead letters and require to be repealed. But so far as the present purpose is concerned I submit that they are no longer applicable to present day circumstances. In the statement of Objects and Reasons of the Bill relating to Act XXI of 1941 it was stated:

> "The Government of India (Adaptation of Laws) Order, 1937 added Section 111A and Order 45 rule 17 to the Civil Procedure Code and thereby made the procedure of Privy Council Appeals applicable to Federal Court Appeals. The aforesaid procedure is cumbersome and dilatory, means for appeals to a Court six thousand miles away and should not be applicable to a court of appeal situated in India. Moreover, the addition of these provisions to the Civil Procedure Code have derogated from the powers of the Federal Court to regulate its own practice and procedure under section 214 of the Government of India Act and has been commented on unfavourably by the Federal Court in its decision in case No. 15 of 1939, Lachmeshwar Prasad Shukul *Vs.* Basdeo Lal Choudhury. It is desirable therefore both from the points of view of simplifying procedure in Federal Court Appeals and restoring to the Federal Court its powers to regulate practice and procedure that the new additions to the Civil Procedure Code should cease to be operative."

[Mr. Naziruddin Ahmad]

I submit that these additions which have been made in the Civil Procedure Code would have been applicable to a Court situated far away. So this cumbersome procedure was abrogated by the Amendment Act of 1941. No reference at all would therefore be necessary to the Code of Civil Procedure because the rules of Civil Procedure relating to appeals are as prescribed by the Federal Court in the Federal Court Rules of 1942 by virtue of Act XXI of 1941. In these circumstances I submit that the only rules that should prevail are the Rules made by the Federal Court. As I have said, they cover civil and criminal cases. A mere reference to those Rules would satisfy the Honourable Member as to the accuracy of the statements made by me.

I submit that clause 10 which says that the Civil Procedure Code shall have effect with regard to practice relating to appeals would be improper. We have already in the previous clause—clause 9—added sub-section (1A) to section 214 of the Government of India Act which deals with procedure relating to appeals to the Federal Court. I submit therefore that there would be a confusion between the Rules framed by the Federal Court, which are all complete by themselves, and the Civil Procedure Code which is purported also to be made applicable. If we are left between these two, I should think that the Rules prescribed by the Federal Court, which are complete in themselves, should alone occupy the field and the reference to the Civil Procedure Code in clause 10 should be abrogated. I hope the Honourable Member will consider this suggestion and agree to the deletion of clause 10.

Shri Alladi Krishnaswami Ayyar: Mr. President, my Friend Mr. Naziruddin Ahmad is labouring under a misapprehension. So far as the Rules under the law, as understood prior to this Bill now before us, are concerned there was no direct enforcement of the decisions of the Federal Court. The Federal Court has to send its judgment to the lower court for the necessary Order being drawn up and there was no direct right of enforceability in regard to the judgments of the Federal Court. That is why that lacuna has been filled up by an earlier clause which has been passed, that is, it shall be enforceable and it is not merely sending the judgment to the lower court. There was an anomaly there, namely, of the High Court trying to give effect to the judgment of the Federal Court, but the Federal Court being powerless to ensure the enforceability of its own judgment or decree. That anomaly has now been removed because it has now been made enforceable. I am fairly certain that the Rules of the Federal Court did not and could not provide for that enforceability when the statute itself did not provide for the direct enforceability of the judgments of the Federal Court. Therefore, we have necessarily to provide for the proper machinery for the enforceability of the judgments of the Federal Court.

In the previous clause which has just been passed we have made a provision to the effect that the decree or order of the Federal Court shall be enforceable throughout the Dominion of India. Having made that provision, how is it to be enforced? It has to be by a fresh Act passed by the Dominion Parliament. But until the Dominion Parliament passes some law, there must be some law in the field for the enforcement of the decrees passed by the Federal Court and there has to be adequate provision for their enforceability. The object of this clause 10 is to apply, for example, Order XLV rule 15 so far as it may. For instance, the order of His Majesty in Council was directly enforceable under the provisions of Order XLV rule 15. It is merely to be sent to the High Courts in India and the High Courts in India will send them to the courts which originally passed the decree and they will enforce the decree. It is merely a question of adaptation. The provisions of the Civil Procedure Code in so far as they will be applicable to the new circumstances will be applicable. At best all that can be said is "So far as it may be applicable". Therefore it is an extension of provisions like rule 15 for the judgments of the Federal Court

Later on it will be open to the Dominion Parliament to pass any law at variance with or in addition to the procedure provided in rule 15. But at present we have not got the necessary time and no law has been passed.

Therefore, when once all the jurisdiction of His Majesty in Council is transferred to the Federal Court and when you have made a provision that all the judgments and decrees of the Federal Court shall be enforceable throughout the Dominion of India, there must be a proper machinery for the enforceability of those decrees. No doubt you have made a substantial provision to the effect that the judgment and the decrees of the Federal Court shall be enforceable throughout the Dominion of India. That is why reference has been made to the Code of Civil Procedure and to the Dominion Parliament. No doubt the rules must necessarily refer to any existing law. To prevent a further lacuna, provision is made for the rules.

Therefore, there are three things. One is the extent to which the provision of the Civil Procedure Code can be adapted and extended to the judgment of the Federal Court; in the new dispensation the provisions of the Civil Procedure Code will apply. Secondly, there is the dominant power of the Legislature to intervene and to make appropriate changes. Subject to these, any rules of the Federal Court can be made if there is any lacuna in any of these provisions. Therefore the object is to complete the thing, namely that there will be a triple machinery for the enforcement of a decree. That is the object of the provisions.

Mr. President: Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar: No, Sir.

Mr. President: The question is:

"That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

Mr. President: Then there is another amendment, a new clause to be added

Mr. Naziruddin Ahmad: I beg to move:

52 & 53 Vict. 630 "That after, clause 10 the following new clause be added:—

'11. The Interpretation Act, 1899, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.'"

Sir, we are by this Bill amending the Government of India Act to which the British Interpretation Act of 1899 applies. We have also passed two Acts in this House to amend the Government of India Act and we have made the Interpretation Act of 1899 to apply to the interpretation of those Acts. As this Bill is going to be incorporated largely into the body of the Government of India Act, it seems proper that the interpretation of it, if there is any, would depend upon the Interpretation Act of 1899. It would be highly anomalous if the main part of the Act would be interpreted in accordance with the Interpretation Act of 1899 and the other parts of that big Act which are to be filled up by this Bill would be governed by the General Clauses Act. If we do not limit in any way the interpretation of this Act, the General Clauses Act will normally apply. It was under these circumstances that this rule of interpretation was made applicable in all other cases in a similar situation. Though it is very unlikely that any question of interpretation of this nature may arise, still it may be that some fine question may arise which may depend entirely on the Interpretation Act and as to which Interpretation Act will apply. So I think there should be one Interpretation Act which would be

[Mr. Naziruddin Ahmad]

applicable, namely the Act of 1899 and not the General Clauses Act of India. This, it seems to me, is a corollary to what we have already agreed in the past and in the circumstances of the case.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept that amendment, it is quite unnecessary.

Shri Alladi Krishnaswami Ayyar: Sir, I should just like to say a word or two with regard to this point. So far as the Interpretation Act is concerned, it can apply only to Acts of the British Parliament. This is not an Act of the British Parliament, it is an Act of our Parliament and therefore you cannot extend the provision of the Interpretation Act for the interpretation of a Dominion Act like this one. If any question incidentally arises as to the interpretation of a British Act for the purpose of construing this Act, you can always rely upon the Interpretation Act. Supposing, for example, you have to refer to the Judicial Committee Act, the Judicial Committee Act will have necessarily to be construed in the light of the Interpretation Act because that will always be available. This particular Act is an Act of the Dominion Legislature and therefore the General Clauses Act is made applicable. Between the two there is no kind of lacuna. When any question comes up before the Federal Court, it will either be an Act of the British Parliament in which case the Interpretation Act will continue to be applicable, or it is an Act of the Dominion Legislature in which case the General Clauses Act is applicable. Therefore, under these circumstances, I submit there is absolutely no reason for this amendment.

Mr. President: The question is :

"That after clause 10, the following new clause be added :—

'11. The Interpretation Act, 1899, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.' "

The amendment was negatived.

Clause 1.

Mr. President: Then we go to clause 1.

Mr. Naziruddin Ahmad: Sir, I move :

"That in sub-clause (1) of Clause 1, for the words 'Abolition of Privy Council Jurisdiction Act' the words and brackets 'Privy Council (Abolition of Jurisdiction) Act' be substituted."

Sir, in all cases where we have passed amending Acts, we have always named the Act by the most important condition first of all and then with the detailed description of it within brackets. I have a list of Acts of the year 1947. We have Act XII entitled "Railways (Transport of Goods) Acts," we have Act XV, "Armed Forces (Emergency Duties) Act", we have Act XXIV, "Rubber (Protection and Marketing) Act", and there are many Acts with titles like this. I therefore submit that this nomenclature should be accepted.

Sir, I also move my other amendment :

"That after sub-clause (2) of Clause 1, the following new sub-clause be added :—

'(3) It shall also apply to Indian appeals and Indian petitions arising out of cases originating in Courts in the acceded States."

I do not know whether the acceding States are already governed by the Federal Court. I have no clear idea. I want by this amendment to seek clarification. If this is accepted then amendment No. 4 will have to be accepted as necessary corollary.

Mr. President: Do you wish to say anything about this?

The Honourable Dr. B. R. Ambedkar: The emphasis is on the abolition of the jurisdiction of the Privy Council, and obviously that emphasis could not be realised if the words "abolition of jurisdiction" were put in brackets.

Mr. President: Do you wish to say anything about the 7th amendment?

The Honourable Dr. B. R. Ambedkar: Sir, the acceding States were never subject to the jurisdiction of the Privy Council. But as a measure of extreme caution, it will be seen that in sub-clause (2) the words used are "within the territory of India". Therefore, it is unnecessary to make any mention of the acceding States.

Mr. President: I shall now put the amendments to vote.

The question is:

"That in sub-clause (1) of Clause 1, for the words 'Abolition of Privy Council Jurisdiction Act' the words and brackets 'Privy Council (Abolition of Jurisdiction) Act' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That after sub-clause (2) of clause 1, the following new sub-clause be added:—

"(3) It shall also apply to Indian appeals and Indian petitions arising out of cases originating in Courts in the acceded States."

The amendment was negatived.

Mr. President: The question is:

"That Clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

TITLE AND PREAMBLE

Mr. Naziruddin Ahmad: I do not wish to move my amendment to the Preamable.

Mr. President: The question is:

"That the Preamble stand part of the Bill."

The motion was adopted.

The Preamable was added to the Bill.

Mr. Naziruddin Ahmad: I do not wish to move my amendments to the Title.

Pandit Thakur Das Bhargava: I do not wish to move my amendments to the Title.

Mr. President: The question is:

"That the Title stand part of the Bill."

The motion was adopted.

The Title was added to the Bill.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That the Bill, as amended, be passed."

Mr. Naziruddin Ahmad: The motion should have been:

"That the Bill as settled in the House, be passed."

Mr. President: That is the motion in the Order Paper—

"That the Bill, as settled by the Assembly, be passed."

Shri K. M. Munshi: Mr. President, Sir, I would like only to say a few words on this occasion when we are passing a Bill which will end our connection with the Privy Council which has been our highest court for about one hundred and fifty years. I share the gratification of this House as well as perhaps the gratification of this country that our Supreme Court in the future, and to a qualified extent the Federal Court in the present, will be completely independent of the Privy Council. I may take this opportunity of making a few observations on this point when we are parting company with the Privy Council.

Sir, though we are quite happy that we are becoming completely independent in the matter of the Judiciary, parting with the Privy Council—I am sure it is not my feeling alone, but the feeling of all members of the Bar in India is not a matter which can be gone through without a pang. Most of us have looked to the Privy Council for the last century or so with great respect. If I may say so personally for several years in the beginning of my professional life, I have read in those beautiful thin volumes of the Indian Appeals, the masterly judgment which go to make up practically the fountain-source of our law in India.

Sir, the British Parliament and the Privy Council are the two great institutions which the Anglo-Saxon race has given to mankind. The Privy Council during the last few centuries has not only laid down law, but co-ordinated the concept of rights and obligations throughout all the Dominions and Colonies in the British Commonwealth. So far as India is concerned, the role of the Privy Council has been one of the most important. It has been a very great unifying force and for us Indians it became the instrument and embodiment of the rule of law, a concept on which alone we have based the democratic institutions which we have set up in our Constitution.

Sir, on the 26th of January our Supreme Court will come into existence and it will join the family of Supreme Courts of the democratic world of which the Privy Council is the oldest and perhaps the greatest. I can only hope and trust that though we part with the Privy Council our Supreme Court will carry forward the traditions of the Privy Council, traditions which involve that judicial detachment, that unflinching integrity, that subordination of everything to the rule of law and that conscientious regard for the rights and for justice not only between subjects and subjects but also between the State and the subjects. And no higher tribute can be paid to the Privy Council than my hope that our Supreme Court may be given the strength to maintain the traditions of fearless justice which have prevailed in this country as a result of the supremacy of the Privy Council.

With these words, Sir, I support the motion that has been moved by my honourable Friend, Dr. Ambedkar.

Shri Alladi Krishnaswami Ayyar: Mr. President, it is the object of this measure to abolish the jurisdiction of His Majesty in Council from the appointed day, and place the Federal Court in exactly the same position as the Privy Council. The Bill when passed into law will facilitate the transition to the New Constitution under which the Supreme Court is invested with the sole and exclusive jurisdiction in constitutional and other matters and is constituted the final court of appeal of not merely what are now provinces under the present regime, but also of Indian States.

The only difference between the regime under the New Constitution and this Bill is that whereas under the New Constitution the Supreme Court will be the final court of appeal not only from the High Courts in what are known as the provinces, but also from High Courts in the Indian States, at present the jurisdiction of the Federal Court is confined to matters which arise or might arise under the Instrument of accession of the different States. Instead of detailing the various heads of jurisdiction, reference is made in clause 5 to all heads of jurisdiction which His Majesty in Council has been exercising before the appointed date.

There is one point which is a very important one and which I alluded to in the course of the discussion, namely, that the judgment of the Federal Court shall be enforceable throughout the Dominion of India and appropriate provision has been introduced to make the judgment enforceable.

Then I wish to make only one or two general observations. The Bill, in anticipating the provisions relating to the powers and jurisdiction of the Supreme Court, marks the final stage in the history of the relations between the Courts in India and the Privy Council and gives effect to the Principle of judicial autonomy which is becoming an essential feature of domonion status even in Dominions which acknowledge allegiance to the British Crown. Whatever might be said about the executive government under the regime which has come to an end with the Indian Independence Act, there can be no doubt that taking a broad and disinterested view of the matter, the record of the Judicial Committee of the Privy Council has been a splendid one. The reports enshrined in the volumes of Moore's Indian Appeals and later in the Indian Appeals, bear ample testimony to the worth of the Privy Council. They have enriched Indian jurisprudence in many respect including our personal law. I may mention here that in the law of Adoption itself, though earlier, owing to an imperfect understanding of the Hindu law a broad view was not taken, they have since taken a broader view even before the Indian High Courts took such a step. It has rendered notable judgments in the field of the Statute Law of India too. It has contributed very much to the development of the commercial law of India. Occasionally there might have been legitimate complaints in regard to matters affecting the liberty of the subject in which the Judicial Committee has not always taken a view which has commended itself to the Indian people. But, on the whole, the verdict of history would be in favour of the Judicial Committee and there can be no more illustrious example for our Federal Court and Supreme Court to follow than the Judicial Committee of the Privy Council.

There is however, one point which I would like to emphasise *viz.*, either the Federal Court or the Supreme Court must not blindly follow the precedents of the Judicial Committee. It is hoped that both the Federal Court and the Supreme Court will evolve a jurisprudence suited to the genius of the people and the conditions of our country. The Federal Court now and the Supreme Court under the new dispensation will occupy a position of unique importance and the verdict of history would largely depend upon the independence, the ability and the learning which they would bring to bear upon their task.

Shrimati G. Durgabai (Madras : General) : Mr. President, I could not resist the temptation to speak a few words on this occasion which I consider is very important. To avoid taking up much of the time of the House I would straightaway say what I have to say.

I welcome this Bill which is going to be passed in a few seconds and which is a great land-mark in the judicial history of India. When this Bill is passed it will serve the long-standing connection existing between the Indian system

[Shrimati G. Durgabai]

and the British system in the judicial sphere. I daresay, as a student of law and also a practitioner who is acquainted with the matter this connection, has benefited our Indian law and Indian system of jurisprodence greatly. I have had occasion to read the judgments of the Privy Council and other important decisions which were mentioned by Shri Alladi Krishnaswami Ayyar just now. I felt proud of that connection which had done substantial benefit to us. Therefore we should pay a tribute to this connection from which we are now parting.

This Bill when it becomes an Act will usher in the era of judicial autonomy in India. The important changes made therein are all corollary to the political and constitutional independence of this country. When the Constitution is passed our Federal Court will be designated as the Supreme Court. It will be the highest court of appeal for all high courts and also the judicial authority for the interpretation of the Constitution. We wish and we hope that the Supreme Court which is going to be the guardian of the Constitution and of the fundamental rights guaranteed therein, will do its function very well and every citizen in India will have the occasion to say that it has protected his rights as a true guardian of this Constitution.

Sir, there was criticism heard this morning here that we are continuing the jurisdiction of the Privy Council in certain matters. May I say in reply that this will be so only in the class of cases, as Dr. Ambedkar explained, where the judgment has already been delivered or where the report has been made to His Majesty or where the cases have been entered in the list of the business of the Judicial Committee. All the other cases will be disposed of here. We have also made provision in clause 5 that if only leave has been granted after 10th October, the further steps will have to be taken only in the Federal Court. There are some 20 or 25 such cases and these, if they are not decided before 26th January 1950, will have to be taken over to India. It is only just and fair and polite on our part not to take away such classes of appeals which I have already mentioned. With these few words I commend this Bill and say that it will be a very interesting period in our history to watch the progress and functions of the Supreme Court.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I congratulate Dr. Ambedkar that at least now he has found it necessary to bring in this Bill. On a former occasion when a Bill was brought before Parliament for enlarging the jurisdiction of the Federal Court some of us suggested that all the appeals pending before the Privy Council should *ipso facto* be transferred to the Federal Court and the jurisdiction of the Privy Council abolished forthwith—this was in 1947- we do not know why Dr. Ambedkar vehemently argued against it. I am, however, glad that before the Constitution is passed abolishing the jurisdiction of the Privy Council Dr. Ambedkar has chosen to bring in this Bill. This morning I read in the newspapers that even Canada is taking steps to abolish the jurisdiction of the Privy Council and vest that jurisdiction in their own Supreme Court. Therefore, whether we declare ourselves a Republic or not, this step ought to have been taken earlier.

I have the greatest respect for the Judges who sit in the Privy Council. Between Indian and Indian, from what I have been able to see, they have rendered justice. There may have been occasions when we did not agree with them in their judgments when the interests of Europeans and Indians clashed. Now, a heavy responsibility falls upon the Federal Court in the matter of capacity, in the matter of integrity and in the matter of ability. In times when contending political parties are there, each contending to overthrow the other, trying to win mastery over the other, it is difficult to keep calm in that atmosphere. Therefore, all the greater responsibility falls upon the shoulders of the Judges of the Supreme Court and also the President who in future has to select proper men for filling up these posts.

The Privy Council might have given a lead in many matters, but so far as social legislation was concerned, we have our own grievances against it. It wanted to fossilise ancient practices. It considered many things under the personal law of the Hindus obsolete. An Indian Supreme Court would not have taken that view. Many things could have been accomplished by an Indian Court interpreting them otherwise. Many things are done not merely by statute law. They are allowed to progress. If the courts can help by way of interpretation, many things can be done, many revolutions could take place without people noticing them, and progress can be achieved without the legislature embarking on any legislation. I am sure that the future Judges of the Supreme Court, when it comes into being, will certainly rise to the occasion and justify this transfer of power, this transfer of jurisdiction, from the Privy Council.

Now, so far as the jurisdiction of the Privy Council being allowed to continue even after the 10th October is concerned, I am sure that on the date on which we declare India to be a Republic, if any appeals are pending before it, they would be automatically transferred to the Supreme Court. Already there is a provision in the Transitory Provisions of our Constitution that all such appeals would stand automatically transferred to the Supreme Court.

Sir, I have great pleasure in congratulating the honourable Member that at least now he has thought it fit to bring forward this legislation. With this, the last link with the British will be going. When the British came, they tried to exercise jurisdiction over us, instead of allowing us to settle our own affairs. That link is broken now. I congratulate ourselves and I congratulate the honourable the Mover of this Bill for having brought forward this legislation.

Pandit Thakur Das Bhargava : Sir, I have very great pleasure in supporting the motion that this Bill be now passed. Our connection with the Privy Council for such a long time is now brought to a close. We must on this occasion pay our homage to the Privy Council which has so greatly helped us in the evolution of our laws during the last 175 years. The great traditions of the Privy Council, its impartiality, its independence and its other characteristics would now have to be inherited by the Supreme Court, and we hope that the Supreme Court would rise to the same height.

Now, Sir, the system of Great Britain and the system of America which we have copied make it absolutely clear that it is the courts which are the final arbiters of the rights and liberties of the people. If we have adopted that system, it is but meet that our Supreme Court should be a court of final jurisdiction. Many countrymen of ours have taken a prominent part in the deliberations of the Privy Council on the Judicial side as Judges. I am glad that the Drafting Committee has now proposed to abolish the jurisdiction of the Privy Council and conferred that jurisdiction on the Federal Court of the same character as the Privy Council was enjoying.

Now, the King in any country has some prerogatives. I do not want to say what those prerogatives are, but it is sufficient to say that the King is regarded as the fountain of justice, that he is above the law, he has powers of reprieve and pardon, etc. The same powers are now granted to the President. Even if the courts have convicted a person, the King in his prerogative can grant pardon or reprieve.

There are many cases on the criminal side where the Privy Council in its jurisdiction upheld principles of natural justice and decided cases on such basis. It is true that in criminal matters it interfered with the lower courts on very rare occasions—as I said it was a special kind of jurisdiction—but it was always in the interests of administering justice. I hope, Sir, that now

[Pandit Thakur Das Bhargava]

that our Federal Court is invested with the same jurisdiction, the Federal Court also would rise to the occasion and do the work which every court is expected to do. Though we have not succeeded in giving our ordinary courts such supremacy over the executive as we desire, all the same this Bill is a landmark in that it transfers to the Federal Court the jurisdiction which has been so long enjoyed by the Privy Council. I hope this will ensure justice to all individuals. I am happy, Sir, that now all cases in India will be decided by our own courts. Sir, while paying my tribute, I want to place on record our sense of gratitude to the Privy Council which has for such a long time distributed even-handed justice to all.

Mr. President : The question is :

"That the Bill, as settled by the Assembly, be passed."

The motion was adopted.

DRAFT CONSTITUTION — (*Contd.*)

MOTION *re* TRANSLATION OF THE CONSTITUTION

Shri K. M. Munshi : Mr. President, Sir, I beg to move the resolution which stands in my name :

"Resolved that the President be authorised and requested to take necessary steps to have a translation of the Constitution prepared in Hindi and to have it published under his authority before January 26, 1950 and also to arrange for the preparation and publication of the translation of the Constitution in such other major languages of India as he deems fit."

Sir, the House is fully aware of the steps that were taken by you with regard to having a Hindi translation of the Constitution. In 1947 a Committee was appointed, with my honourable friend, Shri Ghanshyam Singh Gupta as Chairman. That Committee produced a Hindi draft. Later, at the request of the Steering Committee, Sir, you were pleased to appoint an Expert Committee on the 15th March 1949 for the purpose of revising that Constitution. The members of that Committee, as is known to the House, were distinguished scholars associated with literary activities in different provinces in India. The members of the Committee were Shri Ghanshyam Singhji (Chairman), Mr. Rahul Sankrityayana, ex-President of the Hindi Sammelan, Mr. Suniti Kumar Chatterjee, one of the greatest experts on Indo-Aryan languages in India, Sri M. Satyanarayana, a gentleman who more than any other single person has done the utmost to spread the Hindi language in the South, Mr. Jayachandra Vidyalankar and Mr. Date, a well-known authority in Marathi. This Committee has revised the other translation; it is in the press and a considerable section of the House expected that the translation would have been completed in time to be placed before this House. But several difficulties are in the way. The time is not sufficient; it would also involve the Constituent Assembly meeting even after the November Session if that version is to come before this House; and the costs also will be disproportionate. In view of these factors, it is much better that the translation, after it has been revised either by you, Sir, or as it is produced by this Expert Committee, or revised by any other agency that you might think proper, may be published under your authority. It is absolutely necessary that on the 26th of January we should have a translation in Hindi published under your authority, the reason being that no sooner this Constitution is passed on the 26th of January, all the Indian languages will require some basic glossary and some basic translation for the purpose of adopting it in the different languages. At present what happens is, that in every province newspapers are translating the words in the

Constitution in any way they like. Some translations are extraordinarily funny and some are accurate, but it is necessary that the whole of our constitutional terminology should be published in some kind of authorized form, so that the translations in our languages may become easy. Once this constitutional phraseology becomes current, once there is one translation published in Hindi, it will be very easy to have a common terminology throughout the country. Not only that, but if there are going to be any further authorized versions, it will provide a basis for that purpose. Therefore, it is absolutely necessary that we should have this translation.

One thing more, and I have done. The experts on this Committee are in their own respective spheres the best that India could produce and no doubt their translation would be of a character which will command weight all over the country. Some expression of opinion is found in some papers that the translation is likely to be very heavy. Now that is a matter of opinion, but for the life of me, I cannot understand how there can be any version of our Constitution in any Indian language without our having to coin new words to express the legal and constitutional concepts which we have expressed in English in this Constitution. In all our languages, except Sanskrit, there is no complete vocabulary of legal and constitutional terms. Even the Sanskrit Vocabulary is inadequate and we may have to coin new words in order to express certain modern concepts of constitutional law. Therefore, it is inevitable, I submit, that whichever the translation, it will have to be largely drawn from Sanskrit. I find that there is a considerable prejudice amongst certain classes of people in this country who seem to think that even constitutional and legal terminology could be so framed as to be accessible to what is called the 'common man'. Nowhere in the world has a complex constitution like this bristling in every section with different constitutional aspects been worded in easy or so popular language as to be accessible to the common man. Even among our lawyers, I am sure many phrases that have been used in this Constitution,—phrases which have been borrowed from the American or the English Constitution—are such as are not easily accessible to an ordinary lawyer and not even accessible to lawyers of considerable standing. They are strange words to them unless they familiarize themselves with constitutional law; much more so in language like ours; and I think it is necessary that our new terminology should be largely drawn from Sanskrit introduced in words or words which are framed on the basis of Sanskrit roots. As soon as that is done, I am sure it will provide a nucleus for not only consolidating the phraseology of all our Indian languages, but lay the foundation of the new Hindi, the lines of development of which this House decided upon three days ago. With these words, I commend this resolution for the acceptance of the House.

Shri H. V. Kamath (C.P. & Berar : General) : Mr. President, Sir, while supporting generally the motion moved by my honourable Friend, Mr. K. M. Munshi just now, may I place before the House certain amendments to this motion? I am sorry, Sir, that because this agenda was received only last night. I could not give notice of the amendments in time, with the result that my honourable colleagues have not got copies of the amendments.

I shall now therefore read them out one by one.

"(1) That in the motion, for the words 'the President be authorised and requested to' the words 'the President do' be substituted.

(2) That in the motion for the words and figures "before January 26, 1950" the words "as speedily as possible" be substituted.

(3) That in the motion, for the words "the preparation and publication", the words "the early preparation and publication" be substituted.

[Shri H. V. Kamath]

(4) That in the motion, for the words "other major languages", the words "other languages" be substituted."

If these amendments were accepted by the House, the motion would read as follows : —

"Resolved that the President do take necessary steps to have the translation of the Constitution prepared in Hindi and to have it published under his authority as speedily as possible and also to arrange for the early preparation and publication of the translation of the Constitution in such other languages of India as he deems fit."

Taking amendment No. (1), I feel Sir, that the expression used in Mr. Munshi's motion is somewhat clumsy. When the House adopts a resolution, *ipso facto* the President is authorized in pursuance of that resolution. It is not necessary to state in a Resolution that the President is authorized to do such and such a thing. We resolve that the President do take steps and that itself is an authorization and a request; and I, therefore, feel that the words "authorization and request" are unnecessary for the purpose of this motion, and moreover they detract from the dignity of a motion to be adopted by this House.

As regards amendment No. (3) which seeks to insert the words "early preparation and publication," I need not dilate upon this much. I believe that Mr. Munshi intends, and the House also intends, that the translation will be done early in other languages too. I only wish to make it very clear that this matter or this translation in other languages will not be postponed indefinitely.

Shri B. Das : Sanskrit also.

Shri H. V. Kamath : My amendment is for the addition of the word "early" and it is a slightly substantial amendment too; but I leave it to the collective wisdom of the Drafting Committee to incorporate it in such manner as they deem fit.

In the last amendment, I wish to substitute "other languages" for the words "other major languages". After all, who are we to say here which language is major and which language is minor? We have not adopted any motion or even an article on the various languages; nor have we stated in any schedule which language is major and which minor. If we adopt the motion as moved by Mr. Munshi to the effect that the translation will be in such major languages as the President may deem fit, suppose the translation is not done in some particular language, naturally the people of the country speaking that particular language will feel hurt that theirs is considered a minor language and therefore it has been omitted. It will have a bad psychological effect. To avoid any invidious distinction between one language and another, I wish to delete the word "major" and say, that the President shall order translation in such languages as he deems fit, leaving the matter to him to decide. It is not for us to say here which is a major language and in which major language or languages the President may order translation of this Constitution. The interruptions of my friends Mr. B. Das and Mr. Chaliha also show which way the wind is blowing. They also feel hurt as to the incorporation of the word 'major'. Suppose, for instance, Assamese is not included by the President,—I do not mean to suggest that it will be excluded,—or Oriya is excluded, they will feel that theirs is not a major language. Therefore, the best thing is to delete the word 'major' and say "such other languages as the President may deem fit".

Coming to amendment No. 2 by means of which I seek to substitute the expression "before January 26, 1950" by the words "as speedily as possible", I have to advance two or three arguments in support of this amendment. Firstly, the House will recollect that on the closing day of the last session, we adopted a resolution about the next general election, the preparation of electoral rolls and other ancillary matters. The argument was put forth even on that occasion that

it is not proper to bind the House to a particular date; and Dr. Ambedkar had to admit in his reply to that debate that if for some reason or other we were unable to prepare the electoral rolls early enough and if therefore the elections were to be postponed beyond the end of 1950, we will have to state our reasons, bring another motion before the House and thereby get the original motion amended. Therefore, it is not wise I think to specify any definite date. I hope, nay, I am almost sure, that the Committee which the President will set up will strenuously labour at this task of translation and get the translation ready even before, long before the 26th of January. But, there is many a slip between the cup and the lip and unforeseen circumstance at times arise which upset the plans of men. Therefore, I think it would be the part of wisdom to delete any reference to any particular date and just say, 'as speedily as possible'. It may be ready even in a month's time. If you fix a date, it is likely that it may be published just the day before, the 25th of January. That would be within the ambit of the motion which we are discussing.

I would however request and I would plead strongly that the Hindi translation of this Constitution must be ready long before January 26, 1950, even within a month or six weeks, so that if possible, this Hindi translation of the Constitution may be brought before the House during the Third Reading of the Constitution. For that purpose, I would not mind even if the Third Reading is so adjusted that it falls, say in early December or even early January. When once we have passed the Second Reading of the Constitution and the Electoral rolls are being prepared at a pretty fast pace in the country, there is no reason why we should hustle the Third Reading of the Constitution before the Hindi Translation is ready.

We have adopted Hindi as the State Language and Official language of the Union only two days ago. It is therefore only right and proper, and in the fitness of things that at the Hindi translation at any rate, the State language translation should come before the House at the Third Reading of the Constitution. For that purpose, I would suggest that the Third Reading of the Constitution be postponed to early December or, even early January; and we can be ready with the final draft in English and Hindi before the 26th of January. If unfortunately something happens, some circumstances arise owing to which we cannot adopt the constitution, and promulgate or inaugurate our republic on the 26th of January 1950, I feel there is no reason to feel any compunction on that score because to my mind, though the 26th of January has got its own sanctity as being the Independence Day on which twenty years ago we took the pledge of Independence, yet it is conceivable, it is likely that we may have yet another date in our National Calendar. After the 15th of August 1947, last year and even this year, the 26th of January has been observed as Remembrance Day and not as Independence Day. Now, if this Constitution proceeds at its usual pace we need not hurry it up just to synchronise it with independence Day, the 26th of January. I have no objection to that date: I would welcome that date. But, if it is not finished by that day, we can have a new date in our National Calendar, call it the Republic Day.....

Mr. President: You are discussing a subject which is not germane to the motion.

Shri H. V. Kamath: The date, January 26, is there mentioned in the motion I thought that has reference to Independence Day. I am not dilating on it; I only feel that we may have a new date in our National Calendar, call it a Republic Day and celebrate it annually. I only feel that the Hindi Translation of the Constitution must be before the House during the Third Reading of the Constitution, especially, in view of the fact that Hindi has been adopted as the State language, the official language of the Union just a few days ago. If the Third Reading is passed without the Hindi Translation before the House, I think we would be doing a wrong to this very House which has adopted this language as

[Shri H. V. Kamath]

the State language and official language of the Union. I commend my various amendments to the House for their consideration and acceptance.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General) : Mr. President, Sir, I stand here to support the motion of Shri K. M. Munshi but I must confess that I am not very happy over it. If I had my way, I would very much have liked that the Hindi version of the Constitution also could have been adopted by this House. It was also your desire that the version in the official language of the Union should be passed by the House but there were obvious difficulties also. The question of the official language was not decided earlier and therefore the time left is very short. If earlier decision had been taken about the official language of the Union, then it would have been more easy for us to pass the Constitution in our own national language also. But as it is, it seems to me that this is probably the best under the circumstances.

But, Sir, I appeal to the House about one thing. There is no doubt that we have decided that English shall go. It shall go during the period of fifteen years or earlier and in some respects it might take a longer time, but when English goes and English is replaced in the Centre by our official language Hindi, then at that time we will only be left with the authoritative text of the Constitution in English and only a translation in Hindi. I would very much wish that the Steering Committee and Dr. Ambedkar in their deep wisdom might find a way in which we could say that the provision is there that we have our authoritative version of the Constitution also in Hindi which can be used say after about fifteen years. As the resolution stands by itself, even after twenty or twenty-five years we would only have the translation. It will not have the sanctity which attaches to a Constitution adopted by the House. It will be absent in the translation in our national official language Hindi.

What I would very much request Dr. Ambedkar and the Drafting Committee to consider is to find out a formula by which some day we may be able to say that this Constitution which is in Hindi has the sanctity of the Constitution passed by the House itself and not merely that of a translation. There is section 304 but then I find that that section would not be quite sufficient for the purpose. If the Drafting Committee could draft another provision in this Constitution itself by which some such provision is made that after English ceases to be the official language of the Union, we may have our Constitution in Hindi adopted by the Union Parliament to which the same sanctity could be attached as if it was passed by the House, I would be very happy. This is the side of the case which I must humbly but most emphatically wish to bring to the notice of the Drafting Committee. I am sure that the ingenuity of the Drafting Committee will evolve a formula by which this would be possible and our sons and grandsons will not be left in the position in which they will say that there is no such thing as sanctified Constitution in our national language, and the sanctified constitution is only in the English language. That will not be very creditable for us. Even a small country like Ireland drafted their Constitution in both the languages, in their own language and in the English language. But they took very early steps and therefore it was possible. I do understand and realize the difficulties but I would appeal that a way should be found out in which what I have said may be possible.

Now I have the good fortune of being associated with the Hindi translation from the very beginning and I know the difficulties of translation. Therefore I do realise that our words have to be settled. They have to get implications and that is bound to take some time. I will not like to take the time of the House to show as to how we are proceeding with this translation. In choosing of a vocabulary which has any technical significance we take good care that the vocabulary is such as is acceptable not only to the Hindi area but to all the regional languages of the country—Marathi, Bengali, Gujarati and the languages

of the South. Any word which is not acceptable to Shri Satyanarayanji or to Dr. Chatterjee or to Shri Date, we reject. We take words which are unanimously agreed upon so that we may have the basis for future terminology of technical terms (so far as the Constitution is concerned) not only for Hindi but for all the major languages of India. And our difficulties have been very very great indeed. I can tell this House what I have often told you that I have never devoted so much time, so much energy and so much attention, even as a student in any of my studies, as I have devoted to the work which you were pleased to entrust to me and my colleagues. I support the motion.

Dr. P. S. Deshmukh (C.P. & Berar : General) : Mr. President, I must confess I am somewhat unable to understand the purpose and necessity of this resolution. We are going to request and authorise the President to take necessary steps to have a translation of the Constitution. I do not think your authority was limited even as the President of this Assembly, to have a translation not only in the Hindi language but in the various languages of India. Secondly, this authority does not mean that the translation the President is going to get prepared is going to be the authorised translation. If this resolution was at all necessary, it should have been provided that any such translation which the President will promulgate shall be the authorised and recognised translation of the Constitution.

My second difficulty is, I do not know when the President is going to come into being. If the Constitution is to be promulgated on the 26th January, 1950, then what is the sense in saying that the translation should be prepared before that date? I do not conceive that unless this Constitution comes into being and is promulgated, the President can come into existence. If the President cannot come into existence before 26th January, 1950, what kind of translation is to be published before that date I am unable to understand.

Shri R. K. Sidhva (C.P. & Berar : General) : The President of the Constituent Assembly is already there.

Dr. P. S. Deshmukh : If it is the President of the Constituent Assembly, then I beg pardon. I took him to be the President of the Union. If it is the President of the Constituent Assembly, who is meant I do not think the resolution is necessary. The work of translation is already going on and we can provide that the translation prepared by the President, or published by or through him should be the official translation which shall be recognised by everybody.

Then Sir, I think there is no necessity for the changes which have been suggested by my friend Mr. Kamath. The wording as it stands would probably serve the purpose. But in any case, the word "major" should be altered, or omitted altogether. It is especially difficult to define what are major and minor in this connection. It is not the phraseology we have accepted anywhere and it is therefore better to omit the word altogether.

Then I support the suggestion made by Mr. Gupta so far as accepting the translation as the only authorised version of the Constitution, at some date or the other, and the sooner it is done the better. If it is our intention that after fifteen years period Hindi should be recognised as the only official language, that it should be used more and more, then the best place where it should be brought into use is the law courts. I am sorry to see that in the various law courts and in the High courts, English is to be the language in use. I differ very vehemently on this point. The language in the law courts is very important because it results in so many other things. If the law courts are to use English, the lawyers will perforce have to be proficient in English and there will be so many others who will have to give preference to English. Therefore having the Constitution in Hindi and recognising it as the only

[Dr. P. S. Deshmukh]

correct version is very important from many more points of view than the point of view of convenience only. And if it is our intention that Hindi should be recognised more and more, it should be possible for the President of the Union to declare that from such and such date, the English version of the Constitution shall cease to have effect and that the Hindi Constitution will be the only one to be referred to and interpreted by law courts. I think this suggestion is very welcome and I hope it will be possible for Mr. Munshi to accept it.

Seth Govind Das (C.P. & Berar : General) : *[Mr. President, Sir, I am very much dissatisfied with the resolution moved by Mr. Munshi. You might remember that years back I raised the question of adopting the Constitution in our National language. Whenever the Constituent Assembly met in session and I got an opportunity of speaking, I placed before you the proposal that our Constitution should be adopted in our own language. You might remember that whenever I raised this question you gave the assurances that the Constitution to be adopted will be in our own language. The resolution moved in the House means that the Constitution will be translated into Hindi. It will only be a translation and not the original one. When English is going to be altogether banished. I fail to understand how we will carry on our work if the original draft of our Constitution would be in English.

This resolution means that we still want to maintain English on the same pedestal which it occupied during our slavery. I want to tell you that whatever difficulties we may be conronted with, we feel even today that the original draft of our Constitution should be in our national language.

We have been meeting in this Constituent Assembly for the last three years. It was after thousands of years that we got an opportunity to have this Constituent Assembly. Is it not possible for us to meet for a month more for this work? If we cannot meet now, we can do so after some time. We want to adopt the Constitution on the 26th of January next, and we have sufficient time at our disposal. During this period we can set aside a month to adopt our Constitution in Hindi. The resolution put forward by the Steering Committee in this regard was altogether different from the resolution moved by Mr. Munshi today.

We know that there are a number of Members in the Constituent Assembly who do not understand Hindi, but I would like to say that there are some Members also who do not understand English. A number of Members do not understand many words used in the Constitution. It is possible that when we shall place before this House our constitution in Hindi, many of its words also would not be understood by a number of Members. But this is no argument for not adopting the Constitution in Hindi. When we are adopting the Constitution in English, even though a number of Members do not understand many of its words, there should be no difficulty on the same ground to adopt our Constitution in Hindi also. When we have accepted Hindi as the *lingua franca*, as the State language it is very necessary that our original draft of the Constitution should be passed in Hindi after the English version of the Constitution is adopted. It should not be a translation. It should be the original Draft. The Constitution in English too can be brought into force together with it as is the case in Ireland. I want to say with emphasis that the original draft of the Constitution should be framed in our own language and if there is any difference anywhere in our original draft and the English the original draft should be taken as authentic and not the English draft.

*[ ] Translation of Hindustani speech.

This is a question of our prestige. This is a question of our national prestige. Ours is a vast Country and it has a big population. It has an old history and old culture. If after the dawn of freedom in such country its Constitution is not framed in the language of the country, it would be a matter of deep and unlimited humiliation and shame for us. I am very much dissatisfied with the resolution moved by Mr. Munshi, and I want to tell you that the time has come for fulfilling the promise made by you at the time we commenced our work. At that time it was said that so long as the question of the national language is not decided this cannot be done. Now the question of the national language has been solved and there is no difficulty in fulfilling that promise. Whatever has been done in this House from beginning to end in regard to Hindi has not been right. The effect of all that has been that there is discontent among the people and they are taking no interest in our work, although the people of a free country should take sufficient interest in the framing of their constitution. If we do not adopt originally our Constitution in our national language, there is bound to be discontent among the people and they would take absolutely no interest in the Constitution.

In the life of a nation such difficulties present themselves many times, and I appeal to you that it should be the primary duty of our leaders to solve these difficulties. Whatever may be the difficulties we should remain firm and stick to our ideas and objectives. At the outset the Steering Committee had accepted that our Constitution should be framed in Hindi and that a Committee of the House should be appointed to formulate it. We should sit for a month and consider all the Drafts that have been prepared so far and should adopt our Constitution in our national language.]

Shri R. K. Sidhva: Mr. President, Sir, I wholeheartedly support the motion moved by Mr. Munshi. I attach great importance to the publication of this Constitution in various languages, particularly in Hindi. I also attach even greater importance that this Constitution in the various languages should be published particularly on the 26th January, 1950. We have adopted Hindi as our national language and to publish only the English version on the 26th January, and the Hindi one later as was suggested by Mr. Kamath, would not be proper. It is essential that the two must be published simultaneously. I would even wish that the publication in the various other languages, I mean the fourteen languages which we have passed in the Schedule must also be done as early as possible. But I know the difficulties you, Sir, will be confronted with. Therefore it has been said that the English and Hindi versions shall be published by the 26th January, and as for the others, it has been left to you to see that they are brought out as early as possible. A very large number of people who could really take advantage of reading this Constitution in their languages should be enabled to do so. Therefore, the translation of the Constitution in these languages should be published as early as possible. I hope it is not intended by "such other major languages of India" that the Constitution should be restricted only to a few languages. The major language means those who would benefit the larger number.

At an earlier stage we had stated in this Constituent Assembly that the Draft Constitution should be given the widest publicity and I think you, Sir, also stated that a very large number of copies will be published. But I may state that in January of this year I was addressing a public meeting on the Constitution. Visitors after visitors stated that they applied to your office and also to the book-sellers and to the Bombay Government but they could not get any copy. I found on enquiry that all the copies were exhausted.

Dr. P. S. Deshmukh: Are you referring to the English copies or to the translation?

Shri R. K. Sidhva: I am referring to the English copies. We had stated that the people should take interest in the matter, acquaint themselves with it and as a matter of fact express their opinions through the medium of the press and also by sending them to the office of the Constituent Assembly. I do not know how many copies were printed. I make a suggestion that a very large number of copies of the Constitution in English and Hindi should be published on the 26th January so that everyone who so desires should be able to get a copy.

I would also make one other suggestion that you, Sir, on your behalf and on behalf of this Assembly should give a short synopsis of what we have done during these three years and what are the special features of the Constitution. It should be available both in Hindi and English. That will be interesting and people would like to read it.

As regards the suggestion made by my Friends Seth Govind Das and Shri Ghanshyam Singh Gupta I do appreciate that this Constitution in Hindi should have come here. But it is really difficult if you want to go clause by clause. And it has to go clause by clause—every Member has a right to discuss the Constitution clause by clause in Hindi as we have passed it in English. Of course they cannot make any special suggestions now. But in regard to the translation there are many experts in Hindi here. They will say 'this word is not suitable, this should be there' and they have a right to say so. I do not agree with Seth Govind Das that it can be done in one month. It will take six months if you want to pass through all the stages.

While I admit the force of the argument I would like to make a suggestion. Eventually the Hindi Constitution will prevail because within fifteen years or after fifteen years English will go. Therefore we must have a duly authenticated Constitution in Hindi. It will not be the version that you will be publishing. In my opinion something has to be done and that is later on it has to go to Parliament for this purpose. The Hindi translation of the Constitution must be an authenticated translation for the purposes of interpretation in the Supreme Court. Where there is a difference of opinion in the interpretation it is very necessary. I do appreciate that point of view. Now only the English Constitution will be there for the purpose of interpretation. But English has to go. Therefore the Hindi translation must be an authenticated one. This Constituent Assembly will be dissolved and therefore it cannot meet. My suggestion therefore is that some arrangement should be made for this purpose. If it is necessary to be made a clause in this Constitution I have no objection. But the matter must go to Parliament and Parliament must have the power to pass that Hindi translation.

I appreciate that Hindi now having been recognized the Hindi translation should have the fullest support of this Constituent Assembly, that is to say, the Third Reading of the Constitution in Hindi should have been passed by the Constituent Assembly. But practical difficulties come and it will not be possible for us to bring in this Constitution on the 26th of January, 1950. I strongly support the motion and I hope you will bear this little suggestion of mine that it will be very much appreciated if you attach a little brochure explaining what we did for three years, what immense work we had to do, how we had to change clause after clause and article after article, and what an amount of effort and work has been done by the Constituent Assembly. Let it not be misunderstood by the public that we have wasted so much time. On the contrary I consider that if we have lengthened the period of this Assembly it is for the advantage of the country. What we did in 1948, half of it we have scrapped now. After gaining experience and after mature consideration we have introduced many important articles. I very much appreciate that. I am not at all sorry—I am glad that the period has been

somehow, by God's act, extended. It was not the desire of the Members of this Assembly that the period should thus be extended. We had wanted to pass it earlier in 1948. But God preferred that it should be extended. It is very good that as a result of this extension, after full consideration and in the light of the experience that we gained in the country, we have been able to change many of the articles.

With these words I strongly support the motion.

Mr. President: Mr. B. Das.

Shri T. T. Krishnamachari: Sir, the question may now be put.

Mr. President: I have already called Mr. Das.

Shri B. Das: Sir, I support the resolution moved by my honourable Friend Mr. Munshi. I do hope he will see the points brought forward by my Friend Mr. Kamath and accept his third and fourth amendments. I do not like my Friend Mr. Kamath asking us to pass a resolution that the President "do take the necessary steps". The President has been our mouth-piece, the embodiment of our conscience, the embodiment of the spirit of this House over the sovereign Constitution which we have framed. Whenever any contacts take place with the outside world it is the President that has represented all our sovereign rights, all our conscience, all our hearts, and corresponded with them. So it is not for me to say that the President "do this". If I had drafted this I would have done away with the words "The President be authorised". I would have only said that "the President be requested to take necessary steps" and that satisfies me because we have trusted him and he will carry out the will and the wishes of this sovereign Houses as our chosen head and as our mouth-piece.

As regards the suggestion, which has also been supported by Mr. Sidhva and Dr. Deshmukh that the translation should be made available in all the languages that have been included in the Schedule as early as possible. I would suggest a *modus operandi* for that. We find that whenever any Bill is introduced in the Parliament at once the Provincial Governments take steps to translate it in the Provincial languages and circularise it or publish it in their gazettes. So, if the Honourable the President can take advantage of the existing machinery of the various Provincial Governments, then the translations in the languages—of course the translation in regard to Hindi will be the official version that will come from my friend the Honourable Sjt. Ghanshyam Singh Gupta—but the translation in the other languages could easily be done within a month's time and then on the 26th of January 1950 all these translations—in Oriya, Assamese, Bengali, Gujerati, Telugu, Tamil, Kannada and every other language of the fourteen languages—will be available. Whether a translation in Sanskrit will be available I do not know. We will have to approach the various Pandits headed by my Friend Pandit Lakshmi Kanta Maitra and ask them whether they can work over it and produce a translation for the Pandits that inhabit the sacred places of India. But I do hope my Friend Mr. Munshi will accept Mr. Kamath's suggestion, modified by Mr. Sidhva, of having the translations in the other languages as described in the Schedule to the Constitution.

Sir, I will echo the feelings of the House if I say that the House is grateful to my honourable Friend the Honourable Sjt. Ghanshyam Singh Gupta for the labour and efforts that he has devoted to the Hindi translation. Whether it will be the accepted version ten years hence I cannot say, but it must be the accepted version in the country from the date it is published by your orders. But as regards the suggestion of my Friend Seth Govind Das that the Constituent Assembly should be prolonged infinitely and should pass the Hindi version, Sir, though I agree with the sentiment I do not agree with the proposal. Although the Constituent Assembly has continued for three years

[Shri B. Das]

and we are hoping that on the 26th January next we will declare a Republic when this Constitution will be promulgated, still to quote Mr. Kamath, "there is many a slip between the cup and lip". We saw two years ago the people of France had three Constituent Assemblies; they drafted three Constitutions, they are carrying on their faltering existence in some way on the 3rd draft.

Whether this Constitution will outlive all times, I cannot say. Already I hear criticisms from my friends the Socialists and from those who have gone underground, I mean the Communists, that they do not like this Constitution at all. We are not for all times going to be the Government of India—the Socialists are bound, to step in, though they will have to learn to acquire the capacity for administration of the Governments. They are mostly busy criticising the Congress and its ways—most of them were Congress members at one time or another. So, the Constitution may not be a permanent thing. Even if fifteen years hence from January 26th a Hindi version is necessary as the statutory and authorised version, by that time I believe so many amendments will have taken place in the very Constitution that it will be desirable to have the authorised translation in Hindi then. Perhaps then a new Constituent Assembly may be elected, not on the basis of franchise as the present Constituent Assembly was created but perhaps every State will send two or three representatives who will sit down and adopt the authorised Hindi version of the Constitution. But at present it will remain an educative version, it will not have any legal or statutory binding on the people. The very lawyers that preponderate in our country will seldom quote the Hindi version; they will always quote the authorised version of the English text which this House has passed.

So, that is not a very dreadful matter to me and I hope time and experience will evolve the proper form of the Hindi language so that a proper, authorised Hindi translation will be evolved at least ten years hence, when I anticipate that language will be accepted all over India as the national language and then that version of the Hindi text will be accepted as authorised text. Of course I admire his sentiment that he wants that the Hindi version should be an authorised version which this House is not at present in a mood to sit longer and pass.

Seth Govind Das: But when will it come?

Shri B. Das: It will come ten years hence and I will not be there, you will be there.

Sir, I do appeal to you, and we are putting our trust and confidence in you in this matter to see that the thirteen languages excluding English—I do not know if Sanskrit will come in—will have their own version and they will all be published on the 26th January next so that the countryside will know in detail as to what we did by sitting long hours, what are the rights and privileges that are conferred on them by the Constitution and what hopes they can cherish under our Independent Republican Government.

Mr. President: Closure has been moved and so I will put it to vote.

The question is:

"That the question be now put."

The motion was adopted.

Shri K. M. Munshi: Mr. President, Sir, I will first deal with the amendments moved by my Friend Mr. Kamath. I am very sorry that I am not able to accept any of his amendments. As regards the first amendment, the words "authorized and requested" have been appropriately used, firstly because the word "do" is mandatory and with reference to our President I do not think it appropriate to use a word like that, and secondly because the

word "authorized" has been used after considerable deliberation. I would have been extremely glad if the translation had been placed before this House and accepted as an authorized version of the Constitution. But as things were, it was not possible to do so.

Seth Govind Das: May I ask one question of my Friend Mr. Munshi? Is it not a fact that the Steering Committee first decided that a Committee of this House should be appointed which will go into the question and consider that translation and then that that translation should be brought here and considered as the original version?

Shri K. M. Munshi: It is an open secret, I moved those resolutions. I was keen that we should have the version accepted by the House, but the circumstances are such that it is not possible for us to do so—at least that is the view of the bulk of the Member of the House. Whatever my personal view may be or whatever the view of my honourable Friend Seth Govind Das may be, the general opinion of the House is that it is not possible to do so. Therefore, we have to accept the best possible substitute, namely, we are delegating that authority of publishing a translation to the President himself. It is a perfectly legitimate way of doing things in view of our difficulty. My Friend Seth Govind Das in his enthusiasm forgot what Mr. Sidhva said. My honourable Friend. Mr. Sidhva thinks that this version should be placed before the House and carried through, article by article, clause by clause, with the numerous amendments which the Members of this Assembly might bring forward...

Seth Govind Das: I say it can be done.

Shri K. M. Munshi: Well, it cannot be done in less than 12 months because I can assure my Friend Seth Govind Das that whatever he may think about himself or whatever I may think about my capacity to translate there are quite a large number of Members here who share my Friend Mr. Sidhva's opinion that they are great experts even in the matter of translating a highly technical subject.

Seth Govind Das: I guarantee that if you bring it up it will be passed within a month.

Shri K. M. Munshi: I am not prepared to accept that view and my learned Friend need not spend his enthusiasm on the subject, but I do say that we have to reckon with Members here like my Friend Mr. Sidhva. I have suggested the best possible substitute and that accords with the general views so far as I have been able to ascertain. We do not need a discussion, in a popular House like this, on the niceties of language. It is much better that it should be left to the President to get such expert advice as he thinks proper and to produce a translation which, though not approved by the House, is approved by the experts he wants.

Seth Govind Das: The same thing as was done for English may be done for Hindi also

Shri K. M. Munshi: Sir, I have said it once and I am prepared to repeat it again that I am carrying out the general wishes of the Members of the House.

Shri Mahavir Tyagi (United Provinces: General): Can you not use the word "version" instead of the word "translation"?

Shri K. M. Munshi: I would have been very glad to do it, were it not untrue. What we are doing is a translation. 'Version' means really-speaking rewriting the whole thing in an independent manner. This is a translation. Let us pass through the stage of translation. Then we can have an independent version of the Constitution, which it will be open to the Parliament to accept as the authorised version.

Seth Govind Das: Are you going to move any such resolution that the original version may be passed by Parliament?

Shri K. M. Munshi: I am afraid it will take an unduly long time of the House if I were to answer my honourable Friend's query.

The next amendment is of Mr. Kamath's who wants to substitute the words "as speedily as possible" for the words and figures "before January 26, 1950" I would feel happy if we could do it before the 26th of January, because after all it is a very technical and difficult work and cannot be turned out like cotton piecegoods.

In regard to Mr. Kamath's third amendment, I see no reason to suppose that this preparation would not be done with convenient despatch.

In his fourth amendment Mr. Kamath wants the words "other major languages" to be substituted by the words "other languages". The position is this. There are many more languages in India than the fourteen that were enumerated in the Schedule to the chapter on the national language. Among the fourteen languages we have included a language like the 'Kashmiri' which, I am told, is spoken by not more than ten lakhs of people. Now, it may be that some of these languages are not in use in courts. If that is so, there is no reason why there should be a translation in that language. The whole object is that this translation should be available to all persons who will be dealing with the Constitution either in courts of law or in schools or colleges, or to people who want to familiarise themselves with the constitutional concepts embodied in the Constitution.

Pandit Lakshmi Kanta Maitra (West Bengal: General): The Provincial Governments may be entrusted with the work of translation into different languages.

Shri K. M. Munshi: The President has been given the discretion to select such languages as he considers to be the major ones. It may be a waste to spend money on translation into, take, for instance 'Cutchi'. 'Cutchi' is a sort of language, though all Cutchies speak Gujerathi. Why should there be a translation in 'Cutchi'?

Some Honourable Members: 'Cutchi' is not a language.

Shri K. M. Munshi: Therefore we must give the President full discretion to deal with this matter. I, therefore, request the House to accept this motion.

Shri H. V. Kamath: Is my honourable Friend aware that the Irish Constitution was adopted in Irish as well as in English by Eire in 1937?

Mr. President: It does not matter. That will not solve the problem even if he is aware of it. I shall now put the amendments to vote.

Mr. President: The question is:

"That in the motion, for the words 'the President be authorised and requested to' the words 'the President do' be substituted"

The amendment was negatived.

Mr. President: The question is:

"That in the motion, for the words and figures 'before January 26, 1950,' the words 'as speedily as possible' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in the motion, for the words 'the preparation and publication' the words 'the early preparation and publications' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in the motion, for the words 'other major languages' the words 'other languages' be substituted."

The amendment was negatived.

Mr. President: The question is :

"Resolved that the President be authorised and requested to take necessary steps to have a translation of the Constitution prepared in Hindi and to have it published under his authority before January 26, 1950, and also to arrange for the preparation and publication of the translation of the Constitution in such other major languages of India as he deems fit."

The motion was adopted.

Mr. President: Now that the Assembly has adopted this resolution, I wish to say a few words, because it now falls upon me to implement it and I want the assistance and co-operation of the Members of this House, as also of others who may be interested in this subject, to help me in implementing it. So far as the Hindi translation is concerned, it has made considerable headway under the Chairmanship of Shri Ghanshyam Singh Gupta. We shall see how far that translation is acceptable and we shall also consider in that connection how far the particular expressions which have been used for technical words are acceptable to most of the languages of the country. For example, we have a word like "assembly" which is translated in different ways in different languages. It would be in the interests of the development of the country as a whole if we could have one uniform vocabulary for such expressions, at any rate for those parts of the country where the languages spoken are of Sanskritic origin.

In appointing the Committee which is now working on the Hindi translation, I took care to have representatives from different parts of the country and people who might be considered more or less as authorities on the subject. Even then I shall take further care to see to it that the expressions which are adopted finally are such as will, as far as possible, be acceptable to all the languages.

I, therefore, suggest to honourable Members present here who represent practically all the provinces and all the languages to give me some names. They should, in the first instance, discuss amongst themselves so that I might be able to say that these are the names suggested by the representatives of the various languages spoken in the country who are Members of the Assembly. Take, for example, our Tamil-speaking Friends. I would expect them to give me one or two names; I would expect the Telugu-speaking Friends to give me one or two names; I would expect the Bengali-speaking Friends to give me one or two names. Similarly if all the Members representing the various provinces and the languages will give me the names I would make a selection and appoint a Committee which will sit and finalise the vocabulary, so far as the constitutional and technical terms are concerned. If that is once accepted....

Sardar Hukam Singh (East Punjab : Sikh) : What about Punjabi-speaking areas ?

Mr. President: I have mentioned only two or three, by way of example. You are certainly welcome to give me the names you like.

If that vocabulary is once accepted, our work will become very easy. Then the translation will be a running thing which can be easily done.

[Mr. President]

I propose also to address the various Provincial Governments to assist me with the co-operation of their Translation Departments and any experts that they may have in their own employ. If I get these names soon, I think the work of translation could be expedited.

I believe there are many translations already made in various languages. Those translations might also be utilised and I would request Members who have information about those translations to give me information with regard to them.

Shri V. I. Muniswamy Pillai (Madras : General) : May I know when the translation will be over?

Mr. President : As soon as possible. But there is this difficulty which the House will bear in mind. We have not finalised the Constitution as a whole. There are still many articles which have to pass the Second Reading stage. Whatever translation is prepared now will be only with regard to the articles which have been finalised so far as the Second Reading is concerned. There may be some changes made further, but they will be only minor changes.

As regards the Hindi translation that work is proceeding on the basis of the articles finalised from day to day in the House. There is no other translation being prepared in that sense under our authority. But now that you have asked to get translations prepared in other languages also, I think this is the best course I can adopt in the circumstances. I hope the House will give me authority and approval to this plan.

Shri K. M. Munshi : May I respectfully suggest that, if Members can give the names by this evening, then it will be possible for you to announce the names this evening?

Mr. President : I do not think they will find it convenient to give the names by this evening. I would not limit the time to this evening.

Shri V. I. Muniswamy Pillai : Should the selection of names be confined to the members of this House.

Mr. President : Not necessarily. They may be outsiders also. They should be experts whose translation will be accepted as authoritative in their own languages. I shall have to depend upon the authority which those people carry to get the translation accepted by their own people.

Shri M. Ananthasayanam Ayyangar : Are the translations likely to be long delayed?

Mr. President : They will have to expedite the translations as soon as possible.

Babu Ram Narayan Singh (Bihar : General) : In the beginning you announced that the Constitution will be passed in Hindi.

Mr. President : That was my wish and intention, but I find that it has not fructified and it is not possible. That is all I can say. Members are familiar with the events that have happened and the circumstances under which I had to give up that idea.

Article 303.—(contd.)

Mr. President : Now the House will proceed to the next item on the agenda. Consideration of article 303 may be resumed. There are no amendments to sub-clauses (k) and (l). Therefore I will put them to vote. The question is :

"That sub-clauses (k) and (l) stand part of article 303(1)."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : I move :

"That after sub-clause (1) of clause (1) of article 303, the following sub-clauses be inserted namely :—

'(II) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(i) any court in the territory of India constituted or reconstituted unded this Constitution as a High Court, and

(ii) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.

(III) "Indian State" means—

(i) as respects the period before the commencement of this Constitution, any territory which the Government of the dominion of India recognised as such a State; and

(ii) as respects any period after the commencement of this Constitution, any territory not being part of the territory of India which the President recognises as being such a State.'"

Mr. President : There is no amendment to this. As no one wishes to speak on this I will put it to vote.

The question is :

"That after sub-clause (1) of clause (1) of article 303, the following sub-clauses be inserted, namely :—

'(II) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(i) any court in the territory of India constituted or reconstituted under this Constitution as a High Court, and

(ii) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.

(III) "Indian State" means—

(i) as respects the period before the commencement of this Constitution, any territory which the Government of the Dominion of India recognised as such a State; and

(ii) as respects any period after the commencement of this Constitution, any territory not being part of the territory of India which the President recognises as being such a State.'"

The amendment was adopted.

Mr. President : The question is :

"That sub-clauses (m) and (n) stand part of article 303(1)".

The motion was adopted.

(Amendment No. 141 was not moved).

The Honourable Dr. B. R. Ambedkar : I beg to move :

"That after sub-clause (n) of clause (1) of article 303, the following sub-clause be inserted, namely :—

'(nn) 'Ruler' in relation to a State for the time being specified in Part III of the First Schedule means the person who for the time being is recognised by the President as the Ruler of the State and includes any person for the time being recognized by the President as exercising the powers of the Ruler of the State, and in relation to an Indian State means the Prince, Chief or other person recognised by the Government of the Dominion of India or the President as the Ruler of the State;'"

Mr. President : There is no amendment to this. I will put it to vote.

The question is :

"That after sub-clause (n) of clause (1) of article 303, the following sub-clause be inserted, namely :—

'(nn) 'Ruler' in relation to a State for the time being specified in Part III of the First Schedule means the person who for the time being is recognised by the President as the Ruler of the State and includes any person for the time being recognised by the President as exercising the powers of the Ruler of the State, and in relation to an Indian State means the Prince, Chief or other person recognised by the Government of the Dominion of India or the President as the Ruler of the State;"

[Mr. President]

The amendment was adopted.

Shri H. V. Kamath: May I ask Dr. Ambedkar what exactly is the point in mentioning that 'securities' includes stock? Why not mention shares also?

Shri T. T. Krishnamachari: I may mention, Sir, that the word usually used in respect of Government securities is 'stock' by the British Parliament.

Mr. President: There are no amendments to sub-clause 'o'.

Mr. President: The question is:

"That sub-clause (o) stand part of article 303(1)"

The motion was adopted.

Mr. President: I think we had better stop here.

Before we adjourn, there is one thing I desire to mention. I have received a letter addressed to me by Mr. Z. H. Lari, a Member of this Assembly. He has resigned his Membership of this House and in the letter of resignation he has mentioned certain reasons connected with the discussion about the language question which we had the other day. He has asked me that I should read out his letter to the House. I find, however, that before the letter reached me a copy of it was given to the Press and the substance of the letter has already appeared in the newspapers. That being so I do not think it is necessary that I should read out this letter to the House. Of course I shall take the other action that is necessary in connection with it.

Shri Jaspat Roy Kapoor (United Provinces: General): On a point of order. If this House is going to take any cognisance of this matter, I think the contents of it may as well be discussed, and the Assembly given an opportunity to express its view on that letter.

Honourable Members: No, No.

Shri Jaspat Roy Kapoor: I am not suggesting that it should be discussed. My only submission is that the Assembly should not be considered to have taken cognisance of the contents of that letter.

Shri M. Thirumala Rao (Madras: General): On a point of information, is it necessary that this letter should be placed before the House or the Members of this House should know the contents of that letter. I do not think it need be placed before the House.

Mr. President: If the matter had not been published, the question of reading it to the House may have arisen. I cannot say what decision in that case would have been, but since it has already been published, the question of reading it to the House does not arise.

Shri R. K. Sidhva: He should have had the courtesy not to publish it.

Shri Mahavir Tyagi: Is the formality of acceptance either by the House or by the President necessary? The very fact that the resignation has reached...

Mr. President: As I have said, I shall take action under the rules. Under the rules, I am authorised to accept resignations. That matter does not concern the House.

The House is adjourned till 4 o'clock this afternoon.

The Assembly then adjourned till Four of the Clock in the Afternoon.

The Assembly reassembled after lunch at Four of the Clock in the after noon. Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

Article 303 (*contd.*)

Mr. President: We shall take up item (p) of article 303 now.

Shri T. T. Krishnamachari: There is no amendment to this.

Mr. President: The question is :

"That sub-clause (p) stand part of article 303(1)."

The motion was adopted.

Mr. President: Then we shall take up sub-clause (q). Is there any amendment to this sub-clause ?

Shri T. T. Krishnamachari: There are amendments Nos. 3224 and thereafter standing in the name of Mr. Santhanam and others. I do not think they are being moved.

Mr. President: The question is :

"That sub-clause (q) stand part of article 303(1)."

The motion was adopted.

Shri T. T. Krishnamachari: Mr. President, Sir, I move :

"That for sub-clause (r) of clause (1) of article 303, the following sub-clause be substituted :—

'(r) 'railway' does not include tramway, whether wholly within a municipal area or not.' "

Sir, may I move the other amendments to sub-clauses (s), (t) and (u) because they are consequential ?

Mr. President: Yes.

Shri T. T. Krishnamachari: Sir, I move :

"That sub-clauses (s), (t) and (u) of clause (1) of article 303 be omitted."

This is consequential on the revision that we have made in the entry in List I in Schedule VII. There is no need to define Union Railways, State Railways or Minor Railways separately.

The Honourable Shri K. Santhanam (Madras : General) : I only want to know whether tramway is defined anywhere. There is no fundamental difference between a railway and a tramway, except that one is called a railway and the other a tramway.

Mr. President: It is for this reason that it is sought to state that a railway does not include tramway.

The question is :

"That for sub-clause (r) of clause (1) of article 303 the following sub-clause be substituted :—

'(r) 'railway' does not include tramway, whether wholly within a municipal area or not.' "

The amendment was adopted.

Mr. President: The question is:

"That sub-clauses (i) and (ii) of clause (1) of article 303 be omitted."

The amendment was adopted.

Shri T. T. Krishnamachari: There is no amendment to (v).

Mr. President: The question is:

"That sub-clause (v) of part of article 303(1)."

The motion was adopted.

Shri T. T. Krishnamachari: Sir, will you take up amendments 203 and 204 together?

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That with reference to amendment No. 147 of List IV (Eighth Week), for sub-clause (w) of clause (1) of article 303, the following sub-clause be substituted:—

'(w) 'Scheduled Castes' means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 300A of this Constitution to be Scheduled Castes for the purposes of this Constitution.'"

The only change is, the word 'specified' has been changed to 'deemed', Sir, I move:

"That with reference to amendment No. 148 of List IV (Eighth Week), for sub-clause (x) of clause (1) of article 303, the following sub-clause be substituted:—

'(x) 'scheduled tribes' means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 300B of this Constitution to be scheduled tribes for the purposes of this Constitution;"

I am incorporating the other amendment which has also been tabled.

Shall we take up the two other articles also at the same time?

Mr. President: Yes.

New articles 300A and 300B.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after article 300, the following articles be inserted:—

Scheduled Castes

300A. (1) The President may, after consultation with the Governor or Ruler of a State, by public notification specify the castes, races or tribes or parts of or groups within castes races or tribes, which shall for purposes of this Constitution be deemed to be Scheduled Castes in relation to that State.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued by the President under clause (1) of this article any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Scheduled Tribes

300B. (1) The President may after consultation with the Governor or Ruler of a State, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for purposes of this Constitution be deemed to be scheduled tribes in relation to that State.

(2) Parliament may by law include in or exclude from the list of scheduled tribes specified in a notification issued by the President under clause (1) of this article any Tribe or Tribal community or part of or group within any Tribe or Tribal community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The object of these two articles, as I stated, was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President, in consultation with the Governor or Ruler of a State should have the power to issue a general notification in the Gazette specifying all the Castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purposes of the privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this : that once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made, that must be made by Parliament and not by the President The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President.

Mr. President : 218A.

Shri T. T. Krishnamachari : In reading it he has included that.

Mr. President : 224.

Pandit Thakur Das Bhargava : Sir, I move :

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300A the following be added at the end :—

'for a period of ten years from the commencement of this Constitution.' "

I also move :

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300B the following be added at the end :—

'for a period of ten years from the commencement of this Constitution.' "

I agree with the principle that for ten years to come no variation of the notification originally made by the President should be possible. Because now that special privileges of reservation, etc., have been given to the Scheduled Castes, I do not like the idea that the Executive, President or Governor or any other person may be able to tamper with that right, but after a period of ten years, when this privilege will no longer be available to the Scheduled Castes, there will be no difference between the Scheduled Castes and other backward classes which will be declared under article 301 of the Constitution. At that time there will be no meaning in taking away this power from the President in consultation with the Governor. Therefore my humble submission is that the proposed amendment be accepted to make the point absolutely clear and free from ambiguity. Unless we add these words for a period of ten years from the commencement of this Constitution, you will be taking away the power of the President to include or exclude proper classes from the purview of the notification which will be issued under 300A and B After the first ten years the privileges which will be open to these classes are probably under article 10 and under articles 296 and 299. I do not know of any other privileges which have been specifically given to these Scheduled Castes. Whereas I am, very insistent and conscious that these provisions should not be tamperec with, I do like that these castes may not become stereo-typed and may not lose the capacity of travelling out of the schedule when the right occasion demands it. I, therefore, submit that if you put these words you will be making the whole thing elastic and the President will have the power of including or excluding after the lapse of ten years such tribes or castes within the notification.

Mr. President: Cr. Chaliha—you have two amendments. Once is 205 and the other is 225. I do not know if 205 arises now.

Shri Kuladhar Chaliha (Assam: General): Mr. President, I move;

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 303B after the words 'Parliament may' the words 'and subject to its decision the State Legislature' be inserted."

I have always been fighting that the Governor should have power to safeguard the rights of the Tribes. I am glad in some measure this has been conceded. Yet I find certain amount of suspicion in that the State Legislature is neglected. The Drafting Committee has not allowed the State Legislature to have a voice. In order to fill up that lacuna I have said that Parliament may and subject to its decision the State Legislature'.

Shri T. T. Krishnamachari: Then what is left to the State Legislature

Shri Kuladhar Chaliha: Somehow or other I feel you have neglected it. In these you have covered a good deal which you had objected to in the past. The Governor has been given power I am glad to say. The only thing is provincial assemblies have no voice in this. Whatever Parliament says they are bound by it; but if there is anything which consistently with the orders of the Parliament they can do anything, they should be allowed to have the power. That is why I have moved this. However I am thankful this time that the Drafting Committee has assimilated good ideas and only provincial assemblies have been neglected. However, the Governor is there—that is an improvement—Parliament is there and the President is there. Therefore, I thank the Drafting Committee for this.

Mr. President: Mr. Sidhva.

The Honourable Dr. B. R. Ambedkar: It is already covered.

Shri Brajeshwar Prasad (Bihar: General). There are some amendments seeking to add some more clauses.

Mr. President: That is a separate matter. These were all the amendments.

Shri V. I. Muniswami Pillai: Mr. President, I come to support the amendments that have been moved by the Honourable Dr. Ambedkar. These amendments deal with the definition of Scheduled Castes. As far as I can see he has made it clear that, according to the second part of it, the President on the 26th January 1950 will publish a list of such communities that come under the category of Scheduled Castes. But I would like to inform this House of the background which brought out the special name of Scheduled Castes. It was the untouchability, the social evil that has been practised by the Hindu Community for ages, that was responsible for the Government and the people to know the section of people coming under the category of Hindus and who were kept at the outskirts of the Hindu society. Going backwards to 1916 it was in that year when Government found that something had to be done for the untouchable classes, (when they said untouchable classes, they were always understood to be Hindus,) and they had to be recognised. In Madras there were six communities that came under this classification. During the Montagu-Chelmsford reforms they were made ten. In 1930 when the great epoch-making fast of Mahatma Gandhi came about, then only the country saw who were the real untouchable classes. And in the 1935 Act, the Government thoroughly examined the whole thing and as far as the Province of Madras is concerned they brought 86 communities into this list or category, though there were some touchable classes also. Now, after further examination the Provincial Governments have drawn up a list and I think according to the amendment mover's suggestions, all those communities that come under the category of untouchables and those who profess Hinduism will be the Scheduled Castes, because I want

to emphasise about the religion. I emphasise this because of late there have been some movements here and there; there are people who have left Scheduled Castes and Hinduism and joined other religions and they also are claiming to be Scheduled Castes. Such convert cannot come under the scope of this definition. While I have no objection to Government granting any concessions to these converts, I feel strongly that they should not be clubbed alone with Scheduled Castes.

Sir, I am grateful to the Drafting Committee and also to the Chairman of that Committee for making the second portion of it very clear, that in future, after the declaration by the President as to who will be the Scheduled Castes, and when there is need for including any other class or to exclude anybody or any community from the list of Scheduled Castes that must be by the word of Parliament. I feel grateful to him for bringing in this clause, because I know, as a matter of fact, when Harijans behave independently or asserting their right on some matters, the Ministers in some Provinces not only take note and action against these members, but they bring the community to which that particular individual belongs, and thereby not only the individual, but also the community that comes under that category of Scheduled Castes are harassed. By this provision, I think the danger is removed.

I strongly oppose the amendment moved by Pandit Bhargava. The reason is that he wants to have the ten years period for observing these amendments. But he has entirely forgotten that under another article that we have already passed, or will pass the Constitution provides for the appointment of a Special officer at the Centre and also various officers in all the Provinces to go into the various disabilities of these communities and to submit a report to the President who will then be able to know whether the Scheduled Castes have reached a stage when the facilities now given to them could be withdrawn. I do not think that the reasons that he has advanced are fair and square for the uplift of the Harijans.

With these few words, I support the amendment.

Mr. President: Does anyone else wish to speak? Do you wish to say anything Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment of Pandit Thakur Das Bhargava.

Mr. President: Then I put the amendments. The first is the one with reference to amendment 147.

The question is:

"That with reference to amendment No. 147 of List IV (Eighth Week), for sub-clause (w) of clause (1) of article 303, the following sub-clause be substituted :—

'(w) 'Scheduled Castes' means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 300A of this Constitution to be Scheduled Castes for the purposes of this Constitution;'"

The amendment was adopted.

Mr. President: Then the amendment regarding (x).

The question is:

"That with reference to amendment No. 148 of List IV (Eighth Week), for sub-clause (x) of clause (1) of article 303, the following sub-clause be substituted :—

'(x) 'Scheduled tribes' means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 300B of this Constitution to be scheduled tribes for the purposes of this Constitution;'"

The amendment was adopted.

Mr. President: Then I put the two new articles 300A and 300B. But I will first put the amendment. No. 224 of Pandit Thakur Das Bhargava.

The question is:

"That in amendment No. 201 of List V (Eighth Week), in clause (2) of the proposed new article 300A, the following be added at the end:—

'for a period of ten years from the commencement of this Constitution.'"

The amendment was negatived.

Mr. President: There is no other amendment.

I then put No. 201. The question is:

"That after article 300, the proposed new article 300A stand part of the Constitution."

The motion was adopted.

Article 300A was added to the Constitution.

Mr. President: Then 300B and the amendment moved by Mr. Sadhva or Mr. Krishnamachari about adding the word "tribal". But then there is another amendment, that of Mr. Chaliha.

The question is:

"That in amendment No. 201 of List V (Eighth Week), in clause (2) of the proposed new article 300B, after the words 'Parliament may' the words 'and subject to its decision the State Legislature' be inserted."

The amendment was negatived.

Mr. President: Then I put No. 227 of Pandit Thakur Das Bhargava.

The question is:

"That in amendment No. 201 of List V (Eigth Week) in clause (2) of the proposed new article 300B, the following be added at the end:—

'for a period of ten years from the commencement of this Constitution.'"

The amendment was negatived.

Mr. President: Then I put Mr. Krishnamachari's amendment which has really been accepted by Dr. Ambedkar 218A.

The question is:

"That in amendment No. 201 of List V (Eighth Week), in the proposed new article 300B—

(a) in clause (1), for the word 'communities' in the two places where it occurs, the words 'tribal communities' be substituted;

(b) in clause (2), for the word 'community', in the two places where it occurs, the words 'tribal community' be substituted."

The amendment was adopted.

Mr. President: Then I put article 300B as proposed by Dr. Ambedkar. The question is:

"That proposed article 300B be adopted."

The motion was adopted.

Article 300B was added to the Constitution.

EIGHTH SCHEDULE

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That the Eighth Schedule be deleted."

Mr. President: There are certain amendments to the Eighth Schedule. They would not arise now.

The Honourable Dr. B. R. Ambedkar: No, Sir, they would not arise.

Mr. President: The question is:

"That the Eighth Schedule be deleted."

The motion was adopted.

Schedule Eight was deleted from the Constitution.

(Amendment No. 3749 of Volume II seeking to add New Schedule IX was not moved.)

Article 303 —(*contd.*)

Shri Brajeshwar Prasad: Sir, I beg to move:

"That in amendment No. 3234 of the List of Amendments, in clause (1) of article 303, after the proposed sub-clause (x), the following new sub-clause be added :—

'(xx) 'to aid and advise the President' means that there is no statutory obligation that President is to be guided by ministerial advice.' "

Sir, I do not want to move (z) and have moved only (zz).

Shri T. T. Krishnamachari: Sir, I am afraid the amendments is out of order for the reason that in the article relating to the Council of Ministers we have definitely provided that the President must act in such and such a manner as prescribed in Schedule III-A. I think my honourable Friend cannot anticipate III-A and nullify the effect of the wording of that particular schedule The article referred to by me is (62) (5)(a). The amendment runs counter to the article and it cannot therefore be accepted.

Mr. President: Instead of taking it as a point of order I will dispose of the amendment.

The question is:

"That in amendment No. 3234 of the List of Amendments, in clause (1) of article 303, after the proposed sub-clause (y), the following new sub-clause be added :—

"(zz) 'to aid and advise the President' means that there is no statutory obligation that President is to be guided by ministerial advice.' "

The amendment was negatived.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (2) of article 303, the following words be added at the end :—

'as it applies for the interpretation of an Act of the Legislature of the Dominion of India.' "

The reference is to the General Clauses Act.

Shri Jaspat Roy Kapoor: I wonder whether there is any real necessity for making this. Even if it is, I do not know how far it would be correct if you have it like this "as it applies for the interpretation of an Act of the Legislature of the Dominion of India". Because, hereafter when the Constitution has come into force, there shall be no law which has been made by the Legislature of the Dominion of India'. The Dominion of India will cease then and all the Acts in force within the Dominion of India will automatically become Acts of the Union.

The Honourable Dr. B. R. Ambedkar: The point is this that the General Clauses Act applies to Acts, Regulations and Ordinances. It is therefore necessary to say to which class of these laws this will apply. That is the reason why this amendment is proposed.

Shri T. T. Krishnamachari: The reference is to the General Clauses Act for the purposes of interpretation. There are three classifications so far as the General Clauses Act is concerned, namely Acts, Ordinances and Regulations. What we want is that only those particular portions which refer to Acts should apply so far as this particular clause is concerned.

Shri Jaspat Roy Kapoor: What I mean to submit is that after the Constitution comes into force there shall be no law in existence which could be said to be a law of the 'Dominion of India. So I think our purpose would be fully served if we say "as it applies for the interpretation of any existing Act."

The Honourable Dr. B. R. Ambedkar: I am afraid you have not examined the General Clauses Act.

Shri Jaspat Roy Kapoor: It is no use introducing some provision without carefully scrutinising it.

The Honourable Dr. B. R. Ambedkar: It had better be left to the draftsmen as to what is necessary and what is not.

Shri Jaspat Roy Kapoor: I agree that any necessary corrections should be left to the Drafting Committee. But there is no harm in admitting a mistake if it is a mistake.

The Honourable Dr. B. R. Ambedkar: I refuse to accept, it is a mistake.

Shri Jaspat Roy Kapoor: I know it is not easy to convince you.

Mr. Naziruddin Ahmad: Sir, I submit amendment No. 206 is perfectly unnecessary. Clause (2) of article 303 is absolutely clear. It says :—

"Unless the context otherwise requires, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution."

This is quite enough. The addition of the words again, "as it applies for the interpretation of an Act of the Legislature of the Dominion of India" is absolutely unnecessary. It is of course absolute, plain truth that the General Clauses Act really applies to all the Acts of the Dominion of India. In a book on literature this adjective clause relating to the General Clauses Act would be perfectly valid, but in a legislative enactment it is unnecessary. Clause (2) is perfectly clear that the Act applies to this Constitution, the addition of the explanatory matter "as it applies for the interpretation" of the Dominion Act is absolutely unnecessary. All that we need say is that the General Clauses Act shall apply for the interpretation of the Constitution unless, of course, the context otherwise requires.

The Honourable Dr. B. R. Ambedkar: Sir, I have said what I had to say and after having seen the General Clauses Act right here, I am quite convinced that the amendment I have moved is a very necessary amendment.

Mr. President: The question is :

"That in clause (2) of article 303, the following words be added at the end :—

'as it applies for the interpretation of an Act of the Legislature of the Dominion of India.'"

The amendment was adopted.

Mr. President: Then clause (3). There is amendment No. 156.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That in clause (3) of article 303—

'(i) after the word and figure 'Part I' the words and figures 'or Part III' be inserted;

(ii) for the words 'as the case may be, to an Ordinance made by a Governor' the words 'to an Ordinance made by a Governor or Ruler, as the case may be' be substituted."

It is purely consequential.

Mr. President: The question is :

"That in clause (3) of article 303—

'(i) after the word and figure 'Part I' the words and figures 'or Part III' be inserted;

(ii) for the words 'as the case may be, to an Ordinance made by a Governor' the words 'to an Ordinance made by a Governor or Ruler, as the case may be' be substituted."

The amendment was adopted.

Mr. President: Then I put the whole of this article 303.

The question is :

"That article 303, as amended, stand part of the Constitution."

The motion was adopted.

Article 303, as amended was added to the Constitution.

Article 304

Mr. President: Article 304. Amendment No. 118.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 304, the following be substituted:—

'304. An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill the Constitution shall stand amended in accordance with the terms of the Bill:

Procedure for amendment of the Constitution

Provided that if such amendment seeks to make any change in—

(a) any of the Lists in the Seventh Schedule, or

(b) the representation of States in Parliament, or

(c) Chapter IV of Part V, Chapter VII of Part VI, and article 213A of this Constitution,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule.'"

I will move my other amendment also, No. 207. I move:

"That in amendment No. 118 of List III (Eighth Week), for the proviso to the proposed article 304 the following proviso be substituted:—

'Provided that if such amendment seeks to make any change in—

(a) article 43, article 44, article 60, article 142 or article 213A of this Constitution, or

(b) Chapter IV of Part V, Chapter VII of Part VI, or Chapter I of Part IX of this Constitution, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.'"

Sir, I do not wish to say anything at this stage because I anticipate that there would be considerable debate on this article and I propose to reserve my remarks towards the end so that I may be in a position to explain the points that might be raised against this amendment.

Mr. Naziruddin Ahmad: It is far better to give the arguments in advance to avoid any unnecessary debate.

The Honourable Dr. B. R. Ambedkar: If my friend will guarantee to me that he will not take time, I will do it, but I know my friend will have his cake and eat it too.

Mr. Naziruddin Ahmad: Sir, Dr. Ambedkar will give no argument at the beginning, saying that he will await arguments and speak in reply. But in the end on hearing arguments, he will merely say "I oppose the amendments and reject the arguments"!

Mr. President: We shall take up the amendments. No. 119.

Shri T. T. Krishnamachari: Sir, I am not moving amendment No. 119 because it is incorporated in Dr. Ambedkar's amendment. It is covered by No 207.

Mr. President: No. 157, Mr. Santhanam.

The Honourable Shri K. Santhanam: I am not moving it, Sir.

Mr. President: No. 158, Mr. T. T. Krishnamachari.

Shri T. T. Krishnamachari: That is also covered by Dr. Ambedkar's amendment.

Dr. P. S. Deshmukh: Mr. President, Sir, I move:

"That in amendment No. 118 of List III (Eighth Week), for the substantive part of the proposed article 304, the following be substituted :—

'304. This Constitution may be added to; or amended by, the introduction of a Bill for this purpose in either House of Parliament and passed in both Houses of Parliament by a clear majority of the total membership of each House. The provisions of the Bill shall not, however come into force until assented to by the President.'"

Sir, I move amendment No. 210.

"That in amendment No. 118 of List III (Eighth Week), the following proviso be added to the proposed article 304 :—

Provided that for a period of three years from the commencement of this Constitution, any amendment of the Constitution certified by the President to be not one of substance may be made by a Bill for the purpose being passed by both Houses of Parliament by a simple majority. This will, among other things, include any formal amendment recommended by a majority of the Judges of the Supreme Court on the ground of removing difficulties in the administration of the Constitution or for the purpose of carrying out the Constitution in public interest and certified by the President to be necessary and desirable.'"

Then there is another amendment, No. 212, Sir, I move:

"That with reference to amendment No. 118 of List II (Eighth Week), after article 304, the following new article be inserted :—

'304-A. Notwithstanding anything contained in this Constitution to the contrary, no amendment which is calculated to infringe or restrict or diminish the scope of any individual rights, any rights of a person or persons with respect to property or otherwise, shall be permissible under this Constitution and any amendment which is or is likely to have such an effect shall be void and *ultra vires* of any Legislature.'"

Sir, it is obvious from the very reading of these amendments that they are alternatives to one another. My first amendment (No. 208) is an amendment to the substantive portion of article 304 as presented to the House by Dr. Ambedkar this afternoon. Its main purport is that the amendment of the Constitution should not be made as difficult as it has been sought to be done by the article proposed by Dr. Ambedkar. The main reason for my suggestion to make it easier for the amendment of the Constitution is that, in spite of the fact that we may have spent more than two and a half years in framing this Constitution, we are conscious and I am sure many members of the Drafting Committee itself are conscious that there are many provisions which are likely to create difficulties when the Constitution actually starts functioning.

Of course there have been complaints from some ignorant quarters, mainly from pressmen and journalists, who are ignorant of what the Constitution should be, that we are spending a lot of money. These are, I think, people who have just come into journalism recently and have not any idea or conception of the framing of a Constitution. I am sure, Sir, no sensible man will pay any attention to this type of journalism, because they have the ink and the pen with them and they are employed by some capitalists here and there to write out in dailies or weeklies whatever comes into their heads. I know they very often write things which are not in the public interest. I am sure, Sir, that we are not daunted by this type of criticism. In my opinion, we have not taken that much time that should have been taken, nor have we allowed many Members who have something to contribute to the debate to do so. We have not, in fact, been acting up to the tenets and principles on which parliamentary democracies are to be worked and should work. Parliamentary democracy is known to be and shall always be a talking shop, and if this is so, it is intended that even the meanest amongst us may have something positive and beneficial to contribute and it is therefore incumbent upon us to give him a chance to have a say. That is the purpose of Parliament and if there are sometimes some long speeches I do not think that should be something we should complain against. So, my contention is that we have not devoted as much time as we should

have in allowing Members to contribute their best to the framing of this Constitution.

These are the reasons why this Constitution is bound to be and will prove to be defective in many respects. That being so, that being inherent in the circumstances under which we are working, I think, Sir, every facility should be afforded for amending the Constitution. If you do not provide the necessary outlets or safety-valves for the air or the storm to pass through, it is likely that the whole ship may be blown up. For that reason, Sir, I have two amendments presented here. One is that it should be possible for the Parliament to amend it without recourse to two-thirds majority. In the clause proposed by Dr. Ambedkar there is a double provision. Not only the majority of the total Members of the House should be in favour of the amendments, but when it is brought before the House and the Bill is passed by the House there should be a two-thirds majority of the Members who are present and vote. That means there is a double check so far as any Bill to be passed for amendment of the Constitution is concerned. Even if you have to change a comma, even if you have to make some consequential changes, let alone changes in the Fundamental Rights, very strenuous efforts will have to be made for bringing about that change.

At least for a period of five years I have therefore suggested in my second amendment that it should be possible for the Parliament not only to pass amendments by a majority of the House, but I have also made two other suggestions : whenever the President certifies that a certain amendment is not one of substance, is not going to vitiate or abrogate the principles of the Constitution, but being one of form obstructs the working and the proper administration or governance of India, if the President certifies that this amendment which is not of substance is necessary, it should be possible to pass that amendment with a simple majority in the House. I have also brought in the Judges of the Supreme Court because on their wisdom is going to depend much of the fate of the Constitution.

Sir, I wish to protect the Constitution wherever we have conferred any rights on our people, whether they are rights of citizenship, Fundamental Rights or they are consequential rights. For that purpose I have suggested amendment No. 212. It provides that it will be *ultra vires* of any Parliament to bring forward a Bill by which an amendment of the Constitution is sought, infringing any of the rights of individuals or groups of individuals conferred by the Constitution. I am sure this will not prevent the bringing in of measures to amend the Constitution with a view to enlarge those rights nor is this necessary. There is apprehension in the minds of the people that the liberty of the people is not safe and that as we get more and more freedom, they are not allowed even that much freedom that the foreigner allowed them. Article 15A is not quite sufficient for the protection of the liberty of the individuals and therefore this amendment is both necessary and desirable. I hope that the House will agree that this amendment is necessary and have the article suitably amended.

I feel that at any rate for some time to come it would be necessary to amend the Constitution in many particulars. Though we have spent many months making the Constitution, there are still many defects in it. There are contradictory provisions in some places which will be more and more apparent when the provisions are interpreted. Therefore, if we do not make it easy for amendments to be affected the whole administration will suffer. As I said in the beginning, if you do not provide outlets it might lead to the whole Constitution being rejected or not being accepted by future Parliaments and their resorting to something much more drastic and radical. If we do not allow them chances to mould the future of this country in their own ways, by simplifying the procedure by amendments, they will have no alternative left but to go the whole

[Dr. P. S. Deshmukh]

hog and reject the Constitution as a whole. In such a situation it is the State that will suffer. Therefore it is better to provide outlets so that any dissatisfaction with any provision in the Constitution may easily be cured. We should not allow complaints and dissatisfaction to grow to such a pitch as will result in dislocating the administration of the State.

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment No. 118 of List III (Eighth Week), in the proposed article 304, the words 'and by a majority of not less than two-thirds of the members of that House present and voting' be deleted."

My next amendment runs thus:

"That in amendment No. 118 of List III (Eighth Week), clause (a) of the proviso to the proposed article 304 be deleted."

My third amendment is No. 229. It reads:

"That in amendment No. 207 of List V (Eighth Week), in the proposed proviso to article 301 for the words 'Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent' the word 'electorate' be substituted."

Sir, this new amendment No. 207 came into our hands last night at ten o'clock. We find that there is a world of difference between these two amendments. More powers have been taken away from the hands of Parliament and placed in the hands of the State legislatures. The effect will be that vital articles of the Constitution cannot be amended by the Parliament and the consent of 50 per cent. of the Legislatures will be necessary in order to pass an amending Bill.

I hold the view that in this process of amendments the Legislatures of the States should not be associated. A proviso exists in the Australian Constitution to the effect that if there is a conflict between the two Houses of Parliament or if either House does not pass the amending Bill of the other, then the whole matter has to be referred to the electorate. It would be beneficial if we incorporate that provision of the Australian Constitution in our Constitution. I think that what is possible in Australia will be equally possible in India. If the people of Australia are competent and advanced to adopt this method of amendment, certainly we who are as competent as the Australians, if not more, are entitled to adopt the same method. I do not want to associate the States Legislatures in the process of amending the Constitution.

It is ordinary commonsense that should tell us that if we want to abolish landlordism you cannot seek the consent of the landlord. If you want to wait for that purpose you will never be able to achieve your object and abolish landlordism. Similarly if you want to abolish capitalism you cannot afford to look for the consent of the capitalists. The purpose of amending a Constitution in effect will be to take more powers from the hands of the State Governments and confer them on the Centre. That being so it is beyond my comprehension how any legislature will be agreeable to such a proposition. The provincial Governments constitute vested interests. They have as much vested interest in society as our capitalist friends. Therefore, adopt the simple method provided in the Australian Constitution for amending the Constitution.

Sir, I am in favour of a referendum, because referendum has many advantages. Referendum is democratic as it is only an appeal to the people, and no democratic government can have any objection to resorting to referendum in order to resolve a deadlock, when there is a conflict between Parliament and provincial governments. Secondly, I am in favour of referendum because it

cures patent defects in party governments. People think that it is too radical a weapon and that a conservative people like ourselves ought not to use it without proper consideration and thought. It is conservative since it ensures the maintenance of any law or institution which the majority of the electors effectively wish to preserve. Therefore it cannot be a radical weapon. Thirdly, Sir, referendum is a clear recognition of the sovereignty of the people. Fourthly, it would be a strong weapon for curbing the absolutism of a party possessed of a parliamentary majority.

In this connection I would like to read what Professor Dicey has observed in his monumental book "Law of the Constitution" which I would like honourable Members of this House to note:

> "Trust in elected legislative bodies is, as already noted, dying out under every form of popular government. The party machine is regarded with suspicion, and often with detestation, by public-spirited citizens of the United States. Coalitions, log-rolling and parliamentary intrigue are in England diminishing the moral and political faith in the House of Commons. Some means must, many Englishmen believe, be found for the diminution of evils which are under a large electorate the natural, if not the necessary, outcome of our party system. The obvious corrective is to confer upon the people a veto which may restrict the unbounded power of a parliamentary majority."

It is to obviate this evil that the method of referendum has been advocated by a man like Professor Dicey, who is not a radical or a Socialist or Communist. Professor Dicey is of the opinion that referendum will promote among the electors a kind of intellectual honesty which is being rapidly destroyed. I refer only to the last part of the amendment which seeks to substitute "referendum" for "State Legislatures."

An Honourable Member: Has he finished?

Shri Brajeshwar Prasad: I am coming to the other parts of the amendment. I do not want that the powers of the Parliament should be fettered. The method we seek to introduce by article 304 is totally detestable, totally repugnant to me. This two-thirds majority provision will act as a brake. No amendment of the Constitution will be possible if this requirement is adhered to.

I feel that even in the interests of the States, this is not necessary. The members of the Upper House of the Parliament will consist entirely of the representatives from the States and it is inconceivable that these people will under any circumstances seek to vest more powers in the Centre and take away the powers of the States. This two-thirds majority provision will act as a brake to any progressive legislation and even pave the way for revolutionary and anarchist forces in the country. I hold the opinion that at least for a period of ten years from the commencement of this Constitution, these safeguards must be removed. Sir, today are living under abnormal conditions The effect of Partition has blurred our vision. After the migration of large populations from one part of the country to another, and after witnessing their sufferings, we are not in a position to take an objective view of things. Many other factors also have clouded our vision with the result that we are not able to take a disinterested view of things. At least for a period of ten years from the commencement of this Constitution, the method of amending the Constitution must be made easy.

There is another reason why I want this change. I am all for a flexible Constitution and not a rigid Constitution. There is likely to arise a revolutionary situation in Asia in the near future. In order to meet that situation, the Government of India should not be fettered in any way whatsoever. There is another reason why I am in favour of a flexible Constitution, as opposed to a rigid Constitution. I hold the opinion that we are passing through a period of decadence. It is only with the establishment of a new social order that we

[Shri Brajeshwar Prasad]

will be in a position to sense the needs of the coming century. For heaven's sake do not make your Constitution rigid.

There is yet another reason why I am in favour of a flexible Constitution. I hope friends will excuse me for my bluntness. The fear of domination of the North and the Hindi speaking regions over the South and the non-Hindi speaking areas has mutilated this Constitution. We have framed a middle class Constitution. We have done all we could do to prevent the establishment of socialism and a unitary State in this country. The dominant tendencies of the age and the needs of our developing economy have been completely ignored. This Constitution will not survive the test of time unless we make it flexible. Our ancient law givers were never influenced by extraneous considerations. We have sacrificed wisdom at the altar of expediency and vested interests both political and economic. With your permission, Sir, I would once again quote from Professor Dicey. (*Interruption*). I hope Members will allow me to develop my argument. Perhaps Members are not interested and do not realise the situation.

> "The twelve unchangeable Constitutions of France have each lasted on an average for less than ten years, and have frequently perished by violence. Louis Phillippe's monarchy was destroyed within seven years of the time when Tooqueville pointed out that no power existed legally capable of altering the articles of the Charter. In one notorious instance at least—and other examples of the same phenomenon might be produced from the annals of revolutionary France—the immutability of the Constitution was the ground or excuse for its violent subversion....."

Shri Kala Venkata Rao (Madras : General) : Let him read slowly. We are unable to follow the speech.

Shri H. J. Khandekar (C. P. & Berar : General) : He is so hasty; I cannot follow him.

Shri M. Thirumala Rao : On a point of information, Sir. A Member who can talk extempore, can he read from a manuscript?

Shri Brajeshwar Prasad : I am reading from a book. I am quoting from Dicey.

> "The best plea for the *coup d' etat* of 1851, was, that while the French people wished for the re-election of the President the article of the constitution requiring a majority of three-fourths of the legislative assembly in order to alter the law which made the President's re-election impossible, thwarted the will of the sovereign people. Had the Republic an Assembly been a sovereign Parliament. Louis Napoleon would have lacked the plea, which seemed to justify, as well as some of the motives which tempted him to commit, the crime of the 2nd of December."

I am not reading the whole chapter. I am reading only a paragraph with the permission of the President. (*Interruption*).

I think the Honourable President of the House should not be told how to conduct the business of the House. He is much more competent than anyone here.

> "Nor ought the perils in which France was involved by the immutability with which the statesmen of 1848 invested the constitution to be looked upon as exceptional; they arose from a defect which is inherent in every rigid constitution. The endeavour to create laws which cannot be changed is an attempt to hamper the exercise of sovereign power; it therefore tends to bring the letter of the law into conflict with the will of the really supreme power in the State. The majority of the French electors were under the constitution the true sovereign of France; but the rule which prevented the legal re-election of the President in effect brought the law of the land into conflict with the will of the majority of the electors, and produced, therefore, as a rigid Constitution has a natural tendency to produce, an opposition between the letter of the law and the wishes of the sovereign. If the inflexibility of French constitutions has provoked revolution, the flexibility of English constitutions has, once at least, saved them from violent overthrow."

Shri T. T. Krishnamachari: May I suggest that the honourable Member may read a little more slowly and then we can at least understand what he says.

Shri Brajeshwar Prasad: I know fully well, if not the other Members of this House, Mr. T. T. Krishnamachari has read this book and he should not make this objection.

> "To a student, who at this distance of time calmly studies the history of the first Reform Bill, it is apparent, that in 1832 the supreme legislative authority of Parliament enable the nation to carry through a political revolution under the guise of a legal reform. "
>
> "The rigidity, in short, of a constitution tends to check gradual innovation; but, just because it impedes change, may, under unfavourable circumstances, occasion or provoke revolution."

Mr. President: Mr. Brajeshwar Prasad, you have a number of amendments.

Shri Brajeshwar Prasad: I do not like to move any other amendment, Sir.

Mr. President: I agree they do not arise now. I think these are all the amendments that we have.

Shri H. V. Kamath: On the Printed List, we have several amendments.

Mr. President: Why do you go to the Printed List now?

Shri H. V. Kamath: Because, Sir, the article as moved by Dr. Ambedkar today minus the proviso is identical with the draft and my amendments are all to that first part of the article. The article as it stands today is identical with the old draft except the proviso, and therefore I thought that my amendments would be in order.

Mr. President: Which is the amendment which you wish to move? Let me know the amendments first.

Shri H. V. Kamath: Amendments Nos. 3239, 3241. I do not move amendment No. 3246. Then I come to 3248 and 3249 and 3250. They all relate to the first part of the article which is today identical with the old draft. Changes have been made only in the proviso to the article and none in the rest of the article, Sir.

Mr. President: You may move them.

Shri H. V. Kamath: Mr. President, I move, Sir, amendments Nos. 3239, 3241, 3248, 3249 and 3250 of the Printed List of Amendments, Volume II. I do not propose to move amendment No. 3246 that stands in my name in that list.

Sir, I move:

"That before clause (1) of article 304, the following new clause be inserted and the existing clauses be renumbered accordingly:

'(1) Any provision of this Constitution may be amended, whether by way of variation, addition or repeal, in the manner provided in this article'."

Sir, I move:

"That in clause (1) of article 304, for the words 'An amendment', the words 'A proposal for an amendment' be substituted."

Sir, I move:

"That in clause (1) of article 304, for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill', the words 'it shall, upon presentation to the President, be signed by him' be substituted."

or, alternatively,

"That in clause (1) of article 304, for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill', the words 'it shall upon presentation to the President, receive his assent' be substituted."

[Shri H. V. Kamath]

Sir, I move :

"That in clause (1) of article 304, the words 'to the Bill' occurring in the 11th line be deleted"

Sir, I do not know what the 11th line today is but it is the penultimate line of the first paragraph of the article.

Sir, I move :

"That before the proviso to clause (1) of article 304, the following new proviso be inserted

'Provided that a period of not less than six months intervenes between the initiation of the Bill and its final passage in Parliament.'"

If my honourable colleagues turn for a moment to the chequered history of this article during the last two years or more, they will at once realize the need for flexibility of a Constitution. The very changes that this article and especially the proviso to the article has undergone during the last two years proves to my mind, that the Constituent Assembly has changed its mind from time to time. If we have made several alterations like this within less than a year, then how on earth do you propose or do you dare to bind and fetter the future Parliament by making this more and more rigid than before?

Mr. President : Which amendment of yours Mr. Kamath, makes it flexible so far as that portion of that article is concerned?

Shri H. V. Kamath : I have not moved amendment No. 3246 which might have made it more rigid.

Mr. President : You have not moved that amendment.

It is therefore I say.....

Shri H. V. Kamath : I am speaking generally on the article, and also with reference to the amendments. I will come to them in time.

Mr. President : So far as the question of the rigidity of the Constitution is concerned, by not moving your amendment, you accept that part of it.

Shri H. V. Kamath : I accept it, but certainly I hope I am at liberty to offer some observations on the article at this time, because the proviso was sprung upon us last night, it has become more complicated and swollen, and it has gathered more and more moss as time went on. The proviso, as it was originally, comprised three items; now the proviso contains clauses (a) to (e) and clauses (a) and (b) comprises so many different articles and Chapters of this Constitution. The original article in the Draft Constitution comprised only the Lists in the Seventh Schedule, the representation of States in Parliament and the powers of the Supreme Court. Today, it has had so much of accretion that one wonders, if we can change our mind so often just because we can change in time, because so much time had been given to us, why not give the future Parliament also the time and scope for changing the Constitution by making it more flexible?

I was glad to find an amendment in the name of Pandit Jawaharlal Nehru, number 3267. I am sorry that it has not been moved. I hope that it would be moved. If that had been moved, much of the objections of the rigidity of the Constitution might have been out of place. But, that amendment, which to my mind was an important one, considering the transition through which we are passing today, to which my honourable Friends Dr. Deshmukh and Mr. Brajeshwar Prasad also made reference, if it had been moved by Pandit Jawaharlal Nehru or by the Drafting Committee and accepted by the House,

all the trouble that I foresee might have been obviated. That amendment, I suppose, is not going to be moved. Neither has it been incorporated in the draft of the article presented to the House today by Dr. Ambedkar.

Coming to my amendments, the first, No. 3239, is an introductory clause where the process of amendment is defined. What is an amendment? An amendment may mean either a variation, addition or repeal of the Constitution. If the House turns to the several constitutions of the world, the Irish Constitution or the South African Constitution or the Australian Constitution I believe, and several other constitutions, they will find that first of all, the article defines what an amendment is. I hope the House does realise that this article is second in importance only to a few other articles in the Constitution. The article dealing with amendment of the Constitution is one of the fundamental things that must be considered very earnestly by the House.

I perfectly appreciate the contention of several honourable Members that an amendment to the Constitution must not be allowed to be made lightly or easily. But, the argument on which that dictum is based is that the Constituent Assembly of any country is superior in constitutional status to any future Parliament of that country. That is the argument on which this is based, that a Constitution framed by a sovereign Constituent Assembly must not be easily tampered with by a future Parliament which is inferior in status to the Constituent Assembly. But unfortunately, the conditions today in India, the conditions which brought this Assembly into being, have been such that this Assembly cannot be deemed to be superior in constitutional status to a future Parliament. Why? First of all, this Assembly was elected on a restricted franchise and then indirectly by the provincial assemblies on separate electorates. All these vitiated this Assembly *ab initio*, that is from the very beginning. The future Parliament, according to our Constitution will be elected on adult franchise, by direct election, and certainly to any constitutionally wise, sensible person it should appear obvious that a Parliament elected on adult franchise, on a direct basis, must be superior to an Assembly elected like this, on a restricted franchise, indirectly by the provincial legislatures.

That is why in England, no Parliament binds the future Parliament so far as the amendment of the Constitution is concerned. Parliament can amend the Constitution at any time by the usual process of law making. Considering the circumstances under which our Assembly was born, for a few years at least, say five years, which Pandit Jawaharlal Nehru mentioned in his amendment, which unfortunately has not been moved, I do not see any reason why, for five years, when the transition is not complete and conditions have not settled down, when perhaps a little more foresight and deliberation might point out various flaws in the Constitution, during this period, we should not allow it to remain flexible.

Some of my friends have pointed out that if the Constitution is not flexible, if it does not respond to social change, dangers inhere in such a Constitution. I feel, Sir, that this observation is well founded. If the Constitution holds up, blocks, the future progress of our country, I daresay that the progress which has been thus retarded will be achieved by a violent revolution : revolution will take the place of evolution. When a storm breaks out, it is the flexible little plants, blades of grass that withstand the storm. They do not break because they bend, they are flexible. But the mighty trees that stand rigid break, and they are uprooted in a storm. Therefore, I fear that when a social storm is brewing, if we want to resist that storm, this is not the way to proceed about it. You must make the Constitution flexible, and able to bend to social change. If it does not bend, people will break it. That is an eventuality which, I am sure, none of us here in this House wants to envisage. That is why I say that Pandit Jawaharlal Nehru's amendment should have been incorporated in this article. But as ill-luck would have it, it has not been.

[Shri H. V. Kamath]

I do not know what the future has in store for us, if we refuse to make the Constitution a little more flexible than we are seeking to make it today.

My next amendment 3241 is a verbal one and I leave it to the collective wisdom of the Drafting Committee. Amendment No. 3242 I am not moving because I want to leave it to both the Houses, either House of Parliament, to initate any proposal to amend the Constitution. Amendment No. 3246 also I am not moving. Amendment 3248 relates to the assent to be given by the President. This is more or less a verbal and formal amendment, and so I am content to leave it to the Drafting Committee to be dealt with at the appropriate stage. 3249 is also verbal and that also I leave to the wisemen of the Drafting Committee. 3250 refers to the period that in my opinion should elapse between the initiation of a proposal to amend the Constitution in Parliament and its final passage in Parliament. I seek to provide through this amendment 3250 that not less than six months should elapse between the initiation of a proposal and its passage through Parliament, because we are not providing for a referendum or plebiscite on an amendment to the Constitution as certain constitutions have done. The Irish Constitution has provided for a referendum before the amendment is finally incorporated in the Constitution but we have not provided for such a thing. Therefore I wish to provide a safeguard against hasty amendment to Constitution. If a period of six months is guaranteed under the Constitution between the initiation and the final passage of the Bill, then it would ensure a proper and adequate discussion in the country by the people at large. The people can voice their opinions and views upon the bill for an amendment initiated in Parliament. Six months at any rate ought to suffice.

Mr. President: The net result of your amendment is to make the Constitution more rigid.

Shri H. V. Kamath: Which one makes it more rigid, may I know, Sir?

Mr. President: 3246.

Shri H. V. Kamath: I am not moving it.

Mr. President: The net result of all your amendments was to make it rigid. You are speaking about making the amendment easy.

Shri H. V. Kamath: May I submit that I did not move it deliberately? Otherwise I would have moved it.

Mr. President: Even the ones you have moved and those you are speaking about have the tendency to make it rigid.

Shri Mahavir Tyagi: He speaks both ways.

Shri H. V. Kamath: If my Friend Mr. Tyagi thinks that I speak both ways, he is welcome to speak in more than two ways. I did not move 3246 deliberately.

Mr. President: I was only pointing out the inconsistency between your speech and the amendments you have given notice of.

Shri H. V. Kamath: You will excuse my ignorance, Sir, and my inadequate judgment.

Mr. President: 3246 you have not moved, but you moved 3250.

Shri H. V. Kamath: If I had moved 3246 you could have charged me as making it more rigid.

Mr. President: Even 3250 has the effect of delaying the amendment of the Constitution for some time.

Shri H. V. Kamath: This is only procedural.

I am now coming to the new proviso that has been embodied in the article moved by Dr. Ambedkar. The proviso has incorporated several Chapters of the Constitution which did not find a place in the earlier draft. Even the draft which reached us on the 15th September did not contain the several chapters which now have been incorporated in the provision. That is to say within two or three days the Drafting Committee has thought fit to make amendments with regard to several Chapters of the Constitution more difficult than it could have been otherwise if the proviso had stood unchanged. Some of these chapters refer to the High Courts and Supreme Court, I do not quarrel with them—but there are certain chapters or articles dealing with relations between the Union and the States and the Constituent Units. The amendment of the Constitution regarding relations between these has been made very difficult under this new proviso which reached us only last night. That has made it incumbent upon the President not to give assent to the bill unless and until half the State Legislatures by appropriate Resolutions have approved of the amendment passed by Parliament.

Now the difficulty that arises in my mind is this. We cannot always guarantee that the unifying forces in the country—the centripetal forces—will gain ground against the centrifugal or the disruptive forces in our land. Suppose, for instance, there is need for unifying the country by a more unitary type of Constitution for the country as time goes on, and in the light of that necessity Parliament feels that certain amendments to the Constitution are needed which might vary the relations between the Union and the States, it is quite possible that a number of States faced with what they consider an inroad upon their powers, an encroachment upon their rights, many of them may become rather recalcitrant, or even otherwise they might feel that this amendment is not in their separate interest, though it might be in the interest of the country as a whole, though India as a whole may benefit by such amendment—and Parliament passes a Bill, then half the States do not approve it. What happens? Parliament gets it back. I suggest to Dr. Ambedkar to revise this proviso so that the Amendment Bill, even if not passed by the Legislatures of not less than half of the States, if that goes back to Parliament even after being defeated in the Legislatures of the States, if it goes back to Parliament and after its defeat in the Legislatures of the States it is passed again by the Parliament, then I would request Dr. Ambedkar to change the proviso, that in that case if it is repassed for the second time, it should prevail, the amendment of the Constitution for the second time by Parliament must prevail as against the disapproval of the States Legislatures. Otherwise, I feel that Parliament's supreme authority will be set at naught, the unifying forces of the country will be set at a disadvantage, and the centrifugal or disruptive forces of the country might gain ascendancy. I therefore, feel that even now, at this stage, it is not too late to make suitable alterations in this article so that in future it may not be said of us, of this Assembly, many years hence people may no say of us that the dead wanted to rule the living and that the Assembly that made this Constitution wanted to hold up the progress of the country. If such a situation arises in future, I fear that progress will come about, not by constitutional means, but by methods other than constitutional, and that it will pave the way for revolution which, I have no doubt, this House wishes to avoid as far as it lies in its power.

Mr. Naziruddin **Ahmad:** Mr. President, Sir, at this fag end of the day and at the fag end of the session I will not tire the House with a long statement. I would only submit that the rigidity which has been given to the Constitution by article 304 is very proper. The citation of the English and other Constitutions are not appropriate, because they have had long experience and they have gone through centuries of apprenticeship and they know exactly what changes

[Mr. Nazaruddin Ahmad]

are to be made and what not to be made. In the initial stages of this Constitution we should rather be very strict about changing its terms.

On the amendment brought forward by Dr. Deshmukh—No. 210 I desire to offer a few comments. By this amendment, he wants to introduce a proviso to the effect that if any administrative difficulties arise, then on the report of the Supreme Court, within the period of three years, amendments should be made rather easy. I fully sympathise with his view, and I have reason to believe that many difficulties may arise in the near future. We accepted after a good deal of debate, first of all, the principles of the Constitution. Then the Draft Constitution was prepared with a good deal of expenditure and labour. Then notices of amendments to the Constitution were sent and they have been printed in two big volumes. Then the Drafting Committee has been changing its mind every day and the Draft Constitution, with the sacred principles of the Constitution, and the amendments are all given up and they are obsolete and new articles and new amendments are coming every day. I therefore easily foresee that anomalies, anachronisms and difficulties would be sure to arise from day to day. So far a period of three years, amendments of this nature, amendments to remove difficulties and anomalies should be easy, and the easy procedure indicated by Dr. Deshmukh's amendment should be accepted. The proviso may not be acceptable as it is, but the principle may be accepted and a suitable draft adopted.

We have been leaving so many things to the Drafting Committee that the Third Reading, I am afraid, would be another glorified Second Reading. In fact, questions not merely of drafting, but many substantial matters have been left to them, and some of these anomalies would occur to the Drafting Committee themselves and so they would come with amendments at the Third Reading, and that would, I am sure, lead to the reopening of many things. In these circumstances, I would submit, in view of the quick changes that we have made, from principles to principles, in the course of going back and coming forward, like a shuttlecock, we must have come across some anomalies which have not yet been apparent. I therefore submit that Dr. Deshmukh's suggestions should be considered.

Acharya Jugal Kishore (United Provinces : General): Sir, I have an amendment in my name, No. 3261, Printed List Vol. II.

Mr. President : I have not called all the amendments which are printed in the Second Volume. But if you wish to move your amendment, you can do so.

Acharya Jugal Kishore : Sir, I have amendment No. 3261 of the printed list. But this may not fit in with the amendment proposed by Dr. Ambedkar. But there is another amendment—No. 124 of Shri Brajeshwar Prasad—3rd List. 8th Week, which is an amendment to mine of 3261. I do not know if he has moved that amendment. If he has moved it, I would like to support it. In any case, I would like to make certain observations in connection with this. I would have liked to suggest that discussion over this article be held over. But I know your anxiety to get as many articles as possible finished and so I will not venture to make any such suggestion. Members too are very anxious to get away and the House is thin, and you can easily imagine that they are not taking much interest in what I consider to be a very important article in this Constitution.

Mr. President : I find yours is covered by Dr. Ambedkar's amendment.

Acharya Jugal Kishore : The arguments that I have to bring forward in support of my amendment are these. This is a very important Constitution.

We have passed practically most of the articles. But we were under the impression in the beginning that Pandit Jawaharlal's amendment would be moved, and that for five years at least, there will be opportunities for amending the Constitution, without the rigidity which Dr. Ambedkar's proposal implies We thought that there would be a certain amount of flexibility in the matter of amending the Constitution during the first few years. Since Pandit Jawaharlal Nehru has not moved that amendment, I would like to suggest to Dr. Ambedkar, and if he is prepared to accept my suggestion, he may agree to the proposal that the Constitution can be amended for the next five years, by a simple majority of the Parliament, and his proposal or amendment will become applicable after the first five years.

My reasons for this suggestion are these. We have passed the Constitution under very difficult political conditions. The Drafting Committee has been under very heavy pressure of work, and they have all been under political pressure and also the conditions prevailing in the country. We have been engaged in other things also. And so we have not been able to apply our minds fully to all the articles of the Constitution, and to their implications. I would therefore suggest that at least for the next five years, after knowing how the Constitution is working, the difficulties that we have to face and the shortcomings of the Constitution, we will be in a better position to amend these articles in a manner which will be easy and thereafter we can have a Constitution which will be a permanent Constitution and which can only be amended by the process suggested by Dr. Ambedkar in his amendment.

It is merely a suggestion and I hope Dr. Ambedkar will agree to accept this suggestion either in the form of an amendment as I have proposed or in the form of any other amendment which may fit in with my proposal. That is the only consideration I want to place before the House and I hope Dr. Ambedkar will see his way to accept it.

Shri Mahavir Tyagi: Sir, while considering this article we should not lose sight of the universally recognized maxim on which is based the whole conception of democratic society today—the maxim is that the earth belongs in usufructs to all the living equally, and the dead have neither the powers nor the rights over it. From this maxim it is construed that a generation is disabled morally to bind its succeeding generations either by inflicting on them a debt or a Constitution which is not alterable. I, therefore, emphasise that a Constitution which is unalterable is practically a violence committed on the coming generations. But I do not see that our draft is absolutely unalterable. I will give credit to the Drafting Committee and also to the House that the Constitution, as we have drafted it, is complete to the smallest details. People criticise it from the point of view of its being too bulky and of its dealing in too many details. We have done a service for the coming generations with a view to facilitate their administration and their smooth running of governments by giving all the possible details we could.

The parliamentary system of Britain has practically been adopted as the basis of this Constitution. And this is for the first time that we are constituting a State on the British Parliamentary system. But then let us realise that the British parliamentary system is successful not only because it is a parliamentary system but because there is a perpetual flexibility in the Constitution which is all unwritten. Therefore they can readily adapt their Constitution to the changing circumstances that may arise along with changes both in time and space. We have adopted that very system, but have not adopted the real basis of that system—the basis that it is ever ready to be changed and ever ready to be adapted to the circumstances that the nation may face from time to time. We have not allowed that flexibility in our Constitution. It is not fair that we should deny facilities to the coming generations to change

[Shri Mahavir Tyagi]

the Constitution. The experiment is new, as some of my Friends have already hinted, the Constitution is not given by the country as a whole.

We have assumed that we are the representatives of the nation. Well, all of us have come through an indirect electorate—through the Legislative Assemblies of Provinces which had been elected when we were not free, when the British were here. Those Assemblies were elected in 1946. And we are making this Constitution in the hope and with the claim that we are the accredited representatives of India. I am afraid technically we are not the representatives of India. *de facto* we might claim to be, but *de jure* we are not.

Again, I am sorry that even as we were, in this Constituent Assembly we have not acted as independent representatives—each one of us. It is the majority party of the country which has given the Constitution. Nobody can deny it. The fact is that although we the Congress Party who are a majority in the Assembly did not act as the party in power or treated others as the Opposition, really speaking it is the Congress Party which has given this Constitution. Others have not even been heard properly. They were in a minority. So the whole of India has not been represented in this Constitution. Let us be fair about that. Let us fairly admit and confess that this is a Constitution given by one party, be it the majority party. At this time when we are sitting as judges let us confess,—whatever be the Constitution good, bad or indifferent, it will be judged by future generations—it does not have the sanction of the country as a whole and that it is a Constitution given by a majority party in the country.

An Honourable Member: Question.

Shri Mahavir Tyagi: You might question it, but the fact remains unquestioned. Other parties had little hand in it because we know it for a fact that the amendments emanating from other quarters or from the unattached Members had no value here and were rarely accepted. So it is the Congress Party alone which has given this Constitution.

In future, parties other than the Congress Party might come into power and they might find it difficult to carry on and steer their programmes out of this Constitution which was made by persons who had a different programme. I therefore submit that we must be fair to those parties which might come into power in future, so that they might be able to make convenient changes in the Constitution, although as a member of the Congress Party myself I wish to assure the country through this House that we have always taken care that we did not act really in that prejudicial spirit of a party. But even as the case stands, it is a one party Constitution.

Supposing, after an experience of a year or two the coming generation feels that the system which we have evolved does not actually work in their interests and the Government thus formed acts destructively against the interests of the country, then they must have an easier method to change the Constitution to suit their whims or likings. Supposing that after experimenting with the parliamentary system for a generation or more they feel that they should bring in the American system of Presidential supremacy, or establish a Federal State I wonder if it would be possible for them to do so?

Even this rigidity I like, particularly in the proviso which Dr. Ambedkar has wisely put. There are very important matters which he has taken under this proviso in which he says that a change in the list of the Seventh Schedule etc. will require the sanction of more than half of the States. They are matters which are highly important; matters like justice, and fundamental rights. Now judiciary is the sole guarantee of the rights of both individuals as well

as States. Therefore, it is but fair that in the matter of bringing about a change in these important matters which guarantee security to both individuals and States, there must be sufficient rigidity. I like this proviso, howsoever strict it be.

But it is in the main body of the article that Dr. Ambedkar is too stiff. There he ought to be rather flexible. He has been stiff all through; that is his character it seems, and his character is reflected in every article he has produced before us for consideration. He says that a change could be brought about only if an absolute majority of the House voted in its favour and two-thirds of the Members present in each House voted in favour. It means that in the Lower House there must be at least 334 Members willing to make a change.

Shri T. T. Krishnamachari: I am afraid my honourable Friend is wrong. It is only requires 251 Members provided they are two-thirds of the majority of those present and voting.

Shri Mahavir Tyagi: Sir, Dr. Ambedkar had rightly remarked yesterday that I was a layman; I really did not appreciate the cunnings of Law or the legal quibbles as you would call it. But then as I understand it you require an absolute majority of the House and two-thirds of the Members present voting in favour of a change. If the whole House is present then you need 334 to vote in favour, because two-thirds must vote in favour, and mathematics cannot be wrong though I might be wrong. Two-thirds of 500 is 334. Even the minority parties will come in their full strength and will make it difficult for the bigger party to implement any change howsoever important it may be, unless their number is double the number of the minority party. Absolute majority of the House I can understand, I am prepared to go so far, but to make it compulsory that even among the Members present two-thirds must vote in favour means that it will be too difficult to effect any change. I submit that some change as proposed by my Friend Dr. Deshmukh or Acharya Jugal Kishore will make it easy and enable the coming Governments to make a change if they so require. That is my point. If you do not do it, the Constitution will become too rigid. If it is not flexible, it will naturally become brittle and will break if it is hit even slightly. Do not let your Constitution become so hard as to acquire brittleness; it will break. I therefore submit, Sir, that we should provide for a convenient change in the Constitution.

Mr. President: I desire to remind Members that we propose to finish the items on the Order Paper tonight. If they would just shorten their remarks we could do it, otherwise we would require a session tomorrow which I understand most Members do not want.

Shri R. K. Sidhva: Sir, five Members have spoken against the motion, you should give an opportunity to those who support it.

Mr. President: Dr. Ambedkar will take care of it.

Shri R. K. Sidhva: But the Members also should express their views, Sir.

Mr. President: If the House wishes to carry on, I have no objection.

Shri R. K. Sidhva: We will finish it tonight.

Mr. President: How can we?

Babu Ramnarayan Singh: *[Mr. President: I would not be taking much time of the House. I also desire that the business fixed for today should be completed today. However, I can assure you that the little time I would take would not in any way dislocate the time table. The fact, on the other hand is, that it is the intention and effort of all of us that all the business be completed today.

*Translation of Hindustani Speech.

[Babu Ramnarayan Singh]

Sir, there is one aspect of the problem under consideration today that obliges me to say a few words of my own. I am afraid that too many restrictions and conditions are being imposed with regard to the amendment of this Constitution by the future generations and all this is being done, I believe, under the apprehension that radical amendments may be made in this Constitution by the future generations acting under rash and irrational impulses I would, however like to submit, that we should not entertain any such apprehension and that we should not entertain the idea that this Constitution would be radically amended very early by the people, who will be taking our places in time to come. It is being laid down that the Constitution could be amended in future only by an absolute majority of the total membership of the House and a two-third majority of the members present and voting. Moreover in certain cases it is being provided that the amendment can be effected by a two-third majority. But I fail to see the reason behind these provisions.

You may be under the impression that you are doing a nice job of it by introducing these provisions. But I feel that if I had the power to do so I would like to scrap nearly half of the provisions that have been included in this Constitution. It is the basic principle of popular Government, of democracy, that all decisions be taken by a simple majority vote. I concede that this majority should truly reflect popular opinion. But this requirement would be fulfilled if, as Dr. Deshmukh has proposed, the amendment should be effected by the President acting upon the simple majority vote of the people.

My friend Shri Brajeshwar Prasad has made a very sound suggestion in this connection. He said that if you really desire to secure a popular verdict with regard to a proposed amendment it is no use referring the question to the Provincial Legislature for decision. The right course would be to ascertain the opinion of the people by means of a plebiscite. Such a safeguard can be appreciated. But the kind of restrictions and prohibitions that are being imposed by you on the freedom of action of the generation to come in regard to this matter, are not proper and desirable. I can say that by doing so you are doing something that is unjust to the generation to come. I had intervened in the debate to submit that this injustice should not be done to posterity. With these words Sir, I resume my seat.]

Shri R. K. Sidhva: Mr. President, Sir, I was rather surprised that Member after Member has come here and opposed this amendment on the ground that in order to amend the Constitution there should be flexibility. I am rather surprised at that kind of an attitude. I have never seen any constitution, much less the constitution of a country, which can be played with and amended by a bare majority.

Shri Brajeshwar Prasad: May I know who pleaded for a bare majority?

Shri R. K. Sidhva: Mr. Tyagi stated that up to five years they want a provision that the Constitution may be amended by a bare majority. So did Mr. Jugal Kishore. Are we going to treat this Constitution which we have drawn up after so much of discussion and deliberations in such a light-hearted manner? It was wrong of any Member to have stated that we have not given enough consideration to this Constitution and therefore something may happen tomorrow. I know this Constitution is not perfect. There may be flaws in it, there may be omissions in it. But can any constitution anywhere in the world be perfect? Why, even after five years there may be flaws.

Another honourable Member stated that Members of this Assembly have not been afforded enough opportunity to express their views. It is a most incorrect statement. If anybody is liberal today in allowing the Members to

make their speeches, it is our President. He has given enough latitude to Members to express their points of view. Even germane or not germane, relevant or irrelevant speeches he has allowed and therefore to state that no opportunity is given to express their views is most unfair. Coming, Sir, to my honourable Friend, Mr. Tyagi, he says that this Assembly comprises of one party. He should have stated it comprises of one majority party. But it is an admitted fact that this Assembly represents all the interests of this country and great pains have been taken to take in a good number of men who are non-Congressmen. The honourable Member who is Chairman of the Drafting Committee and who is piloting this Constitution is a non-Congressman. Out of seven Members of the Drafting Committee, six are non-Congressmen. It is therefore an entirely wrong statement for Mr. Tyagi to make.

Shri Mahavir Tyagi: Thinking is done by the Congress Party and the Drafting Committee drafts accordingly.

Shri R. K. Sidhva: But your sweeping remarks should be corrected. My point, therefore, is that you cannot cast a slur on the Constituent Assembly by stating that the opinions of Members are very lightly treated.

In fact I want the Constitution to be more rigid, at least this part of it. In fact I know that in certain Constitutions, a three-fourths majority is insisted upon. The Constitution which we have drawn up after so much of trouble is a great Constitution and we should be proud of it. In fact I have my own grievances in that they have not accepted many of my amendments which were reasonable. But in a democratic form of Government, we have to abide by the decision of the majority. I, therefore, strongly support the motion moved by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, of the many amendments that have been made and the speeches made thereon, it is not possible for me to pursue every amendment and to pursue every speaker. But I am going to take as a general alternative suggested by the various speakers that our Constitution should be made open for amendment by the future Parliament either by a simple majority or by a method which is much more facile than that embodied in article 304.

Sir, before I proceed to explain the provisions contained in article 304, I should like to remind the House of the provisions which are contained in other constitutions on the question of amending the Constitution. I should begin by telling the House that the Canadian Constitution does not contain any provision for the amendment of the Canadian Constitution. Although Canada today is a Dominion, is a sovereign State with all the attributes of sovereignty and the power to alter the Constitution, the Canadians have not thought it fit to introduce a clause even now permitting the Canadian Parliament to amend their Constitution. It has also to be remembered that the Canadian Constitution was forged as early as 1867 and there is not the slightest doubt about it in the mind of anybody who has read the different books on the Canadian Constitution that there has been a great deal of discontent over the various clauses in the Canadian Constitution and even on the interpretation given by the Privy Council on the provisions of the Canadian Constitution; none the less the Canadian people have not thought fit to employ to powers that have been given to them to introduce a clause relating to the amendment of the Constitution.

I come to the Irish Constitution. In the Irish Constitution there is a provision that both Houses by a simple majority may alter, or repeal any part of the Irish Constitution, provided that the decision of the Houses to amend, repeal or alter the Constitution is submitted to the people in a referendum and approved by the people by a majority.

[The Honourable Dr. B. R. Ambedkar]

Then let us take the Swiss Constitution. In that constitution too, the legislature may pass an amending Bill, but that amendment does not have any operative force unless two conditions are satisfied: one is that the majority of the cantons accept the amendment, and secondly—there is a referendum also—in the referendum the majority of the people accept the amendment. The mere passing of a Bill by the Legislature in Switzerland has no effect so far as changing the Constitution is concerned.

Let me now take the Australian Constitution. In that Constitution the provision is this: That the amendment must be passed by an absolute majority of the Australian Parliament. Then, after it has been so passed, it must be submitted to the approval of persons who are entitled to elect representatives to the Lower House of the Australian Parliament. Then again it has to be submitted to a referendum of the people or the electors. A further condition is this: that it must be accepted by a majority of the States and also by a majority of the electors.

In the United Constitution the provision is that an amendment must be accepted by two-thirds majority of both Houses subject to the fact that the decision of both Houses by two-thirds majority must be ratified by the decision of two-thirds majority of the States in favour of the amendment. I cite these facts in order to point out that in no country to which I have made reference it is provided that the Constitution should be amended by a simple majority.

Now let me turn to the provision of our Constitution. What is it that we propose to do with regard to amendment of our Constitution? We propose to divide the various articles of the Constitution into three categories. In one category we have placed certain articles which would be open to amendment by Parliament by a simple majority. That fact unfortunately has not been noticed by reason of the fact that mention of this matter has not been made in article 304, but in different other articles of the Constitution. Let me refer to some of them. Take for instance articles 2 and 3 which deal with the States. So far as the creation of new States is concerned or the re-constitution of existing States is concerned, this is a matter which can be done by Parliament by a simple majority. Similarly, take for example article 148-A which deals with the Upper Chambers in the provinces. Parliament has been given perfect freedom to either abolish the Upper Chambers or to create new Second Chambers in provinces which do not now have them by a simple majority. Now take article 213 which deals with the States in Part II. With regard to the constitution of the States, the draft Constitution also leaves the making of constitution of States in Part II and their modification to Parliament to be decided by a simple majority.

Again take Schedules V and VI. They are also left to be amended by Parliament by a simple majority. I can cite innumerable articles in the Constitution, such as article 255, which deals with grants and financial provisions, which leave the matter subject to law made by Parliament. The provisions are 'until Parliament otherwise provides'. Therefore in many matters—I have not had time to examine the whole of the draft Constitution and so I am only just illustrating my point—we have left things in our Constitution in a way which is capable of being amended by a simple majority. If my friends who have been persisting in the criticism that Parliament should have more extensive powers of amending or altering the Constitution by a simple majority had suggested to me a concrete case and referred to any definite article that that should also be put in that category, it would have been open to the Drafting Committee to consider the matter. Instead of that, to say that the whole

of the Constitution should be left liable to be amended by Parliament by majority is, in my judgment, too extravagant and too tall an order to be accepted by people responsible for drafting the Constitution.

Therefore, the first point which I wanted to emphasise was that it is absolutely a misconception to say that there is no article in the Constitution which could not be amended by Parliament by a simple majority. As I said, we have any number of articles in our Constitution which it would be open for Parliament to amend by a bare majority.

Now, what is it we do? We divide the articles of the Constitution under three categories. The first category is the one which consists of articles which can be amended by Parliament by a bare majority. The second set of articles are articles which require two-thirds majority. If the future Parliament wishes to amend any particular article which is not mentioned in Part III or article 304, all that is necessary for them is to have two-thirds majority. Then they can amend it.

Mr. President: Of Members present.

The Honourable Dr. B. R. Ambedkar: Yes. Now, we have no doubt put certain articles in a third category where for the purposes of amendment the mechanism is somewhat different or double. It requires two-thirds majority plus ratification by the States. I shall explain why we think that in the case of certain articles it is desirable to adopt this procedure. If Members of the House who are interested in this matter are to examine the articles that have been put under the proviso, they will find that they refer not merely to the Centre but to the relations between the Centre and the Provinces. We cannot forget the fact that while we have in a large number of cases invaded provincial autonomy, we still intend and have as a matter of fact seen to it that the federal structure of the Constitution remains fundamentally unaltered. We have by our laws given certain rights to provinces, and reserved certain rights to the Centre. We have distributed legislative authority; we have distributed executive authority and we have distributed administrative authority. Obviously to say that even those articles of the Constitution which pertain to the administrative, legislative, financial and other powers, such as the executive powers of the provinces should be made liable to alteration by the Central Parliament by two-thirds majority, without permitting the provinces or the States to have any voice, is in my judgment altogether nullifying the fundamentals of the Constitution. If my honourable Friends were to refer to the articles which are included in the proviso they will see that we have selected very few. Article 43 deals with the election of the President; article 44 deals with the manner of election of the President. It was the view of the Drafting Committee that the President, while no doubt in charge of the affairs of the Centre, nonetheless was the head of the Union, and as such, the provinces were as much interested in his election and in the manner of his election as the Centre. Consequently we thought that this was a proper matter to be included in that category of articles which would require ratification by the provinces.

Take article 60 and article 142. Article 60 deals with the extent of the executive authority of the Union and article 142 deals with the extent of the executive authority of the State. We have laid down in our Constitution the fundamental proposition that executive authority shall be co-existensive with legislative authority. Supposing, for instance, the Parliament has the power to make an alteration in article 60 for extending its executive authority beyond the provisions or the limit contained in article 60, it would undoubtedly undermine or limit the executive authority of the States as defined in article 142, and we therefore thought that that also was a fundamental matter and ought to require the ratification of the States.

[The Honourable Dr. B. R. Ambedkar]

Chapter IV, Part V, deals with the Supreme Court. There can be no doubt about it that the Supreme Court is a court in which both the Centre and the provinces or the units and every citizen of this country are interested, and it was therefore a matter which ought not to be left to be decided merely by a two thirds majority. The same about the High Courts mentioned in Chapter VII of Part VI.

Chapter I of Part IX which is included in the third category, deals with the distribution of legislative power, and (a) deals with the lists of the Seventh Schedule. Nobody can deny that the provinces have a fundamental interest in this matter and that they should not be altered without their consent. Similarly the representation of the States in the Council of States which is dealt with in article 67.

I think honourable Members will see that the principles adopted by the Drafting Committee are unquestionable, except in the sight of those who think that the Constitution should be liable, should be open to be amended every article of that by a simple majority. As I said, I am not prepared to accept that position. The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State—the executive, the judiciary and the legislature. It also defines the powers of the executive and the powers of the legislature as against the citizens, as we have done in our Chapter dealing with Fundamental Rights. In fact, the purpose of a Constitution is not merely to create the organs of the State but to limit their authority, because if no limitation was imposed upon the authority of the organs, there will be complete tyranny and complete oppression. The legislature may be free to frame any law; the executive may be free to take any decision; and the Supreme Court may be free to give any interpretation of the law. It would result in utter chaos. Sir, I have not been able to understand when it is said that the Constitution must be made open to amendment by a bare majority. I can, applying my mind to this particular feeling, conceive of only three reasons. One is that the Drafting Committee has prepared a draft which from the drafting point of view is very bad. I can quite understand that position. If that is the thing.....

Shri Mahavir Tyagi: It is not so.

The Honourable Dr. B. R. Ambedkar: It may not be so. If it is so, I as Chairman of the Drafting Committee and I think my other colleagues of the Drafting Committee would not at all object if this Constituent Assembly were to appoint another Drafting Committee or to import a Parliamentary draftsman, submit this draft to him and ask him to suggest and find out what defects there are. That would be an honest procedure, and I have no objection to it at all.

If that is not the ground on which the argument rests, then the other ground is that this Constitution proceeds on some wrong principles. Sir, so far as this matter is concerned, it seems to me that a modern Constitution can proceed only on two bases: One base is to have a parliamentary system of government. The other base is to have a totalitarian or dictatorial form of government. If we agree that our Constitution must not be a dictatorship but must be a Constitution in which there is parliamentary democracy where government is all the time on the anvil, so to say, on its trial, responsible to the people, responsible to the judiciary, then I have no hesitation in saying that the principles embodied in this Constitution are as good as, if not better than, the principles embodied in any other parliamentary constitution.

The other argument which perhaps might have been urged—I was not able to hear every Member who spoke—is that this Assembly is not a representative assembly as it has not been elected on adult suffrage, that the large mass of

the people are not represented in this Constitution. Consequently this Assembly in framing the Constitution has no right to say that this Constitution should have the finality which article 304 proposes to give it. Sir, it may be true that this Assembly is not a representative assembly in the sense that Members of this Assembly have not been elected on the basis of adult suffrage. I am prepared to accept that argument, but the further inference which is being drawn that if the Assembly had been elected on the basis of adult suffrage, it was then bound to possess greater wisdom and greater political knowledge is an inference which I utterly repudiate.

Mr. Naziruddin Ahmad: It would have been worse !

The Honourable Dr. B. R. Ambedkar: It might easily have been worse, says my Friend Mr. Naziruddin Ahmad, and I agree with him. Power and knowledge do not go together. Oftentimes they are dissociated, and I am quite frank enough to say that this House, such as it is, has probably a greater modicum and quantum of knowledge and information than the future Parliament is likely to have. I therefore submit, Sir, that the article as proposed by the Drafting Committee is the best that could be conceived in the circumstances of the case.

Mr. President: I shall now put the amendments to vote. I will first take up the amendments moved by Mr. Kamath in the second volume of the printed amendments. The first amendment is 3239.

Mr. President: The question is :

"That before clause (1) of article 304, the following new clause be inserted and the existing clauses be renumbered accordingly :

'(1) Any provision of this Constitution may be amended, whether by way of variation, addition or repeal, in the manner provided in this article'."

The amendment was negatived.

Mr. President: The question is :

"That in clause (1) of article 304, for the words 'An amendment', the words 'A proposal for an amendment' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in clause (1) of article 304, for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill', the words 'it shall upon presentation to the President, be signed by him' be substituted."

or alternatively

"That in clause (1) of article 304, for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill', the words 'it shall upon presentation to the President, receive his assent' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in clause (1) of article 304, the words 'to the Bill' occurring in the 11th line be deleted."

The amendment was negatived.

Mr. President: The question is :

"That before the proviso to clause (1) of article 304, the following new pro-

proposed

'Provided that a period of not less than six months intervenes between the initiation of the Bill and its final passage in Parliament.'"

The amendment was negatived.

Mr. President: There was one amendment, *i.e.*, No. 3261 which was really of proposed adding in the name of Acharya Jugal Kishore.

Acharya Jugal Kishore: I do not want this to be put to vote.

Mr. President: These are all the amendments on the Printed List. Then we come to the amendments in the cyclostyled Order Paper. I first take the amendments in the order in which they have been moved. The question is:

"That in amendment No. 118 of List III (Eighth Week), for the proviso to the proposed article 304, the following proviso be substituted:—

'Provided that if such amendment seeks to make any change in—

(a) article 13, article 44, article 60, article 142 or article 213A of this Constitution, or

(b) Chapter IV of Part V, Chapter VIII of Part VI, or Chapter I of Part IX of this Constitution, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.'"

The amendment was adopted.

Mr. President: The question is:

"That in amendment No. 118 of List III (Eighth Week), for the substantive part of the proposed article 304, the following be substituted:—

'304. The Constitution may be added to or amended by the introduction of a Bill for this purpose in either House of Parliament and passed in both Houses of Parliament by a clear majority of the total membership of each House. The provisions of the Bill shall not however come into force until assented to by the President.'"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 118 of List III (Eighth Week), in the proposed article 304, the words 'and by a majority of not less than two-thirds of the members of that House present and voting' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 118 of List III (Eighth Week), the following proviso be added to the proposed article 304:—

'Provided that for a period of 3 years from the commencement of this Constitution any amendment of the Constitution certified by the President to be not one of substance may be made by a Bill for the purpose being passed by both Houses of Parliament by a simple majority. This will, among other things, include any formal amendment recommended by a majority of the Judges of the Supreme Court on the ground of removing difficulties in the administration of the Constitution or for the purpose of carrying out the Constitution in public interest and certified by the President to be necessary and desirable.'"

The amendment was negatived

Mr. President: The question:

"That in amendment No. 118 of List III (Eighth Week), clause (a) of the proviso to the proposed article 304 be deleted."

The amendment was negatived.

Dr. P. S. Deshmukh: I beg to withdraw my other amendment No. 212.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No. 207 of List V (Eighth Week), in the proposed proviso to article 304, for the words 'Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent' the word 'electorate' be substituted."

The amendment was negatived.

Mr. President: I think these are all the amendments. The question is:

"That proposed article 304, as amended, stand part of the Constitution."

The motion was adopted.

Article 304, as amended, was added to the Constitution.

Shri Brajeshwar Prasad: Sir, now the time is seven o'clock.

Seth Govind Das: There is so much still to be done that I do not think that we shall be able to finish it. So I propose that either we should sit at nine o'clock tonight and go on till twelve o'clock or we may sit tomorrow morning.

The Honourable Dr. B. R. Ambedkar: We have got only three articles.

Shri T. T. Krishnamachari: We have only three articles, two of which are of a formal nature.

Mr. President: I think it would be very inconvenient to adjourn now and come back again to the House. So we have to sit until we finish or we have to sit tomorrow.

The Honourable Dr. B. R. Ambedkar: We have got two or three articles and I am sure they are non-contentious and it would not take even half an hour.

Seth Govind Das: I do not think we can finish in one hour. There is the question of the name of the country in article 1 to be settled. I do not think we shall be able to finish all these.

Mr. President: The majority of the House seems to think that we shall continue. Am I correct?

Many Honourable Members: Yes, Sir.

The Honourable Dr. B. R. Ambedkar: We can finish the thing.

Mr. Naziruddin Ahmad: It cannot be done. There is article 1 and unless the sweets are arranged by Dr. Ambedkar, the *namkaranam* ceremony cannot be done today.

Article 99

Mr. President: Then we shall take articles 99 and 184.

If

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 99, the following article be substituted:—

'99. (1) Notwithstanding anything contained in Part XIVA of this constitution but subject to the provisions of article 301F thereof, business in Parliament shall be transacted in Hindi or in English.

Language to be used in Parliament

Provided that the Chairman of the Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member, who cannot adequately express himself in either of the languages aforesaid to address the House in his mother tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom.'"

May I move the other one also. This is an analogous thing.

Mr. President: I suppose the argument will be the same in respect of both.

The Honourable Dr. B. R. Ambedkar: They are substantially the same.

Mr. President: I shall put them separately to vote.

The Honourable Dr. B. R. Ambedkar: We can have one discussion. So far as the discussion is concerned, the argument will be more or less the same Sir, I move:

"That for article 184, the following article be substituted:—

184. (1) Notwithstanding anything contained in Part XIVA of this Constitution but subject to the provisions of article 301F thereof, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English.

Languages to be used in the Legislatures of States

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother tongue.

(2) Unless the Legislature of the State otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom.'"

Sir, I think no observations are necessary. The articles are very clear in themselves.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

"That with reference to amendment No. 1777 of the List of amendments (Volume I), in clause (1) of article 99, after the word 'Hindi' the words 'or Bengali or any of the regional languages' be inserted."

Mr. President: Mr. Naziruddin Ahmad, how do you fit in the amendment which you have read now?

Mr. Naziruddin Ahmad: This will fit in after the word 'Hindi'.

Mr. President: Yes.

Mr. Naziruddin Ahmad: Sir, I move:

"That with reference to amendment No. 2507 of the List of Amendments (Volume I), in clause (1) of article 184, for the words 'language or languages generally used in that State', the words 'the regional language or languages of the State' be substituted."

An Honourable Member: These amendments have all lapsed.

Mr. Naziruddin Ahmad: I submit that it should be the other way. The amendment proposed by Dr. Ambedkar does not fit in with my amendments. That is the real truth. This amendment was sent long before and the Drafting Committee's amendment has come to us as a surprise. However, I should

only submit a few points. The only point is that I want the regional languages also to be used in article 99. We have already accepted the principle that Hindi should be the official language of India. That we have decided by an overwhelming majority of votes. We have also decided that the regional languages should have sufficient scope for development. I should therefore think that the regional languages should also be encouraged in the Parliament. That is the reason for my amendment. If the amendment will not fit in with the exact text of the article now proposed, it should be left to the Drafting Committee to make suitable adjustments.

With regard to my amendment to article 184, the same principle also applies. There may be one regional language or more regional languages and those regional languages should be allowed to be used in the legislatures. The point which I want to make is that the Speaker or President has much latitude in allowing any member to speak a language with which he is familiar provided he does not know the official language. It gives some discretion to the President or the Speaker to allow the use of the regional languages who may refuse to allow anyone to speak in these languages. If you do not allow the regional languages also to develop, their contribution towards the development of the official language will be very small.

Mr. President: Is that not given in the amendment as proposed now?

Mr. Naziruddin Ahmad: I shall ask the Drafting Committee to consider that. This is only a suggestion: it should fit in somehow. I know this is only a pious sentiment on my part because it is not going to be accepted.

Pandit Lakshmi Kanta Maitra: Are you going to allow discussion on the language question? The whole language question is coming before the House.

The Honourable Dr. B. R. Ambedkar: No, No. The whole question has been discussed and decided.

Seth Govind Das: *[Mr. President, Sir, it is a pleasure to me to have come here to support this article. No one of us has felt completely satisfied in regard to the article adopted so far in connection with the national language. But in regard to this article I do not think that is any particular difference of opinion. The articles moved so far in this House in regard to language have put one impediment or the other in the way of the early adoption of Hindi. This is an independent article for it does not provide for consent of the President being taken nor for entrusting its work to any commission or Parliamentary Committee.

In supporting this article, I am reminded of what happened twenty-two years ago. In 1927 I moved a resolution on this subject in the Council of State. I do not want to take your time by reading out that resolution. In it a demand was made that permission should be given to speak in the House in Hindi and Urdu together with English, but that demand was rejected. I was then twenty-eight or twenty-nine years of age. Today when I think of this incident that occurred about twenty two years ago the subsequent events that occurred during the last twentytwo years come flooding into my mind; I hope that henceforth at least the Hindi speaking people and all those who can speak Hindi but who for reasons best known to them, are proud of speaking in English, after the achievement of freedom, will consider the advisability of speaking in Hindi in free India when the official language will be Hindi after the adoption of the article and in any case it would not be English. If

*Translation of Hindustani Speech.

[Seth Govind Das]

they do not do so, the Press of this country will certainly criticise them adversely for this omission. The place where Hindi can be propagated in a free way is our Parliament and I hope that Hindi will take its rightful place in it.

In the end, I want to add that the people of this country came into contact with political movements after the assumption of leadership by Mahatma Gandhi, and if you want that they should come in contact with the proceedings of their Parliament also, it is necessary they should be conducted in a language which is understood by the majority of the people in our country. With these words I whole heartedly support these two articles moved by Dr. Ambedkar.]

Several Honourable Members: The question be now put.

Mr. President: Mr. Naziruddin Ahmad, do you wish your amendments to be put to vote?

Mr. Naziruddin Ahmad: I beg leave to withdraw them, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That for article 99, the following article be substituted:—

'Language to be used in Parliament

99. (1) Notwithstanding anything contained in Part XIVA of this Constitution but subject to the provisions of article 301F thereof, business in Parliament shall be transacted in Hindi or in English:

Provided that the Chairman of the Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member, who cannot adequately express himself in either of the languages aforesaid to address the House in his mother-tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom.'"

The amendment was adopted.

Mr. President: The question is:

"That for article 184, the following article be substituted:—

'Language to be used in the Legislatures of States

184. (1) Notwithstanding anything contained in Part XIVA of this Constitution but subject to the provisions of article 301F thereof, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English:

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State otherwise provides this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom.'"

The amendment was adopted.

Mr. President: The question is:

"That articles 99 and 184, as amended, stand part of the Constitution."

The motion was adopted.

Articles 99 and 184, as amended, were added to the Constitution

Article 305

Mr. President: There was one article 305. I have omitted it by mistake. There is a proposition that we should omit it.

Shri T. T. Krishnamachari: Sir, I move:

"That article 305 be deleted."

Mr. President: This article has become unnecessary now. The question is:

"That article 305 be deleted."

The motion was adopted.

Article 305 was deleted from the Constitution.

Article 1

Mr. President: There is one more article, article 1.

The Honourable Dr. B. R. Ambedkar: Sir, I propose to move amendment No. 130 and incorporate in it my amendment No. 197 which makes a little verbal change in sub-clause (2).

Sir, I move:

"That for clauses (1) and (2) of article 1, the following clauses be substituted:—

'(1) India, that is, Bharat shall be a Union of States.

(2) The States and the territories thereof shall be the States and their territories for the time being specified in Parts I, II and III of the First Schedule."

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I want to submit that this is a very important article. It does not want only the name, but it also says that it will be a Union of States. This is very objectionable. I have given notice of an amendment on which I will take at least half an hour to explain. I am opposed to this Union of States. I do not want a Union of that kind. Because, originally we had republics. We have given up that idea of republics and we have brought in the States. This is a very serious matter. It cannot be disposed of in a simple manner. I spoke to Dr. Ambedkar; he says he will finish in five minutes. He cannot do that. This is a very serious matter and in this connection I have tabled amendments from the very beginning. I have tabled an amendment even now which is printed and circulated.

Mr. President: You move an adjournment of the discussion.

Maulana Hasrat Mohani: Sir, I want an adjournment of the discussion to-morrow morning.

Honourable Members: No.

Mr. President: I will take the sense of the House. I have taken it once. I will take it again. The motion is:

"That the discussion be adjourned till to-morrow morning."

The motion was negatived.

Mr. President: Discussion will proceed. 131.

Maulana Hasrat Mohani: What about my amendment?

Mr. President: It will come in time.

Maulana Hasrat Mohani: On a point of Order. I understand there is no quorum. Therefore this House should be adjourned till to-morrow morning.

Mr. President: I do not know. I think under the procedure the bell has to be rung and then counting shall have to take place. Have the bell rung?

(The bells were rung.)

I think there should be counting now. Members will take their seats so that counting may proceed.

Maulana Hasrat Mohani: If you at least adjourn for half an hour, it will enable me to take my meals. I have not so far taken meals.

Mr. President: If I adjourn at all, it will be for the next session. It will be best to adjourn till the next session.

The Honourable Dr. B. R. Ambedkar: Sir, this can be finished in a short time.

Mr. President: What can we do? It is open to any Member to obstruct. Eighty six Members are present, and under our rules one-third of the total number of Members should constitute the quorum, and that is about 97. So now, there is no quorum. I have to adjourn the House, there is no help.

An Honourable Member: Let this article go to the next session.

Another Honourable Member: We can meet to-morrow.

Another Honourable Member: There is no guarantee of quorum even to-morrow.

The Honourable Dr. B. R. Ambedkar: We can bring some Members who may be outside. The bell may be rung.

Mr. President: The position is this. Either we have to adjourn till to-morrow.....

Pandit Lakshmi Kanta Maitra: There will be no quorum to-morrow either.

An Honourable Member: We can adjourn for half an hour.

Mr. President: The suggestion is made that we adjourn for half an hour to enable Members to come.

May I make an enquiry? Adjournment is necessary now and we cannot avoid it. The question is only the time we meet next.

The first question is whether we should meet to-night, or to-morrow or leave it for the next session of the Assemly.

Sardar Hukam Singh: Sir, you cannot adjourn the House beyond three days without permission of the House, and the House now cannot give any such permission as it has no quorum.

Mr. President: Then we shall meet later to-night.

The Honourable Shri Binodanand Jha (Bihar: General): A properly constituted House can give permission to adjourn beyond three days, but this Assembly now is not properly constituted as there is no quorum. In the absence of quorum, it cannot function. Clause (2) of rule 22 of the Rules of Procedure deals with quorum and the situation arising from want of quorum. You cannot, Sir, straightaway adjourn without the consent of this House.

Mr. President: Under rule 22 "If the Chairman on account being demanded by a Member at any time during a meeting, ascertains that one-third of the whole number of Members are not present, he shall adjourn the Assembly

or the Committee, as the case may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is still no quorum, he shall adjourn the Assembly or the Committee as the case may be, till the next day on which it ordinarily sits."

So we have to wait. We shall wait till eight o'clock.

(The time was ten minutes to Eight of the Clock.)

Mr. Nazirudd:n Ahmad: Sir, I think that fifteen minutes have passed already.

Shri Mahavir Tyagi: You cannot raise any point of order as there is no quorum in the House.

(On a count at Eight of the Clock it was found that there was still no quorum.)

Mr. President: There is no quorum, as there are only ninety-four Members present. The House stands adjourned till 9 o'clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Sunday, the 18th September 1949.

CONSTITUENT ASSEMBLY OF INDIA

Sunday, the 18th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

MOTION *RE* OCTOBER MEETING OF ASSEMBLY

Shri K. M. Munshi (Bombay : General): Mr. President, Sir, may I move.....

Shri Mahavir Tyagi (United Provinces : General): Sir, lest it happens that there is no quorum during the course of the day, I would suggest that the date of the next meeting be first decided.

Shri K. M. Munshi: Mr. Tyagi may have patience. I am moving:

"That the President may be authorised to fix such a date in October as he considers suitable for the next meeting of the Constituent Assembly."

Shri M. Thirumala Rao (Madras : General): Why should we have it in October?

Shri K. M. Munshi: The meeting has to be held in October. I request the House to adopt the Resolution I have moved.

Shri H. V. Kamath (C.P. & Berar : General): May we know the probable date of the meeting in October?

Mr. President: If the House is so pleased it may give me authority to call the next meeting at any date which I may consider necessary. I may provisionally announce that as at present advised I propose to call the next meeting to begin on 6th October. Due notice will be given to Members about it

An Honourable Member: How long will that session last?

Mr. President: It will up to 18th or 19th October. We shall finish that session before Deepavali on 21st October.

Do I take it that the Resolution moved by Mr. Munshi is acceptable to the House?

Honourable Members: Yes.

The motion was adopted.

DRAFT CONSTITUTION—*Contd.*

Article 1—Contd.

Mr. President: The House will now take up article 1. I think Mr. Kamath has moved amendment 220 and finished his speech.

Shri H. V. Kamath: I have not finished my speech, Sir.

Mr. President: Then, go ahead.

Shri H. V. Kamath: I move:

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (1) of article 1, the following be substituted :—

'(1) Bharat, or, in the English language, India, shall be a Union of States.'"

or, alternatively,

[Shri H. V. Kamath]

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (1) of article 1, the following be substituted:

'(1) Hind, or, in the English language, India, shall be a Union of States.'"

Sir, I move:

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (2) of article 1, the following be substituted:

'(2) The States shall mean the territories for the time being specified in Parts I, II and III of the First Schedule.'"

Taking my first amendment first, amendment No. 220, it is customary among most peoples of the world to have what is called a *Namakaran* or a naming ceremony for the new-born. India as a Republic is going to be born very shortly and naturally there has been a movement in the country among many section almost all sections of the people that this birth of the new Republic should be accompanied by a *Namakaran* ceremony as well. There are various suggestions put forward as to the proper name which should be given to this new baby of the Indian Republic. The prominent suggestions have been Bharat, Hindustan, Hind and Bharatbhumi or Bharatvarsh and names of that kind. At this stage it would be desirable and perhaps profitable also to go into the question as to what name is best suited to this occasion of the birth of the new baby the Indian Republic. Some say, why name the baby at all? India will suffice. Well and good. If there was no need for a *Namakaran* ceremony we could have continued India, but if we grant this point that there must be a new name to this baby, then of course the question arises as to what name should be given.

Now, those who argue for Bharat or Bharatvarsh or Bharatbhumi, take their stand on the fact that this is the most ancient name of this land. Historians and philologists have delved deep into this matter of the name of this country, especially the origin of this name Bharat. All of them are not agreed as to the genesis of this name Bharat. Some ascribe it to the son of Dushyant and Shakuntala who was also known as "Sarvadamana" or all-conqueror and who established his suzerainty and kingdom in this ancient land. After him this land came to be known as Bharat. Another school of research scholars hold that Bharat dates back to Vedic.....

The Honourable Dr. B. R. Ambedkar (Bombay: General): Is it necessary to trace all this? I do not understand the purpose of it. It may be well interesting in some other place. My Friend accepts the word "Bharat". The only thing is that he has got an alternative. I am very sorry but there ought to be some sense of proportion, in view of the limited time before the House.

Shri H. V. Kamath: I hope it is not for Dr. Ambedkar to regulate the business of the House.

Mr. President: What amendment are you moving?

Shri H. V. Kamath: I am moving two alternative amendments.

Mr. President: Alternative amendments but not contradictory amendments.

Shri H. V. Kamath: The idea is that if one is not accepted, the other may be accepted. In this I have followed the usual practice. I have got your ruling on previous occasions.

Mr. President: Here, one excludes the other. You can choose one name.

Shri H. V. Kamath: The first relates to the language of the amendment moved by Dr. Ambedkar, because he says "India, that is, Bharat". I have recast it in another form. It relates to the language, the phraseology, the construction of the sentence.

Mr. President: So I take it that it is not a matter on which there need be long speeches. I do not think anything is gained by long speeches.

Shri H. V. Kamath: I want only five minutes.

Mr. President: You have already taken five minutes.

(Shri Shankarrao Deo rose.)

Shri H. V. Kamath: I need not obey you, Mr. Shankarrao Deo. I know the rules.

Mr. President: You can move one. I permitted you to move both of them, but I find that the two amendments are contradictory.

Shri H. V. Kamath: Are they contradictory, Sir? If you say they are contradictory, I have nothing to say.

Mr. President: Yes, if one is accepted, the other is ruled out.

Shri H. V. Kamath: My object is that if one is not accepted, the other may be accepted.

The Honourable Dr. B. R. Ambedkar: Why all this eloquence over it?

Shri Shankarrao Deo: (Bombay: General): There should be no arguing with the Chair.

Shri H. V. Kamath: I know the rules, Mr. Shankarrao Deo.

Mr. President: You can move one.

Shri H. V. Kamath: I shall move "Bharat".

Mr. President: Then it is only a question of language. It is only a verbal change.

Shri H. V. Kamath: I bow to your ruling, Sir, but I do think.....

The Honourable Shri N. Gopalaswami Ayyangar: (Madras: General): There can be no 'but'.

Shri H. V. Kamath: If Mr. Ayyangar is so impatient.....

Shri K. M. Munshi: Order, order.

Shri H. V. Kamath: It is not for Mr. Munshi to call me to order.

Mr. President: I have told you that if you select the name "Bharat", it is only a question of language and it does not require any speech.

Shri H. V. Kamath: I bow to your ruling. I only wish to refer to the Irish Constitution which was adopted twelve years ago. There the construction of the sentence is different from what has been proposed in clause 1 of this article. I feel that the expression "India, that is, Bharat"—it is means "India, that is to say, Bharat"—I feel that in a Constitution, I say, somewhat clumsy; it would be much better if this expression, tion were modified in a constitutionally more acceptable form in a more aesthetic from and definitely in a more correct form of referring

If honourable colleagues in the House would take the Free State to the Irish Constitution passed in 1937, they will see its name on was one of the few countries in the modern world which refers to the achieving freedom; and the fourth article of its Constitution

[Shri H. V. Kamath]

change in the name of the land. That article of the Constitution of the Irish Free State reads as follows:

"The name of the State is Eire, or, in the English language, Ireland."

I think that this is a much happier expression that "Bharat, or, in the English language, India, shall be and such". I say specifically the English language. Why? Because Members might ask me, why do you say "the English language"? Is it not the same in all European languages? No, Sir, not so. The German word is 'Indien' and in many parts of Europe the country is still referred to as in the olden days as "Hindustan" and all natives of the country are referred to as Hindus, whatever their religion may be. It is quite common in many parts of Europe. It must have come from the ancient name Hindu, derived from the river Sindhu.

To sum up, I think that the construction of this clause "India, that is, Bharat" is a clumsy one, and I do not know why the Drafting Committee has tripped in this fashion, has committed what is to me a constitutional slip. Dr. Ambedkar has admitted so many slips in the past, I hope that he admits this one too, and revises the construction of this clause.

Clause (2) as moved by Dr. Ambedkar reads as follows:

"The States and the territories thereof shall be those for the time being specified in Parts I, II and III of the First Schedule."

Mr. President: In place of clause (2) "that the territories thereof shall mean" is only a verbal amendment.

Shri H. V. Kamath: I am sorry, Sir, you have not been able to follow my amendment. It states "shall mean the territories". I have moved the deletion of the words "territories thereof", as Dr. Ambedkar's amendment states "and the territories thereof shall be those."

Mr. President: They shall mean only the territories and nothing else.

Shri H. V. Kamath: I am making out my point from the Schedule itself. I am not going to argue in the air. Unless the Schedule is altered,—that is a subsequent point for the House to decide,—I must take my stand on that. The Schedule as it stands reads thus:

"PART I

The States and the territories of India.

The territories known immediately before the commencement of this Constitution as the Governor's Provinces of "

Now, Sir, if the clause as moved by Dr. Ambedkar is accepted by the House how does that read? "The States and the territories thereof." May I invite Dr. Ambedkar's attention to the clause as it stood in the original draft, "the State shall mean the states for the time being specified". I do not know why this change in the phraseology and the construction or the wording of this clause has been made, because if you say States as referred to in Schedule One, Part I, these States are defined there, and what are these? The States which were Governors' provinces before the commencement of the Constitution; similarly the territories in Part II known as the Chief Commissioners' Provinces.

Mr. President: I think your amendment arises on account of the fact that you do not know what form the First Schedule is going to take.

Shri H. V. Kamath: I take my stand on the Schedule as it stands.

Mr. President: We have not taken up the First Schedule and therefore, you do not know the change or the form in which the First Schedule is to be put.

Shri H. V. Kamath: Who is to know what is likely to be passed? The best thing is to pass that Schedule first and take the other thing next.

Mr. President: May I read out the form in which the First Schedule will be placed before the House?

"In Part I of the First Schedule, the following be substituted:

'In Part I the names of the States are given. Only the names are given in the Schedule. Then the territory of each of the States shall comprise such and such.'"

Shri H. V. Kamath: I had not the benefit of this draft before me, and therefore I took my stand on the Schedule as it stands in the Constitution, and there was therefore no alternative but to move my amendment. Now that you have drawn my attention to the Schedule as it will be brought before the House—and I hope will be accepted by the House,—in the light of that, there is no need for me to speak further on this amendment. I move both amendments, Sir, and commend them to the House for consideration and acceptance.

Shri Brajeshwar Prasad: (Bihar: General): Mr. President, Sir, there are six amendments standing in my name. I would like to move only one, amendment No. 192, List V, Eighth week. Sir, I move:

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (1) of article 1, the following be substituted:

'(1) India, that is, Bharat is one integral unit.'"

I am opposed to the incorporation of the words 'Union' and 'States' in our Constitution. There was a bitter and prolonged controversy in the United States of America on the question of the constitutional status of the constitutent units.

The Honourable Shri K. Santhanam: (Madras: General): On a point of order, Sir, we have already passed the Constitution defining the constitution of the States. Therefore, we cannot change the Constitution by a definition.

Shri Brajeshwar Prasad: It is only here, I submit, Sir, that this point could have been raised. The use of the word 'States' for the first time occurs in article 1 of the Constitution. This fundamental question could have been raised only in this clause.

Mr. President: As a matter of fact, the whole of the Constitution has been based on the assumption that there will be separate States, and that those States will constitute the Union. Now, you want to go back on that and say that there are no separate States, it is too late now, I think.

Shri Brajeshwar Prasad: I object to the use of the word 'Union'. Both these words are inter-related and integrated.

Shri S. Nagappa: (Madras: General): What is the word objected to?

Shri Brajeshwar Prasad: Have patience. Please permit the Chair to regulate the proceedings of the House.

There was a prolonged and bitter controversy in the United States of America on the question of the constitutional status of the constitutent units. It ultimately led to a bloody civil war.

Mr. President: We have, as a matter of fact, fixed the status of the Units in the articles which we have already passed. Whatever status, the States have, has already been fixed.

Shri Brajeshwar Prasad: The use of the word 'Union' further aggravates the malady. I will confine myself to the use of the word 'Union'.

It ended in a bloody civil war. Having due regard to the lessons of American Constitutional history, I submit that the word 'Union' should be deleted from the Draft Constitution of India. We have not accepted the use of the word 'Union' anywhere in the Constitution.

Mr. President: I think you mean that the use of the word 'State' should be omitted.

Shri Brajeshwar Prasad: No, Sir. The word 'Union' should not be used.

The Honourable Shri K. Santhanam: We have got the 'Union List' which we have already passed.

Dr. P. S. Deshmukh: (C. P. & Berar : General) : The statement is wrong that we have not used the word 'Union'.

Mr. President: We have used the word 'Union' in so many places in the Constitution. I think it is really too late to re-open that question.

Shri R. K. Sidhva: (C. P. & Berar : General) : We have got the Union List.

Shri Brajeshwar Prasad: We have never discussed the heading of List I. We began with entry No. 1.

Mr. President: The word 'Union' occurs in so many places in the articles. I think it is too late now. You cannot move this amendment.

(Amendments 190, 191, 193, 194, 195 and 196 were not moved.)

Mr. President: Amendment 197; that has already been moved. Amendment 219; Maulana Hasrat Mohani.

Maulana Hasrat Mohani: (United Provinces : Muslim) : Sir, I want, first of all, to explain that I am not in the habit of adopting any dilatory tactics or putting anybody to any hardship. Yesterday evening, I appealed.....

Mr. President: It is not necessary to go into that. That need not be explained. You go on with the amendment.

Maulana Hasrat Mohani: Sir, before explaining my two amendments, I first want to refer very briefly to the history of this Constitution making business.

Seth Govind Das: (C.P. & Berar : General) : How can the whole question be now taken into consideration, this Constitution making business ?

Maulana Hasrat Mohani: My whole argument depends on that background I will not take more than two minutes.

Mr. President: Yes, Maulana.

Maulana Hasrat Mohani: The first thing is about the Objectives Resolution I have got a verified copy of this thing together with the two speeches delivered by Pandit Nehru at the time of the passing of the Objectives Resolution. It is this :

"The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constituiton.."

This is the Objectives Resolution, that is an Independent Sovereign Republic. These are the three words and Pandit Nehru has declared more than once, and it has made history, that there will be no change introduced in this Objectives Resolution. To my astonishment, when I got this copy of the Draft Constitution, I found, as a sort of an introductory remark Dr. Ambedkar

has given the direct lie to that thing. He will not follow this Objectives Resolution. Here is what he himself admits. In paragraph 2, he says, about the Preamble: "The Objectives Resolution adopted by the Constituent Assembly in January 1947, declares that India is to be a Sovereign Independent Republic. The Drafting Committee has adopted the phrase Sovereign Democratic Republic because independence is usually implied in the word "Sovereign", so that there is hardly anything to be gained by adding the word "Independent". The question of the relationship between this Democratic Republic and the British Commonwealth of Nations remains to be decided subsequently". This last portion of this explanation has let the cat out of the bag. Because, he had in his mind that the time is coming when it is quite possible that our Prime Minister will go and decide in some way or other to remain in the British Commonwealth.

Then, again, he says: "It will be noticed that the Committee has used the term Union instead of Federation. Nothing much turns on the name, but the Committee has preferred to follow the language of the preamble to the British North America Act, 1867, and considered that there are advantages in describing India as a Union although its Constitution may be federal in struction." Here also, he says, what is there in the name. I say, if there is no importance in the name, why should he change the word Federation into Union. Why did he not stick to the form Federal Republic of India? Why drop the word Republic? It is on this ground that I must declare that when Pandit Nehru introduced the Objectives Resolution in January 1947, he was agreeable to that. But later on, somehow or other and for reasons best known to himself I found that he has changed his mind.

Mr. President: We are not now discussing the Preamble. We are discussing article 1.

Maulana Hasrat Mohani: It is the same thing. Both are identical.

Mr. President: They are not.

Maulana Hasrat Mohani: Dr. Ambedkar said that this amendment is only about name. I say it is nothing of the kind because here he says 'India shall be a Union of States only'. Why States only? Why not Union of Republics? If there had been only a question of name, I would not have taken any part in the discussion.

Shri Mahavir Tyagi: They are sovereign states and so they are republics.

Maulana Hasrat Mohani: I will come to it later on and you will see whether it is a Republic or Dominion or an Empire. Because Pandit Jawaharlal changed his mind and because he was committed to certain pledges, therefore he thought it advisable to hand over this task to Dr. Ambedkar so that he may be saved the charge of going back upon his promises and it was therefore entrusted to Dr. Ambedkar. Perhaps it was with his connivance or perhaps at his instance that Dr. Ambedkar in this Draft Constitution has introduced this thing. Article 1 says—"We the People of India having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all the citizens, etc." The original word in the Objectives Resolution was Sovereign Independent Republic.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General): What are we discussing now, may I know, Sir?

Mr. President: I have pointed out to the speaker that we are discussing article 1 and not the Preamble.

Maulana Hasrat Mohani: I will say a few words and then resume my seat. Now the word 'Independent' is dropped in this because it was in the minds of both Pandit Nehru and Dr. Ambedkar that the relationship between India and the British Commonwealth had not yet been determined, therefore taking into consideration the possibility of India coming to terms with the British Commonwealth he said that in that case Pandit Nehru could not go back on his word 'Republic' and therefore he allowed Dr. Ambedkar to change this and take the odium of changing the wording of this Resolution. I most seriously object to this.

Mr. President: There shall not be any speculation about the motives of the Drafting Committee or the Prime Minister.

Maulana Hasrat Mohani: Now, Sir, I now explain the reason why I have tabled this amendment. There are two alternatives, the first is about the phrase in clause (2) where he says that 'India or Bharat will be a Union of States'. I say that I have got a right to propose that instead of 'Union of States' it should be 'Union of Republics of India or Union of Socialist Republic of India'. This was my contention. I proposed this amendment to the Preamble but because Dr. Ambedkar, I think, in his inner heart wanted to deprive me of that opportunity, so he got that thing in the first clause so that he may get it passed here and then when discussion of the Preamble takes place he would come forward and say that this is a settled fact and now we cannot frame a Preamble against the previous decision, although I have an assurance by the Honourable the President that he would not disallow me and declare me out of order when I will propose this very thing when the question of Preamble comes before the House. I have taken into consideration the difficulty. The word Republic is taboo for some people. If they do not have the courage to use it, and find difficulty in accepting that word, I have an alternative proposal to call them Sovereign States of India. That is to say the provinces will be autonomous. When I was in the Congress up to the last I proposed a Resolution of complete independence at the Ahmedabad Congress. I have always been of the opinion that India cannot remain in the same position as it was during the British rule here. The British divided India into so many provinces but it was only for administrative purposes. There was C.P., U.P. Bihar Bengal, etc. but they were all for administrative purposes. As far as power was concerned, no province had got any right. The Governors were appointed by His Majesty the King and his rules were framed by the Central Government. I was determined to have this changed.

The Honourable Shri Ghanshyam Singh Gupta: The status of the States has been defined.

Mr. President: Let him finish.

Shri Brajeshwar Prasad: I think the same consideration ought to have been shown to me, Sir.

Mr. President: He is not talking of anything which has already been decided.

Maulana Hasrat Mohani: My idea of the present Constitution was I thought that the provinces will be made autonomous and the Indian States.....

Shri Lakshminarayan Sahu (Orissa : General) : *[Mr. President, article 1 is at present under consideration. It is my feeling, however, that it would have been much more proper and desirable that article 1 was taken up for consideration after we had finish our consideration of all the other articles.

*[ ] Translation of Hindustani Speech.

Naturally the taking up of article 1 for consideration without settling all other questions causes some suspicions and apprehensions in our mind. We must bear this consideration in our mind that any changes necessary in article 1, which is under consideration today, would involve corresponding changes in other articles as well. It would not be easy to make such corresponding changes in the articles that have already been adopted. I repeat that any changes in article 1 would involve corresponding changes in all other articles, and, therefore, the more proper thing would be to decide upon the final form of article 1 in the light of and after all the other articles have been adopted by this House.]

Mr. President: *[It would have been in time if you had put forward this suggestion yesterday, and it could have been then considered. But this article has been under consideration since yesterday and your suggestion cannot be considered now.]

Maulana Hasrat Mohani: Very well. Sir, I was saying that my idea of the Constitution was, and also that of many of my friends, if it was to be a union of States, then it must be a union of Sovereign States, that is to say, of completely autonomous provinces and groups of States, containing even the smaller States which have been merged in Districts and Provinces. I thought we would give to those groups of States also the same status as the Provinces, and then we would give them all complete provincial autonomy, and thus make our position quite different from what it was under the British regime. We all know that the set-up under the British regime was designed only for administrative convenience and not for any political purpose or for giving any political power to anyone. There was no provincial autonomy as such during the British regime. I want that at least after our struggle of the last forty years, we must get our provinces independent, and after that we will have a federation of independent units which will voluntarily give some central subjects or hand over to the Centre some subjects such as foreign relations, defence and communications. That was the original idea, and I can give quotations from the speeches of Pandit Jawaharlal Nehru and even Dr. Ambedkar to show that they were of this opinion also at that time.

But now, somehow or other, these gentlemen have changed their attitude, and instead of making these groups of Indian States assume the same status as the Provinces, they have merged the smaller States and put them out of existence—only a very few remain now—and they have frustrated my hopes of having a federation of these completely autonomous units. Instead of proclaiming these groups of States as being on the same level as the Provinces and allowing them to have their own elected governors, now they have appointed Pramukhs and Raj Pramukhs and many other things which are beyond my comprehension to understand and which is all quite ridiculous. What do Pramukhs and Raj Pramukhs mean? They do not allow any sort of independence, either to the Provinces or to the groups of States. Even at a very early state of our deliberations I raised this point. When Pandit Jawaharlal Nehru moved his motion about Provincial constitution to be provided here, I raised this objection. I asked, "Why do you anticipate the decision of the Constituent Assembly? How do you know what will be the status of the Provinces now? Why are you planning this model provincial constitution, and what right have you got to produce such a model constitution for the provinces before realising what will be the position of the Provinces?" He wanted to silence me, and replied to me by asking, "Why do you bother about it? We have already made up our mind that we will have such and such provincial constitutions." Sir, we had said that we would have independent provinces and that the Governors would be elected governors. But now what do we find here? Instead of Governors, you have adopted that thing—Pramukhs. And

*[ ] Translation of Hindustani Speech.

[Maulana Hasrat Mohani]

afterwards, for some unknown reasons, or due to some mystery, now Dr. Ambedkar came forward the other day and proposed a new thing. He said, "No, we will have no elected Governors, but the Governors will be nominated by the President, and even though he is the nominee of the President, the President would not trust him, in an emergency; and they say the state of emergency should be determined by the Centre or by the President."

This shows clearly that they want to go back upon all their pledges and decisions; and as I said the other day, Dr. Ambedkar is doing something new, and changing the very nature of the Constitution. Formerly, our idea was that India will be a Federal Republic—a federation of republics, and even if you do not like this idea of republics, at least a federation of autonomous units, But what has he done now? He has brought in the words "Union of States". He has done this practically to obscure the word "Republic". That is the only object. I think the word "Union" does not signify the same thing as "Federation". He may ask, "What is in a name?" If there is nothing in a name, why does he prefer the word "Union" to "Federation"? You may take it from me, he wants this Union to be something like the Union proposed by Prince Bismark in Germany, and after him adopted by Kaiser William and after him by Adolf Hitler. He wants all the States to come under one rule and that is what we call Nazification of the Constitution. I think Dr. Ambedkar also is of that view, and he wants to have that kind of union. He wants to bring all the units, the provinces and the groups of States, everything under the thumb of the Centre.

My Friend, Prof. Shah and others have formed a separate party on this particular point. But here the attempt is to make India a sort of unitary government, and not only a unitary Government, but a sort of unitary empire. This merger of all the States into the Union clearly means that there is nothing more than that he wants to treat the whole of India as one and he wants to establish here a sort of not only Indian Dominion or something of that kind, but he wants to make it a sort of Indian Empire. Sir, I submit that I have been a constant opposer of the British Empire.

Seth Govind Das: He is out of order. He is repeating and repeating!

Maulana Hasrat Mohani: I shall be a direct opposer of this proposal of Indian imperialism in the same way.

Mr. President: Have you anything to say in respect of your amendment?

Maulana Hasrat Mohani: What I say is this: that I know that Dr. Ambedkar has made up his mind and Pandit Jawaharlal has also made up his mind. He has changed his whole attitude and career. I know he has got an overwhelming majority on his side. I was going to suggest last evening that you, Mr. President, could have treated my amendment in the same way as you did the other day. But you said: "All right, we shall take all these amendments as read." Then you went a step further and said: "There is no need of any speech. Put these things to the vote" and the question is put to the vote. If Dr. Ambedkar ventures to say that it is night now, and not day, it is night. I said you should consider that you will have to answer before the Indian public and before God for hoodwinking the public in this manner. You take advantage of your one-party Government and one-party business. If you will adopt these tactics then take it from me that you will not be able to rule for very long.

Shri R. K. Sidhva: I do not wish to move any of my amendments.

Mr. President: These are all the amendments. Now the amendments and the original article as moved by Dr. Ambedkar are open to discussion. Does any Member wish to speak?

Seth Govind Das: *[Mr. President Sir, I will not take more than five minutes of the House and that too I have to because the atmosphere that was necessary in the House for the naming of the country has been disturbed by the speeches so far delivered. Naming has always been and is even today of great significance in our country. We always try to give a name under auspicious stars and also try to give the most beautiful name, I am glad to find that we are giving the most ancient name to our country but, Dr. Ambedkar will excuse me, we are not giving it in as beautiful a way as it was necessary. "India, that is, Bharat" are not beautiful words for the name of a country. We should have put the words "Bharat known as India also in foreign countries". That would have been much more appropriate than the former expression. We should however, at least have the satisfaction that we are today giving to our country the name of Bharat.

I was the first man to raise two questions in the Constituent Assembly; the first was with regard to the National language and the second with regard to the name of the country. We have solved the question of the National language and we are naming our country today. Therefore this day appears to be of great significance. There should be something on record in this connection and therefore I shall submit a few words and shall take only a few minutes.

Some people are under the delusion that India is the most ancient name of this country. Our most ancient books are the Vedas and now it is being recognised that they are the most ancient books of the world. No mention of India is to be found in the Vedas. The words "Idyam" and "Idanyah" can be found in the Rig Veda and the words "Ida" in Yajur Veda. These words have no connection with India.]

Mr. President: Who said that India is the most ancient name?

Seth Govind Das: *[Some people tell us so and in support of this a pamphlet has also been published in which an effort has been made to prove that "India", is more ancient than "Bharat". I want that it should be on record that this is incorrect. "Idyam" and "Ide" mean fire. 'Idenyah" has been used as an adjective of fire and "Ida" signifies voice.]

Shri Mahavir Tyagi: Should it be understood that the word India is the product of the international form?

Seth Govind Das: *[The word India does not occur in our ancient books. It began to be used when the Greeks came to India. They named our Sindhu river as Indus and India was derived from Indus. There is a mention of this in Encyclopaedia Britannica. On the contrary, if we look up the Vedas, the Upanishads the Brahmanas and our great and ancient book the Mahabharat, we find a mention of the name Bharat.

"अथ ते कीर्तयिष्यामि वर्षम् भारत भारतम"

(Bhisma Parva)

We find a mention of "Bharat" in Vishnu Purana also.

"गायन्तिः देवा किल गीत कानि
धन्यास्तु ते भारत भूमि भागे"

In Brahma Purana too we find this country mentioned as "Bharat"

"भरणाच्च प्रजानां वै मनुर्भरत उच्यते।
निरूक्त वचनाचैव वर्ष तद्भारतं स्मृतम् ॥"

*[] Translation of Hindustani speech.

[Seth Govind Das]

A Chinese traveller named Hiuen-Tsang came to India and he has referred to this country as Bharat in his travel book.

By my reminding the House of these ancient matters it should not be understood, as our Prime Minister and other Honourable Members say, that I am looking backward. I want to look forward and I also want that there should be scientific inventions in this country. But by naming our country as Bharat we are not doing anything which will prevent us from marching forward. We should indeed give such a name to our country as may be befitting our history and our culture. It is a matter of great pleasure that we are today naming our country as Bharat. I said many a time before too that if we do not arrive at correct decisions in regard to these matters the people of the country will not understand the significance of self-government.

We fought the battle of freedom under the leadership of Mahatma Gandhi by raising the slogan of "Bharat Mata Ki Jai". It is a matter for pleasure that we are going to do a correct thing today. But I would like to say that we are not doing it in a beautiful way. Why whatever way we may do it, our country is going to get the name of Bharat. I am confident that when our Constitution will be framed in the national language this name of Bharat will occupy its rightful place. I am very much pleased to note that whatever manner it may be, the name Bharat is being given to our country. I heartily congratulate the Constituent Assembly on it.]

Shri Kallur Subba Rao (Madras : General) : Sir, I heartily support the name Bharat, which is ancient. The name Bharat is in the Rig Veda, (*vide* Rig. 3, 4, 23.4). It is said there 'इमाइन्द्र भरतस्य पुत्रा' "Oh, Indira all this progeny of Bharata". Also in Vayu Purana the boundaries of Bharat also are given

"उत्तरं यत् समुद्रस्य हिमाद्रेश्चैव दक्षिणम् ।
वर्षं तद्भारतं नाम भारती यत्र संततिः ।"

(Vayupuran U-45-75).

It means that land that is to the south of the Himalayas and north of the (Southern ocean) *Samundras* is called Bharat. So the name Bharat is very ancient. The name India has come from Sindhu (the Indus river), and we can now call Pakistan as Hindustan because the Indus river is there. Sind has become Hind : as (Sa)' in Sanskrit is pronounced as (Ha) in Prakrit. Greeks pronounced Hind as Ind. Hereafter it is good and proper that we should refer to India as Bharat. I would request Seth Govind Das and other Hindi friends to name the language also as Bharati, I think for the name Hindi the name Bharati should be substituted, as the former denotes the Goddess of Learning.

Shri B. M. Gupte (Bombay : General) : Sir, I support the name Bharat but I want to point out certain implications of the adoption of the amendment and the anomalies arising therefrom.

In his introductory speech at the commencement of the Second Reading of the Constitution Dr. Ambedkar observed that the word 'Union' was advisedly used in order to negative the right of secession. My submission is that as far as I see there is no warrant for this proposition either in the dictionary meaning of the word Union or in the political science meaning of it. Therefore if it is necessary that the right of secession should be negatived that should be expressly provided for. I do not mean to say that if we do not expressly negative it there will be the right of secession, because in regard to the provinces there is no question of secession at all. They were never

independent and they have not come in by agreement. As far as the Indian states are concerned, those which signed the first Instrument of Accession, there is a provision in that Instrument which allows them to secede after they have seen the full picture of the Constitution. But once they accede after the commencement of the constitution they may perhaps not have the right. It is however worthwhile considering whether it is not necessary, in view of the provision in the Instrument of Accession, to expressly provide for this subject.

This leads us to the debatable point—whether the Union is a Federation or a Unitary State. I have already described it sometime ago, speaking on another article that this is not a federation proper but it is a decentralised unitary government. No doubt I admit that there is one characteristic of federation in this constitution and it is this that provinces have a fairly large number of subjects in their jurisdiction. But it is not an absolute characteristic as it is also compatible with a de-centralised form of unitary government. Therefore though there is one characteristic which can be said to be of a federal character, there are so many other characteristics of subordination. The other day when I said that the States are subordinate to the Centre our Friend Mr. T. T. Krishnamachari objected to that statement; but I can point out so many articles, so many characteristics which show how the States are subordinate to the Centre.

If the constitution were of a federal character there would be no provision in it for the constitutions of the units. In a proper federal constitution the constitution of the units is not given at all. Here we are providing for the constitution of the States. The Governor is appointed by the Centre. Article 3 makes a distinction between State in Part I and State in Part III. With regard to the State in Part I the Centre is given the power to make any changes irrespective of the opinion of the State. The only obligation laid upon the President is that he shall consult the legislature of the State concerned. But with regard to the State in Part III it is laid down that the President shall obtain the consent of the State concerned. That shows that with regard to the State in Part I the Parliament can do anything, even if there is opposition from the State concerned. That shows the subordination of the States. Then under article 226 even without any reference to the States concerned any item from the State list can be taken by the Centre. And I can point out many other similar provisions. These are marks of subordination and therefore I say that this is not a proper federal Constitution.

But my objection is not to what has been done in this direction. My objection is that we have not given the proper name to the units. I do not mind making the Centre strong. I know even in proper federal constitutions under the stress of modern conditions and due to the bewildering expansion of rapid means of communication there is a tendency of power to gravitate to the Centre.....

The Honourable Dr. B. R. Ambedkar: It is proposed to alter the clause in article 3 dealing with the reorganisation of the provinces and States. States in both Parts I and III will be brought on the same level. There is an amendment to the article and that difference is going to be eliminated and it will disappear.

Shri B. M. Gupte: That is alright but as I was saying I am not against making the Centre strong. But at the same time we have given a glorified name to the units. We are taking away the powers of the States and bringing them in the Central or Concurrent list; and yet we have adopted the word State for the unit. If we study the federal or semi-federal constitutions we will not find a single instance in which the word State is given to a unit, where that unit has not got residuary powers or some semblance of sovereignty. Here we are giving the name State even to Commissioner's provinces, where

[Shri B. M Gupte]

there is not even a semblance of responsible government and where there is not even a legislature. As I said, in no federal or semi-federal constitution you will find it. Take the case of Canada. There the residuary powers are not in the units and therefore the units are called "provinces". But in Australia, the residuary powers reside in the units and therefore they are called "States". So also in the United States of America. So also in Soviet Russia. There the residuary powers reside in the units and therefore they are called "Republics". Perhaps the case of South Africa is still more illuminating. There at first units were called "States", but when they devised a form which was more or less of a unitary type, they surrendered their sovereignty and thereafter those States which were called "States" themselves consented to be called "provinces". Therefore, my point is this, that in all these federal or semi-federal constitutions, the word "State" is used in a particular meaning and we have completely departed from that. I do not mean to say that no departure should be made, but what is the advantage of it? Have you got uniformity? No. On the contrary we have got clumsiness, because again and again we have to say State in Part I and State in Part III and so on. I know we have not yet taken the First Schedule, but this much is certain that some difference between the State in Part I, State in Part II and State in Part III will remain for the time being. But the more serious objection is that we are unnecessarily encouraging the States in the belief of independence and status which is not theirs and this is likely to lead to bitterness and friction.

The Honourable Dr. B. R. Ambedkar: Sir, this matter was debated at great length last time. When this article came before the House, it was kept back practically at the end of a very long debate because at that time it was not possible to come to a decision as to whether the word "Bharat" should be used after the word "India" or some other word, but the whole of the article including the term "Union"—if I remember correctly—was debated at great length. We are merely now discussing whether the word "Bharat" should come after "India". The rest of the substantive part of the article has been debated at great length.

Shri B. M. Gupte: I do not say that we should go back upon what we have done. I am merely pointing out the implications and the result of all this. I say that the word "State" and "Union of States" connotes something which is not really there in the Constitution and the States might consider that they are independent and their estimate of their status might be higher than what it really is. I therefore submit that at least as far as the right of secession is concerned, it is not too late yet expressly to negative it, if it is found necessary.

Shri Ram Sahai (Madhya Bharat): *[Mr. President, Sir, when the question of Hindi was under discussion in the House I had submitted that in Gwalior, which is a part of Madhya Bharat Union, Hindi had been the official language for the last fifty years. I also feel proud to say in this House that our States' Union of Gwalior, Indore and Malwa, had named itself Madhya Bharat as long ago as April 1948. There cannot be an occasion of greater elation for us than that the country, a part whereof we had named Madhya Bharat, is being named Bharat. This name, as Seth Govind Das has also felt, gives us a lot of pleasure. According to the ancient custom, the naming ceremony is performed in the beginning, but according to the modern practice while considering a

*[ ] Translation of Hindustani speech.

Bill or law we take up the first article, regarding the name, at the end. According to this practice we are considering the first article after finishing consideration of most of the articles of the Constitution, and we are, by it, naming our country Bharat. In all our religious scriptures and all Hindi literature this country has been called Bharat. Our leaders also refer to this country as Bharat in their speeches.

For some time, however, it was felt that this name may lead to some difficulties and there was some opposition to this name, but it is a matter for pleasure that we are going to accept the name Bharat without any opposition. The people of the States, who were always considered to be untouchables, separate from the people of the rest of India, would now be regarded as a portion of India, as partners, as part and parcel of India, as equal partners in it, who would be governed under the provisions of the same Constitution. They cannot have greater pleasure than what they have by participating on equal terms in the framing of this Constitution. Even today when the name of the country is being decided, they are taking the same part in the ceremony as the other provinces are doing. There had always been some distinction between the States and provinces.

When the Draft Constitution was prepared, an attempt was made therein too to keep the States aloof, and they have so far been kept separate, but after great endeavour the Drafting Committee has been made to realise that the people of the States or the Constitution of the States cannot be kept separate from this Constitution. By the grace of Sardar Patel the States were integrated, their administrative system was bettered, and the rule of the princes ended. Now the Drafting Committee has also suggested various amendments, besides our amendments, to bring the States to the level of the Provinces, even in regard to matters for which it had originally made separate provisions for the States. For this I thank the Drafting Committee very much on behalf of the representatives of the States. The Committee has at last given due recognition to the aspirations of the people of the States and brought them to the same level as the people of the provinces in so far as this Constitution is concerned. Now the people of the States will also enjoy their rights exactly in the same manner and to the same extent as the people of the Provinces would do under this Constitution. They would be governed by the same administrative machinery.

There was a time when it was thought that the States were established with a view to strengthen the British rule. A kind of bad odour surrounded the very name of the people of the States. But it is long since we succeeded in freeing ourselves from this bad name with the result that we have participated in the Constitution-making as a part of India, and we shall enjoy the fruits of this Constitution like the people, and along with the people, of the provinces.

I do not want to take any more time of the House and I support this motion.]

Shri Kamalapati Tripathi (United Provinces : General) : *[Mr. President, Sir, I am grateful to you for having given me an opportunity to express my sentiments on an amendment which I consider to be very sacred. Today an amendment regarding the name of the country is before us. I would have been glad if the Drafting Committee had presented this amendment in a different form. If an expression other than "India, that is, Bharat" had been used, I think, Sir, that would have been more in accord with the prestige and the traditions of this country and indeed that would have done greater honour to this Constituent Assembly also. If the words, "that is" were necessary, it would have been more proper to use the words "Bharat, that is, India" in the resolution that has been presented to us. My Friend, Mr. Kamath, has moved the amendment that the words, "Bharat as it is known in the English language

*[ ] Translation of Hindustani speech.

[Shri Kamlapati Tripathi]

India should be used. If the Drafting Committee had accepted it, if it accepts it, even now, it would be given appreciable consideration to our sentiments and the prestige of our country. We would have been very glad to accept it. Still, Sir, we are pleased at the resolution that has been put before us and we congratulate the Drafting Committee on it.

When a country is in bondage, it loses its soul. During its slavery for one thousand years, our country too lost its everything. We lost our culture, we lost our history, we lost our prestige, we lost our humanity, we lost our self-respect, we lost our soul and indeed we lost our form and name. Today after remaining in bondage for a thousand years, this free country will regain its name and we do hope that after regaining its lost name it will regain its inner consciousness and external form and will begin to act under the inspiration of its soul which had been so far in a sort of sleep. It will indeed regain its prestige in the world. The revolutionary movement that took place in the country by following the footsteps of Bapu, the Father of the Nation, made us recognise our form and our lost soul. Today it is due to him alone and due to his penance that we are regaining our name too.

Sir, I am enamoured of the historic name of "Bharat". Even the mere utterance of this word, conjures before us by a stroke of magic the picture of cultured life of the centuries that have gone by. In my opinion there is no other country in the world which has such a history, such a culture, and such a name, whose age is counted in milleniums as our country has. There is no country in the world which has been able to preserve its name and its genius even after undergoing the amount of repression, the insults and prolonged slavery which our country had to pass through. Even after thousands of years our country is still known as 'Bharat'. Since Vedic times, this name has been appearing in our literature. Our Puranas have all through eulogised the name of Bharat. The gods have been remembering the name of this country in the heavens.

"गायन्ति देवाः किल गीतकानि ।"

The gods have a keen desire to be born in the sacred land of Bharat and to achieve their supreme goal after passing their lives here.

For us, this name is full of sacred remembrances. The moment we pronounce the name, the pictures of our ancient history and ancient glory and our ancient culture come to our minds. We are reminded that this is the country where in past ages great men and great *Maharishis* gave birth to a great culture. That culture not only spread over all the different areas of this land, but crossing its borders, reached every corner of the Far East too. We are reminded that on the one hand, this culture reached the Mediterranean and on the other it touched the shores of the Pacific. We are reminded that thousands of years ago, the leaders and thinkers of this country moulded a great nation and extended their culture to all the four corners of the world and achieved for themselves a position of prestige. When we pronounce, this word, we are reminded of the Mantras of the Rig Veda uttered by our *Maharishis* in which they have described the vision of truth and soul-experience. When we pronounce this word, we are reminded of those brave words of the Upanishads which urged humanity to awake, to arise, and to achieve its goal. When we pronounce this word, we are reminded of those words of Lord Krishna through which he taught a practical philosophy to the people of this country—the philosophy which can enable humanity even to lay to achieve its goal of peace and bless. When we pronounce this word, we are reminded of Lord Buddha, who had boldly told men all over the world that.—

"बहुजन-हिताय, बहुजन-सुखाय, लोकानुकम्पाय"

(greatest good of the greatest number, greatest happiness of the largest number and the welfare of humanity)

should be the watch-words of their lives and that they should awake and

arise to promote the welfare of mortals and gods and to show to the world the path of knowledge. When we pronounce this word, we are reminded of Shankaracharya, who gave a new vision to the world. When we pronounce this word, we are reminded of the mighty arms of Bhagwan Rama which by twanging the chord of the bow sent echoes through the Himalayas, the seas around this land and the heavens. When we pronounce this word, we are reminded of the wheel of Lord Krishna which destroyed the terrible, Imperialism of Kshatriyas from India and relieved this land of its burden.]

The Honourable Dr. B. R. Ambedkar : Is this all necessary, Sir ?

Shri Kamalapathi Tripathi : I am just telling you to hear relevant things, Sir.

The Honourable Dr. B. R. Ambedkar : There is a lot of work to be done.

Shri Kamalapathi Tripathi : *[When we pronounce this word we are reminded of Bapu who gave a new message to humanity.

We are pleased to see that this word has been used and we congratulate Dr. Ambedkar on it. It would have been very proper, if he had accepted the amendment moved by Shri Kamath, which states "Bharat as is known in English language 'India' ". That would have preserved the prestige of this country. By the inclusion of the word 'Bharat' and by accepting it, we shall be able to give to this country a form and to give back to it its lost soul and we shall be able to protect it also. Bharat will be a great nation and will be able to serve humanity on a world wide scale.]

Shri S. Nagappa : The question may now be put.

Mr. President : I have already called one speaker. After him, I will put the closure motion to the vote.

Dr. P. S. Deshmukh : There is no hurry today.

The Honourable Dr. B. R. Ambedkar : I have no time to hear.

Dr. P. S. Deshmukh : If you do not want to hear, you can also go.

Shri Hargovind Pant : (United Provinces : General) : *[Mr. President, during the early sittings of the Assembly I had moved an amendment to the effect that for the name of the country, we should have the word "Bharat" or "Bharat Varsha" in place of 'India'. I am gratified to see that some change in the name has at last been accepted. I, however, fail to understand why the word 'Bharat Varsha' is not acceptable to the House when the importance and glory of this word is being admitted by all here. I do not want to repeat what the other Members have said in regard to the acceptance of this glorious word, but I would make only a few observations in respect of this word.

The word "Bharat" or "Bharat Varsha" is used by us in our daily religious duties while reciting the Sankalpa. Even at the time of taking our bath we say in Sanskrit :

"Jamboo Dwipay, Bharata Varshe, Bharat Khande, Aryavartay, etc."

It means that I so and so, of Aryavart in Bharat Khand, etc.....

The most celebrated and word-famous poet Kalidasa has used this word in his immortal work depicting the story of his two great characters—King Dushyanta and his queen Shakuntala. The son born of them was named 'Bharat' and his Kingdom was known as "Bharat". There are many fascinating descriptions of the heroism of Bharat in our ancient books. It is said that in his

*[ ] Translation of Hindustani speech.

[Shri Hargovind Pant]

hildhood he used to play with lion cubs and overpowered them. We are well acquainted with the story of Bharat. I fail to understand, in view of all this why we are reluctant to accept, from the core of our heart the word 'Bharat Varsha' as the name of our country.

So far as the word 'India' is concerned, the Members seem to have, and really I fail to understand why, some attachment for it. We must know that this name was given to our country by foreigners who having heard of the riches of this land were tempted towards it and had robbed us of our freedom in order to acquire the wealth of our country. If we, even then, cling to the word 'India', it would only show that we are not ashamed of having this insulting word which has been imposed on us by alien rulers. Really, I do not understand why we are accepting this word.

'Bharat' or 'Bharat Varsha' is and has been the name of our country for ages according to our ancient history and tradition and in fact this word inspires enthusiasm and courage in us; I would, therefore, submit that we should have no hesitation at all in accepting this word. It will be a matter of great shame for us if we do not accept this word and have some other word for the name of our country. I represent the people of the Northern part of India where sacred places like Shri Badrinath, Shri Kedarnath, Shri Bageshwar and Manasarovar are situated. I am placing before you the wishes of the people of this part I may be permitted to state, Sir, that the people of this area want that the name of our country should be 'Bharat Varsha' and nothing else.]

Mr. President: The question is :

"That the question be now put."

The motion was adopted.

Mr. President: I will now put the various amendments to the vote. The question is :

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clauses (1) and (2) of article 1, the following be substituted :—

'India shall be a Union of Indian Socialistic republics to be called U.I.S.R on the lines of U.S.S.R.'"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clauses (1) and (2) of article 1, the following be substituted :

'India or Bharat shall be a Union of Sovereign States of India or Bharat to be called U.S.S.I. or U.S.S.B. on the lines of U.S.S.R.'"

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (1) of article 1, the following be substituted :

'(1) Bharat, or, in the English language. India, shall be a Union of States'"

The Assembly divided by show of hands .

Ayes : 38

Noes : 51

The amendment was negatived.

Mr. President: Amendment No. 223.

Shri H. V. Kamath: In view of the statement made by Dr. Ambedkar that the schedule will be amended later on, there is no point in pressing this amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: There is no other amendment except the one moved by Dr. Ambedkar himself, as amended by his own amendment No. 197.

Shri Brajeshwar Prasad: What about my amendment?

Mr. President: It was ruled out of order.

The question is :

"That for clauses (1) and (2) of article 1 the following clauses be substituted :

'(1) India, that is, Bharat shall be a Union of States.

(2) The States and the territories thereof shall be the States and their territories for the time being specified in Parts I, II and III of the First Schedule.' "

The amendment was adopted.

Mr. President: The question is :

"That article 1, as amended, stand part of the Constitution."

The motion was adopted.

Article 1, as amended, was added to the Constitution.

Mr. President: I think this bring this session to a close and we shall adjourn now. As announced earlier in the morning, I would fix a date for the next session, which most probably will be the 6th of October.

The Assembly then adjourned till such day in October 1949 as the Honourable the President might fix.

L9LSS/66—800—22-6-67—GIPF.